

RIGHT-OF-WAY LANDSCAPING AND MAINTENANCE CONTRACT

This contract (Contract) is entered into between the City of Sugar Land, Texas (City) and First Colony Community Services Association, Inc. d/b/a First Colony Community Association, Inc. (HOA).

Recitals:

The City Council has adopted a Streetscape Policy pursuant to Resolution No. 17-20 establishing standards for the beautification, lighting, landscaping and maintenance of the City's Rights-of-Way. The Streetscape Policy provides that the City Council annually may approve funding for a landscape reimbursement program as part of the City's budget that will be available to homeowners' associations or other City Council-approved entities that maintain landscaping on City-owned rights-of-way at the Signature level. The Signature roadways are heavily travelled boulevard streets that have become the City's trademark and are listed in the Streetscape Policy.

The HOA installs, repairs, and maintains landscaping throughout the public rights-of-way located in First Colony. The City Council further finds and the parties acknowledge that the payments to be made by the City under this Contract are for the HOA's providing landscaping improvements and maintenance of the public rights-of-way of the Signature roadways in the HOA's territory and that at least one-third of the total cost to provide the landscaping improvements and maintenance for the public rights-of-way of the Signature roadways located in the HOA territory has been paid and will continue to be paid by special assessments levied on property in the HOA that will benefit from the landscaping improvements and maintenance services, within the meaning of section 252.022 (a) (9) of the Texas Local Government Code.

In consideration of their mutual covenants and agreements, the City and the HOA agree as follows:

1. Definitions.

1.1. *City* means the City of Sugar Land.

1.2. *HOA* means the homeowners' or property owners' association identified above in the recitals of this Contract.

1.3. *Program* means the Landscape Reimbursement Program approved as part of the Streetscape Policy.

1.4. *ROW* means the City-owned right-of-way of a Signature roadway.

1.5. *Signature Roadways* means Austin Parkway, Bayview Dr., Brooks St., Burney Rd., Commerce Green Blvd., Commonwealth Blvd., Cunningham Creek Blvd (from US90A to Autumn Ridge Dr., Dulles Avenue, Dairy Ashford Rd., Eldridge Rd., Ellis Creek Blvd., First Colony Blvd., Gateway Blvd., Greatwood Pkwy (from US59 to Forest Woods), Jess Pirtle Blvd, Lexington Blvd., New Territory Blvd. (from Wescott Ave to

Jillian Ln.), Riverbrook Dr. (from Greatwood Pkwy to Fielding Dr.), Sandhill Dr. (from Jaymar Dr. to Winston Ln.), Sansbury Blvd., Settlers Way Blvd., Stadium Dr. (from US90A to Oyster Creek), Sugar Creek Blvd. (from US59 to Country Club Blvd.), Sugar Lakes Blvd., Sweetwater Blvd., University Blvd., West Airport Blvd., and Williams Trace Blvd.

1.6. *Streetscape Policy* means the policy adopted by the City Council on October 17, 2017 by Resolution No. 17-20.

2. HOA Obligations.

2.1. The HOA will provide landscaping improvements and landscaping maintenance services within the ROW of the Signature Roadway(s) located in the HOA's territory, according to this Contract and the Streetscape Policy.

2.2. From October 1, 2017 to September 30, 2018 the City will supplement the HOA's cost of providing landscaping and maintenance of the ROW of the Signature Roadways located in the HOA's territory in the total amount of \$220,031.13. The City will make the payments in (i) three quarterly installments of \$55,007.78, to be invoiced quarterly by the HOA to the City and paid by the City by December 31, 2017, March 31, 2018, and June 30, 2018; and (ii) one final quarterly payment of \$55,007.79 to be invoiced by the HOA to the City and paid by the City by September 30, 2018.

2.3. In consideration of the City's payment, the HOA must perform the following in the ROW of the Signature Roadways located in the HOA's territory as indicated on the map (see Exhibit 1):

- A) Maintenance of the ROW at or above the City's standards as provided in the Streetscape Policy;
- B) Mowing, trimming, edging and litter pick up for 44 cycles; and
- C) Weed control, tree trimming, fertilization, plant pruning and irrigation monitoring and repair (if irrigation systems exist) on an as needed basis.

2.4. The HOA must comply with the Streetscape Policy.

3. Insurance.

3.1. The HOA shall procure and maintain or shall require its contractor or contractors to procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property relating to the performance of the landscape improvements and beautification services required under this Contract, as follows:

- A) Workers' Compensation— Statutory Insurance Coverage
- B) Comprehensive General Liability and Property Damage Insurance with minimum limits of \$2,000,000 for injury or death of any one person, \$1,000,000

for each occurrence, and \$1,000,000 for each occurrence of damage to or destruction of property.

3.2. The General Liability Policy shall include the City as an additional insured under the required policies. Certificates of Insurance and endorsements shall be furnished to the City before work commences. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. Upon request, certified copies of all insurance policies shall be furnished to the City.

4. Term and Termination.

This Contract is effective October 1, 2017 and continues in effect through September 30, 2018. Thereafter, this Contract will automatically terminate, at which time a new contract will be issued, subject to annual funding by the City Council. Either party may terminate this Contract for the other party's breach of any material condition or term of this Contract if, after giving written notice to the party alleged to have breached this Contract, the party receiving the notice fails to cure the breach within thirty days of the date of the notice.

5. Miscellaneous Provisions.

5.1. *Records.* Upon the request of the City, the HOA agrees to provide to the City a copy of all documents relating to the administration of this Contract.

5.2. *Notice.* All notices shall be in writing. If mailed, any notice or communications shall be deemed to be received three (3) days after the date of deposit in the United States mail. Unless otherwise provided in this Contract, all notices shall be delivered to the following addresses:

To the HOA: First Colony Community Association
4350 Austin Pkwy
Sugar Land, Texas 77479
Attn: Cary Kelley, Executive Director

To the City: City Manager
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110

With a copy to: Public Works Director
111 Gillingham Lane
Sugar Land, Texas 77478

Any party may designate a different person or address by giving the other party ten (10) days written notice in the manner prescribed above.

5.3. *Entire Contract.* This Contract contains the entire Contract between the parties and supersedes all other negotiations and Contracts, whether written or oral.

5.4. *Assignment.* The HOA may not assign this Contract without the prior written consent of the City.

5.5. *Law Governing and Venue.* This Contract shall be governed by the law of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a court of competent jurisdiction located in Fort Bend County, Texas.

5.6. *Disclosure of Interested Persons for Council-Approved Contracts.* Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission) that includes:

(a) A list of each interested party for the contract of which the contracting business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and

(b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.


The Commission has approved a Certificate of Interested Persons form, which must be filled out, signed and notarized by the HOA and submitted to the City at the time of execution of this Contract, along with the certification of filing generated from the Commission's website at <https://www.ethics.state.tx.us/tec/1295-Info.htm>. The Certificate of Interested Persons form is available on the Commission's website and the HOA must follow the Commission's filing process adopted pursuant to the statute.

[Signature Page Follows]

CITY OF SUGAR LAND, TEXAS

**FIRST COLONY COMMUNITY
ASSOCIATION, INC.**

Date: _____
____ City Manager or
____ Assistant City Manager
____ Executive Director
____ Department Head
____ Program Manager

By: 
Name: Day Pepping
Title: Finance Mgr
Date: 10/24/17
Address: 4350 Austin Parkway
Sugar Land TX 77479
Phone: 281-634-9506
Email: day@firstcolony.org

ATTEST:

Glenda Gundermann, City Secretary

ATTEST:

By: 
Name: LYNN HAIST
Title: ACCOUNTING MANAGER

APPROVED AS TO FORM:

Exhibit 1: Map

Handwritten notes on the left side of the page, including:
- "CITY OF NEW YORK"

Handwritten notes at the bottom left of the page, including:
- "ALBANY COUNTY"

Handwritten notes on the right side of the page, including:
- "COUNTY OF ALBANY"

Handwritten notes on the right side of the page, including:
- "COUNTY OF ALBANY"

Handwritten notes on the right side of the page, including:
- "COUNTY OF ALBANY"

