

City of Houston, Texas Ordinance No. 2013-635

**AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF HOUSTON AND THE HOUSTON PARKS BOARD LGC, INC. FOR THE BAYOU GREENWAYS 2020 PROJECT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.


Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

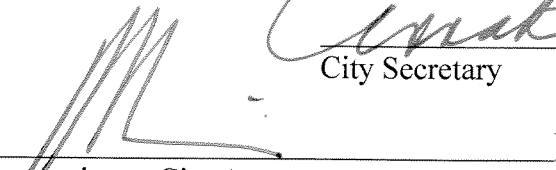
**PASSED AND ADOPTED** this 26<sup>th</sup> day of June, 2013.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 02 2013.

  
 City Secretary

(Prepared by Legal Dept. )  
 (MPB:lg 06/13/2013) Sr. Assistant City Attorney  
 (Requested by Joe Turner, Director, Houston Parks and Recreation Department)  
 (L.D. File No. 0491300005001)

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AYE	NO	
✓		<b>MAYOR PARKER</b>
....	....	<b>COUNCIL MEMBERS</b>
✓		BROWN
✓		DAVIS
✓		COHEN
	<b>ABSENT</b>	ADAMS
✓		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: JUL 02 2013

**INTERLOCAL AGREEMENT FOR BAYOU GREENWAYS 2020**

**BETWEEN**

**THE CITY OF HOUSTON, TEXAS**

**AND**

**THE HOUSTON PARKS BOARD LGC, INC.**

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**EXHIBITS:**

- A Map: Bayou Greenways 2020
- B Project Scope, Schedule and Eligible Project Costs Matrix
- C Eminent Domain Procedures
- D Request for Disbursement Form

**INTERLOCAL AGREEMENT FOR BAYOU GREENWAYS 2020**

**THE STATE OF TEXAS**       §  
  §  
**COUNTY OF HARRIS**       §

**THIS INTERLOCAL AGREEMENT FOR BAYOU GREENWAYS 2020** is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** (the “**City**”), a Texas home-rule city, and the **HOUSTON PARKS BOARD LGC, INC.** (“**HPBLGC**”), a nonprofit local government corporation, organized and existing under the laws of the State of Texas, acting by and through its manager, the Houston Parks Board, Inc. (“**HPB**”) a local 501(c)(3) non-profit corporation organized under the laws of the state of Texas.

The parties agree as follows:

**ARTICLE I  
FINDINGS AND DEFINITIONS**

**Section 1.1. Findings**

A. On November 6, 2012, the voters of the City approved a \$166 million parks bond proposition (“**Proposition B**”) of which \$100 million is designated to support the portion of the Bayou Greenways Initiative (a regional plan for interconnected parks, trails and green spaces) within City limits (“**Bayou Greenways 2020**”). Bayou Greenways 2020 (sometimes referred to in this Agreement as the “**Project**”) is a public/private project with the purpose of creating an integrated system of connected linear parks with walking, running and bicycle trails along the nine (9) major bayous within the City limits. The Bayou Greenways 2020 Project will add parkland, trails and natural areas along the major bayous to enhance, protect and preserve water quality, natural habitat, native wildlife, and promote the health and welfare of the citizens of Houston and its surrounding areas by linking the City’s existing stretches of linear parks, trails and larger traditional parks with new greenways.

B. Implementation of the Project will make a highly visible and tangible contribution to the City’s economic health, environmental health, and the physical and mental health of its residents, 1.3 million of which live within 1.5 miles of one or more of the nine (9) major bayous within the City limits, as shown on **EXHIBIT A** attached hereto.

C. Upon completion of the Project, all Bayou Greenways within the City limits will be open to the public for multi-modal fitness and transportation, including walking, running, cycling and other fitness and recreational activities. The Project is estimated to reach completion within seven years. The estimated cost to complete the Project within the City limits is \$205,000,000.

D. HPBLGC is a Texas nonprofit local government corporation created by the City to provide support for the City’s park system. HPB is a Texas 501(c)(3) nonprofit corporation that works on behalf of the City and the City’s Houston Parks and Recreation Department (“**HPARD**”) to create, improve, protect, and advocate for parkland in the greater Houston area, and to acquire new parkland and park capital improvements throughout the City and its extra-territorial jurisdiction. HPB has a management agreement with HPBLGC to acquire, manage, develop and improve parks properties on behalf of HPBLGC and contract for the design, development, improvement, construction and installation of parks and open spaces approved by the Director of the Houston Parks and Recreation Department.

E. Consistent with the Election Ordinance, which provided that “it is the intention of the City Council to allocate \$100,000,000 of the proceeds of any public improvement bonds or obligations issued and authorized under Proposition B to fund the project known as the Bayou Greenways Initiative,” the City shall, as set forth herein, take all necessary steps to commit \$100,000,000 in bond proceeds to the Project (the “**Public Commitment**”), with the understanding that the remaining \$105,000,000 (the “**Private Commitment**”) will be secured by HPB and its partners through private philanthropy and other sources, including the application and receipt of federal, state or other governmental funding, and including multi-year pledges and grants (collectively, “**Private Contributions**”), resulting in at least/minimum of a 1:1 public-private funding ratio for the Project.

F. Of the total amount of the Private Commitment, HPB has already obtained cash and commitments in the amount of \$20,900,000 and herein reaffirms their commitment to continue their private fundraising campaign for the remainder of the Private Commitment through collaboration with other local non-profits, other governmental agencies, and private individuals and entities.

### Section 1.2. **Determinations**

The City and HPBLGC find that the findings set forth in Section 1.1 are determined to be true and correct for all purposes.

### Section 1.3. **Definitions**

All terms used in this Agreement shall have the meanings given herein, unless otherwise specified.

“**Agreement**” means this Interlocal Agreement for Bayou Greenways 2020, together with all amendments hereto, and all revised and supplemented versions of **EXHIBIT B** hereto approved by the Directors of HPARD and Finance as contemplated in Section 2.1.A.

“**Annual Public Commitment**” means each annual commitment made after the Countersignature Date of this Agreement, as part of a series of seven (7) annual commitments made by the City, each of which will be in the amount of the estimated cost of the annual project scope as set forth in HPBLGC’s annual Public Commitment Request, which seven annual commitments comprise the total Public Commitment of \$100,000,000, and each of which annual commitments are to be funded out of the BG2020 Funding Program.

“**Bayou Greenways**” means the linear greenspaces and all-weather trails along at least one side of the nine (9) major bayous in the City limits, as shown in **EXHIBIT A** attached hereto, including those existing as of the Countersignature Date plus the Greenway Segments to be constructed pursuant to this Agreement, and excluding but connecting to trail systems already established in public parks along the 9 major bayous as of the Countersignature Date.

“**BG2020 Funding Program**” means those certain financing mechanisms that total \$100,000,000 over the Term of this Agreement, to be created by the City, the funds of which are irrevocably dedicated solely to the Project and which may not be used for any other purpose, the full amount of which shall be designated by the City for the Project at the time of the funding program’s creation.

“**Countersignature Date**” means the date of countersignature of this Agreement by the City Controller of the City.

“**Director**” means the Director of HPARD, the General Services Department (“GSD”), and/or the Finance Department, as indicated in the context in which it appears in this Agreement, or such person as he or she shall designate to administer this Agreement.

“**Election Ordinance**” means Ordinance No. 2012-0714, passed by the City Council of the City on August 15, 2012, ordering the regular election at which Proposition B would be presented.

“**Eligible Project Costs**” means those costs associated with the Project to which the Public Commitment shall be applied, consisting of construction (including but not limited to landscaping materials and installation), including construction management fees, and signage and additional amenities, and cost recovery (not to exceed \$200,000.00 annually for the next 7 years) payable to GSD to manage the Project on behalf of the City, all as further described in **EXHIBIT B** hereto, as such exhibit is updated, modified and/or supplement from time to time as contemplated in this Agreement.

“**Expenditures**” means the funds expended from each Commitment.

“**Finance**” means the City’s Finance Department.

“**GSD**” means the City’s General Services Department.

“**Greenway Segment**” is defined in Section 2.1.A.

“**Initial Private Contribution**” is defined in Section 3.1.A.

“**MWSBEs**” means MBEs, WBEs and/or SBEs, as those acronyms are defined in Chapter 15, Article V, of the City’s Code of Ordinances.

“**Private Commitment**” is defined in Section 1.1.E.

“**Private Contribution**” is defined in Section 1.1.E.

“**Project**” is defined in Section 1.1.A.

“**Proposition B**” is defined in Section 1.1.

“**Public Commitment**” is defined in Section 1.1.E.

“**Public Commitment Request**” means HPBLGC’s annual written request and supporting documentation described in Section 3.2.

“**Request for Disbursement**” means HPBLGC’s request for funds to be disbursed out of an Annual Public Commitment, substantially in the form attached hereto as **EXHIBIT D**, as such form may be modified or replaced from time to time during the Term by mutual agreement of HPB and GSD.

“**Term**” means the period of time described in Article IV, during which this Agreement is in effect.

**ARTICLE II  
DUTIES OF HPBLGC**

**Section 2.1. Scope of Work: Project Construction**

A. HPBLGC shall manage the overall Project through its manager, HPB, as overseen on behalf of the City by a GSD Project manager. HPB and HPBLGC shall provide HPARD and GSD with monthly status reports and monthly meetings. The Project shall include the construction of the integrated pathways and associated amenities such as landscaping and benches along the bayous, to be implemented in one or more segments of each of the Bayou Greenways (each, a “**Greenway Segment**”), under multiple construction contracts for each Bayou Greenway. HPBLGC from time to time, in consultation with the Director of HPARD, shall determine the particular Greenway Segments and scheduling of the Project to be implemented under the construction contracts contemplated by this Agreement. As of the Countersignature Date, such Greenway Segments currently anticipated are listed in **EXHIBIT B** to this Agreement, as the same may be revised and supplemented from time to time by HPBLGC as implementation of the Project progresses, subject to approval of the Director. The Director of HPARD may make revisions to the Project alignment based on the 30% design set at his or her discretion or by mutual agreement of the Parties. The revised and supplemented **EXHIBIT B** as approved by the Director shall be deemed to be effective for all purposes and shall be deemed to be **EXHIBIT B** of this Agreement. HPBLGC, acting through its manager, HPB, shall provide professional construction management services and construction of each Greenway Segment’s improvements in accordance with such **EXHIBIT B**.

B. The Director of GSD, HPBLGC and the City Attorney shall mutually agree on a standard form of construction contract prior to commencement of any construction. As each construction contract is finalized, the Director of HPARD reserves the right to review and comment on the contracts between HPBLGC and its construction contractors.

**Section 2.2. Insurance; Bonds**

A. HPBLGC shall require that each construction contractor for the Project provide the following insurance: (1) Workers’ compensation covering the contractor in the amount required by law; (2) Commercial General Liability Insurance including broad form coverage, contractual liability, bodily and personal injury, and completed operations for bodily and property damage (minimum limits of \$1,000,000 per occurrence, with a minimum aggregate limit of \$2,000,000); and (3) Comprehensive Automobile Liability Insurance, including owned and non-owned, as well as hired, vehicles used for the Project (limits of \$1,000,000 combined single limit for each single occurrence). All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Each contractor shall give 30 days’ written notice to HPBLGC and the City before its policies are canceled or not renewed. Each contractor shall name HPBLGC and the City as “Specific Additional Insured” on the Commercial General Liability and Comprehensive Automobile Liability policies.

B. Prior to beginning construction, HPBLGC shall require each contractor to provide the City with copies of bonds covering faithful performance of this Agreement and payment of obligations arising under it as required pursuant to Chapter 2253 of the Texas Government Code. Each contractor shall name the City as dual obligee on such bonds.

Section 2.3. **Minority, Women and Small Business Enterprises**

A. It is the City's policy to ensure that MWSBEs have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Articles II and V, of the City of Houston Code of Ordinances, relating to City-wide percentage goals for contracting with MWSBEs, are incorporated into this Agreement.

B. HPBLGC shall comply and shall require its construction contractors to comply with such Chapter 15 requirements in connection with construction subcontracts. The City's policy does not require HPBLGC to in fact meet or exceed this goal, but it does require HPBLGC to objectively demonstrate that it has made good faith efforts to do so. To this end, HPBLGC's contractors shall maintain records showing:

- (i) subcontracts with MWSBEs, and
- (ii) specific efforts to identify and award subcontracts and supply agreements to MWSBEs.

HPBLGC shall submit periodic reports of its efforts under this Section to the Director of the Office of Business Opportunity for the City in the form and at the times he or she prescribes.

C. The agreements between HPBLGC and its construction contractors and any subcontractor agreements must expressly require compliance with such Chapter 15 requirements.

Section 2.4. **Scope of Work: Land Acquisition and Design**

A. HPBLGC shall attempt, at its sole cost and expense, to acquire all of the real property necessary to construct the Project either by purchase, dedication or donation, either in fee simple or through appropriate easements, including but not limited to conservation easements pursuant to the State of Texas Landowner's Bill of Rights as prepared by the Office of the Attorney General of Texas.

- (i) For each Greenway Segment in the Project, HPBLGC shall develop conceptual illustrative plans for such Greenway Segment, including proposed general routes or alignments for trails, subject to the approval of the Director of HPARD, and HPBLGC's acquisition of real property necessary for such Greenway Segment shall conform to such approved conceptual plans. Title to all such real property shall be taken in the name of the City, either directly or by transfer from HPBLGC or HPB to the City, in each case free and clear of liens and otherwise complying with the standards of HPARD for acquisition of parklands, which includes a survey and a Phase 1 and Phase 2, if needed, as property must have a Residential Clearance.
- (ii) In acquiring real property for the Project, City hereby designates HPBLGC, acting through its manager HPB, and their respective consultants, agents and as a designated, non-exclusive land and right-of-way acquisition agents of the City for the Project. If good-faith efforts by HPBLGC to acquire one or more parcels of real property needed for the Project through voluntary transactions are unsuccessful, and the Director of HPARD deems the parcel(s) essential for the connectivity and completion of Bayou Greenways 2020, HPBLGC may request the Director of HPARD to recommend, by action of City Council, for the acquisition of such real property through the exercise of the City's power of eminent domain in accordance with the procedures set forth in **EXHIBIT C** attached hereto. All such requests shall be made in writing to the Director and

include a current title commitment and appraisal report for the needed real property.

B. HPBLGC shall provide the City all goods and services necessary to design the Project in accordance with **EXHIBIT B**, as revised and supplemented from time to time. HPBLGC shall engage one or more design professionals for the design of the Project in accordance with the Professional Services Procurement Act, Government Code Chapter 2254. HPBLGC shall prepare and submit preliminary alignment and initial scope after surveys have been completed, as well as all 30%, 50%, and 95% Final plans and drawings to the Director of HPARD for review and approval, which the Director will not unreasonably withhold. The Project is not exempt from professional licensing requirements under Section 1001.053 of the Texas Occupations Code.

C. The parties intend that the costs of all Project costs for land acquisition and design shall be covered by proceeds of the Private Commitment.

### **ARTICLE III DUTIES OF CITY**

#### **Section 3.1. Annual Appropriations of Public Commitment.**

A. HPBLGC has obtained cash and pledges or other commitments in the amount of \$20,900,000 (“**Initial Private Contribution**”) toward the total amount of the Private Commitment and hereby reaffirms their commitment to raise an additional \$84,100,000 in additional Private Contributions for a total contribution of \$105,000,000 over the Term of this Agreement, as amended.

B. Consistent with the findings herein, the City hereby commits to take all necessary steps to make available to HPBLGC over the Term of this Agreement, as amended, the Public Commitment in the amount of \$100,000,000. The Public Commitment shall be used to pay Eligible Project Costs in an amount equaling, in the aggregate, \$100,000,000, from which the City will pay a total project management fee in an amount of 4% of the Public Commitment, payable incrementally with the disbursements made under Section 3.3 of this Agreement, for the services rendered by HPBLGC, acting through its manager HPB, under this Agreement.

C. In order to accomplish this Project, the City shall establish the BG2020 Funding Program and intends to appropriate the initial Annual Public Commitment no later than August 31, 2013, and to appropriate Annual Public Commitments as of the same day of each of the next six (6) consecutive City fiscal years thereafter until its \$100,000,000 Public Commitment for the Project is complete. However, the City has appropriated no funds for any obligation under this agreement and shall have no obligation to pay money hereunder until and unless City Council approves an appropriation therefor.

#### **Section 3.2. Public Commitment Requests.**

A. Prior to the Countersignature Date, HPBLGC has provided to the Directors of Finance and HPARD an overall Project scope and schedule with estimated Project costs for City fiscal years 2014 through 2020 in the form of **EXHIBIT B** attached hereto, listing by Greenway Segment the estimated Eligible Project Costs for such proposed scope of work, plus a more detailed annual scope of work and estimated Project costs for City’s Fiscal Year 2014 beginning on July 1, 2013. Based on the Initial Private Contribution of HPBLGC, HPBLGC has applied for an initial Annual Public Commitment in the amount of \$11,400,000 to be made available to HPBLGC to assist HPBLGC in the initial phase of the Project, including paying for Eligible Project Costs necessary to initiate the work on the Project. The initial Annual Public Commitment is a part of and is included in the total Public Commitment. The Director of Finance and the Director of HPARD have approved such documentation, confirmed that the

Initial Private Contribution has been raised and are thus eligible for matching, and the Director of Finance shall bring the initial Annual Public Commitment in the amount of \$11,400,000 to City Council for consideration no later than August 31, 2013.

B. No later than the last day of February in each calendar year during the Term of this Agreement, HPBLGC shall provide to the Directors of HPARD and Finance (i) an updated version of the overall Project scope, schedule and estimated Project costs for the remainder of the Term of this Agreement substantially in the form of **EXHIBIT B**; (ii) a more detailed annual scope of work to be undertaken by HPBLGC in the upcoming City fiscal year, listing by Greenway Segment the estimated Eligible Project Costs for such proposed scope of work; and (iii) a Public Commitment Request containing all the information required in Section 3.2.C below; to which the Directors will respond within thirty (30) days after receipt.

C. Each Public Commitment Request must include the following Project information:

- (i) a statement of the percentage of the prior Commitment that the Expenditures made and to be made in the then current City fiscal year constitute, which must equal at least 60% of such prior Commitment;
- (ii) a statement of the aggregate amount of all Expenditures to date from all prior public Commitments and the aggregate amount of all Project costs paid to date from the Private Commitment; and
- (iii) certification from HPBLGC that HPBLGC has raised Private Contributions sufficient to establish a one-to-one match for the next Annual Public Commitment, and which certification shall set forth the amount of such Private Contributions that is available in cash on hand and the amount that is made up of pledges and commitments.

D. The Directors of HPARD and Finance shall review the Public Commitment Request, including all of the items required in Section 3.2.C above, and the Directors shall have the right to review HPBLGC's donor records at the offices of HPBLGC. For clarification, Private Contributions raised in one City fiscal year that exceed the required 1:1 match with the Annual Public Commitment in that fiscal year may be carried forward and counted toward HPBLGC's 1:1 match for subsequent fiscal years' Annual Public Commitments. Upon the Directors' approval of the updated **EXHIBIT B**, the detailed annual scope, schedule and cost estimate for the upcoming City fiscal year, and the Public Commitment Request and supporting materials, which approval shall not be unreasonably withheld, the Directors shall certify to the City that HPBLGC is eligible for the Annual Public Commitment requested by HPBLGC to continue or complete the Project.

E. Upon the Directors' certification to the City that HPBLGC is eligible for the appropriation of the requested Annual Public Commitment for the Project, the Director of Finance shall include the estimated Annual Public Commitments as shown in the updated **EXHIBIT B** in the City's proposed Capital Improvement Plan for the upcoming City fiscal year to be presented to City Council for approval by June 30 in the then-current City fiscal year. Each Annual Public Commitment shall also include the cost recovery (not to exceed \$200,000 annually for the next 7 years) payable to GSD in connection with the Project for the upcoming City fiscal year. The City shall thereupon take all necessary steps to make available the next Annual Public Commitment from the BG2020 Funding Program, and the Director of Finance shall bring the City's appropriation of the next Annual Public Commitment to the City Council for consideration no later than August 31 of the new City fiscal year.

F. The Parties acknowledge that the City Council has the sole authority to appropriate or not to appropriate Public Commitment funds. The Public Commitment specified in Section 3.1 constitutes

HPBLGC's total compensation for its services under this Agreement. HPB recognizes that, under its Charter, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates, and further recognizes that effective as of the Countersignature Date, the City Council has included in the Capital Improvement Plan for City fiscal year 2014 only the initial Annual Public Commitment of \$11,400,000 to pay Eligible Project Costs under this Agreement. The City agrees and commits that following the creation of the BG2020 Funding Program, the Director of Finance will take to City Council for consideration the appropriation, no later than August 31, 2013, of such initial Annual Public Commitment associated with this Agreement.

**Section 3.3. Disbursements of Annual Public Commitments for Eligible Project Costs.**

A. Upon appropriation of an Annual Public Commitment, the City shall disburse funds therefrom to HPBLGC as set forth below:

- (i) With respect to each construction contract for all or part of a Greenway Segment, HPBLGC will submit to the Directors of Finance and GSD a Request for Disbursement for an initial draw for use as a rolling fund during construction under such contract, as follows. Upon receipt of the qualified low bid for the construction of a Greenway Segment or portion thereof as listed in the annual scope of work for such City fiscal year, as previously approved by the Director pursuant to Section 3.2.D, HPBLGC will submit to the Director a Request for Disbursement in an amount sufficient to pre-fund (i) 20% of the qualified low bid, (ii) 10% contingency, plus (iii) 4% of (i) and (ii) for HPB's project management fee, as a rolling fund for start-up costs and other Eligible Project Costs during construction of such Greenway Segment.
- (ii) On a monthly basis after such initial Request for Disbursement under such construction contract, HPBLGC will submit to the Directors of Finance and GSD a Request for Disbursement for reimbursement of Eligible Project Costs during the preceding month. The first such Request for Disbursement for reimbursements shall include a complete copy of the final executed construction contract, performance bonds and contractor's proof of insurance for construction work for the Greenway Segment or portion thereof covered in such approved annual scope of work. Each such Request for Disbursement for reimbursement shall be accompanied by supporting documentation consisting of paid invoices, including paid invoices for HPBLGC's 4% management fee and the corresponding proof of payments.
- (iii) In each month, HPBLGC shall submit all Requests for Disbursements for construction contracts to the Directors of Finance and GSD in a single package, with a cover sheet that states (x) the amount of each Request for Disbursement, identified by contract and Greenway Segment, (y) the total amount of all Requests for Disbursements submitted in such package for such month, and (z) compares such total amount for such month to the total amount estimated for such month on the approved annual scope of work for such City fiscal year.

B. Upon the approval by the Directors of Finance and GSD of each Request for Disbursement and supporting documentation as required herein, the Director of GSD shall direct the Controller to make payments to HPBLGC at its address for notices within thirty (30) days of the Directors' receipt of the package of Requests for Disbursement and all required supporting documentation. If for any reason the Director of GSD disputes any items in any Request for Disbursement that HPBLGC submits, including lack of supporting documentation, the Director shall (i) direct the Controller to pay all undisputed amounts and (ii) promptly notify HPBLGC of the dispute and

request remedial action. After the dispute is settled, HPBLGC shall have the right to resubmit a Request for Disbursement and supporting documentation for the previously disputed amount as provided for in this Section 3.3, included in the combined package of monthly Requests for Disbursements next submitted by HPBLGC following the date the dispute is settled. For clarification, it is the intent of the parties that only one package of Requests for Disbursements shall be submitted by HPBLGC in any one month, and the disbursement to be made by the Controller when authorized by the Director of GSD shall be made in a single check issued to HPBLGC within 30 days of submittal of such package.

C. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. HPBLGC's invoices to the City must not contain assessments of any of these taxes. Upon request by HPBLGC, the City Attorney will furnish the City's exemption certificate and federal tax identification number to HPBLGC.

#### Section 3.4. **Maintenance**

The City shall maintain the Bayou Greenways, including both the portions of the Bayou Greenways in existence as of the Countersignature Date and each Greenway Segment as construction thereof is completed by HPBLGC. The parties hereto commit to negotiate in good faith and enter into a binding Maintenance Agreement no later than December 31, 2013, (i) establishing mutually agreeable maintenance standards for the completed Bayou Greenways as contemplated in this Agreement; (ii) identifying a long term (no more than 30 years) revenue source that is not subject to annual appropriations for funding such maintenance to the agreed standards; and (iii) requiring the implementation of such long term solution no later than July 1, 2014. For the interim period between the Countersignature Date and ending on the effective date of the Maintenance Agreement, the City shall maintain the existing Bayou Greenways and completed Greenway Segments to standards equivalent to trails in Mason Park.

#### Section 3.5. **Eminent Domain**

If good-faith efforts by HPBLGC to obtain all of the real property necessary for the Project by purchase, dedication, donation or otherwise are unsuccessful, then upon the recommendation of the Director of HPARD pursuant to Section 2.4.A(ii) above and upon City Council's approval, then in accordance with the procedures set forth in **EXHIBIT D** attached hereto, the City will exercise the authority granted to it by the Constitution and laws of the State of Texas, including Chapters 251 and 273 of the Texas Local Government Code, Sec. 402.031 of the Texas Government Code and Chapter 21 of the Texas Property Code, to acquire the real property needed for the completion of the Project by the exercise of the power of eminent domain. All costs of eminent domain, including appraisals and costs of litigation, including but not limited to reasonable fees of professional consultants, expert witnesses and litigation counsel, shall be paid by HPBLGC from the Private Commitment.

### **ARTICLE IV TERM AND TERMINATION**

#### Section 4.1. **Agreement Term**

This Agreement is effective on the Countersignature Date and expires upon the Director's acceptance of the Project and the City's final payment to HPBLGC, unless sooner terminated under this Agreement.

**Section 4.2. Termination**

A. Either party may terminate this Agreement, without cause, by 365 days' written notice to the other party. After termination under this provision, neither party shall have any further obligation under this Agreement, except as follows: HPBLGC shall return to the City any funds that the City has paid to HPBLGC and that HPBLGC has not expended in accordance with this Agreement or encumbered to pay its obligations under a contract existing at the time of such termination for the completion of the Project.

B. Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 90 days after receipt of such notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director of Finance shall act on behalf of the City to notify HPBLGC of a default and to effect termination.

C. After any such 90-day period described in Sections 4.2.A or B above, the parties will cooperate in good faith to carry out the orderly transition of the Project from HPBLGC to the City or to such successor to HPBLGC as Project sponsor as the City may designate. In connection with such termination and transition, HPBLGC shall transfer all of its rights, title and interests to the City or such successor all contracts and materials relating to the Project, including but not limited to (i) all parcels of land acquired by HPBLGC for any Greenway Segment, (ii) all plans, specifications and construction drawings for the Project, and (iii) all construction contracts and bids for construction contracts for the Project. City shall be responsible for reviewing and funding, on the terms of this Agreement, all Requests for Disbursements submitted by HPBLGC with respect to work on the Project through the last day of any such 90-day period.

**ARTICLE V  
MISCELLANEOUS PROVISIONS**

**Section 5.1. Responsibilities of the Parties**

The parties agree that except for City's designation of HPBLGC as its agent for acquisition of right of way in connection with eminent domain and except by operation of law relating to HPBLGC being a local government corporation created by the City for the purpose of assisting the City in certain of its governmental functions, neither party is an agent, servant, or employee of the other party and that each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**Section 5.2. Force Majeure**

Neither party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions.

**Section 5.3. Severability**

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

**Section 5.4. Entire Agreement**

This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Agreement.

**Section 5.5. Written Amendment**

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and HPB. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

**Section 5.6. Applicable Laws**

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

**Section 5.7. Notices**

Except for HPBLGC's submittal of monthly packages of Requests for Disbursements to the Director of Finance as contemplated in Section 3.3 of this Agreement, all notices to either party to this Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out below or other address the receiving party has designated previously by giving written notice of its changed address to the other party. Postage or delivery charges must be paid by the party giving the notice.

<b>City:</b>	<b>HPBLGC:</b>
City of Houston Director, Houston Parks and Recreation Department 2999 South Wayside Houston, Texas 77023	Houston Parks Board LGC, Inc. Attention: Executive Director 300 North Post Oak Lane Houston, Texas 77024

**Section 5.8. Captions**

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

Section 5.9. **Non-Waiver**

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the Director, or by any other employee or agent of the City, of any part of HPBLGC's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

Section 5.10. **Enforcement; Audit Rights.**

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization of the City. HPBLGC shall make available to the City Attorney, at HPBLGC's offices, at a time mutually agreed upon by HPBLGC and the City Attorney, all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining HPBLGC's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

Audit Rights. HPBLGC shall establish and maintain an accounting system that enables the City Controller or his designee ("City Controller") to readily identify HPBLGC's assets, expenses, costs of goods, and use of funds. This should include cost centers/cost objects that allow summarizing on the Bayou Greenways 2020 Project cost in the aggregate and by function/cost center, and/or cost object. The City Controller and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of HPBLGC, including, but not limited to those kept by HPBLGC, its employees, agents, assignees, successors, and subcontractors. Such records shall include, but not be limited to, external auditors reports and audited financial statements, detailed accounting records that support the audited financial statements, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Records Retention. HPBLGC shall, at all times during the term of this Agreement and for a period of 5 years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. This should also include cost centers/cost objects that allow summarizing on the Bayou Greenways 2020 Project cost in the aggregate and by function/cost center, and/or cost object. HPBLGC shall at any time requested by the City Controller, whether during or after completion of this Agreement, and at HPBLGC's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City Controller. Such records shall be made available to the City Controller during normal business hours at HPBLGC's office or place of business and (subject to a 14 day written notice/without prior notice). In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location agreed to by the City Controller.

HPBLGC shall ensure the City has these rights with HPBLGC's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the HPBLGC and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the HPBLGC's obligations to the City.

Costs of Audit. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the City unless the following exemption criteria are met:

If the audit identifies overpricing or overcharges (of any nature) by HPBLGC to the City in excess of three percent (3.0%) of the total contract billings HPBLGC shall reimburse the City for the total costs of the audit.

If the City Controller's audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the City may recoup the costs of the audit work from HPBLGC. Any adjustments and/or payments that must be made as a result of any such audit or inspection of HPBLGC's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City Controller's findings to HPBLGC.

#### Section 5.11. **Ambiguities**

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

#### Section 5.12. **Survival**

HPBLGC shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

#### Section 5.13. **Parties in Interest**

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and HPBLGC only.

#### Section 5.14. **Successors and Assigns**

This Agreement binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any official, officer, director, employee or agent of the City, HPBLGC, or HPBLGC's manager, HPB.

#### Section 5.15. **Business Structure and Assignments**

HPBLGC shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, HPBLGC shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Other than the right of HPBLGC to carry out its obligations hereunder through its manager HPB, HPBLGC shall not delegate any portion of its performance under this Agreement without the prior written consent of the City Attorney and the Directors of Finance and HPARD, such consent not to be unreasonably withheld or delayed provided that the City is not deprived of any rights or protections.

Section 5.16. **Remedies Cumulative**


Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

*[Remainder of this Page Intentionally Left Blank]*

The parties have executed this Agreement in multiple copies, each of which is an original.

**HPBLGC:**  
**HOUSTON PARKS BOARD LGC, INC.**


**CITY:**  
**CITY OF HOUSTON, TEXAS**  
Signed by:

By:   
Name: Roxsan Okan-Vick  
Title: Executive Director  
Tax ID No.: 26-3091027

\_\_\_\_\_  
Mayor

ATTEST/SEAL (if a corporation):  
WITNESS (if not a corporation):

ATTEST/SEAL:

By:   
Name: Becky Porteous  
Title: Finance Manager

\_\_\_\_\_  
City Secretary

APPROVED:

\_\_\_\_\_  
Director, Houston Parks and Recreation Department

APPROVED:

\_\_\_\_\_  
Director, Finance Department

APPROVED:

\_\_\_\_\_  
Director, General Services Department

COUNTERSIGNED BY:

\_\_\_\_\_  
City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

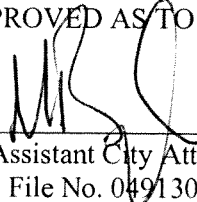
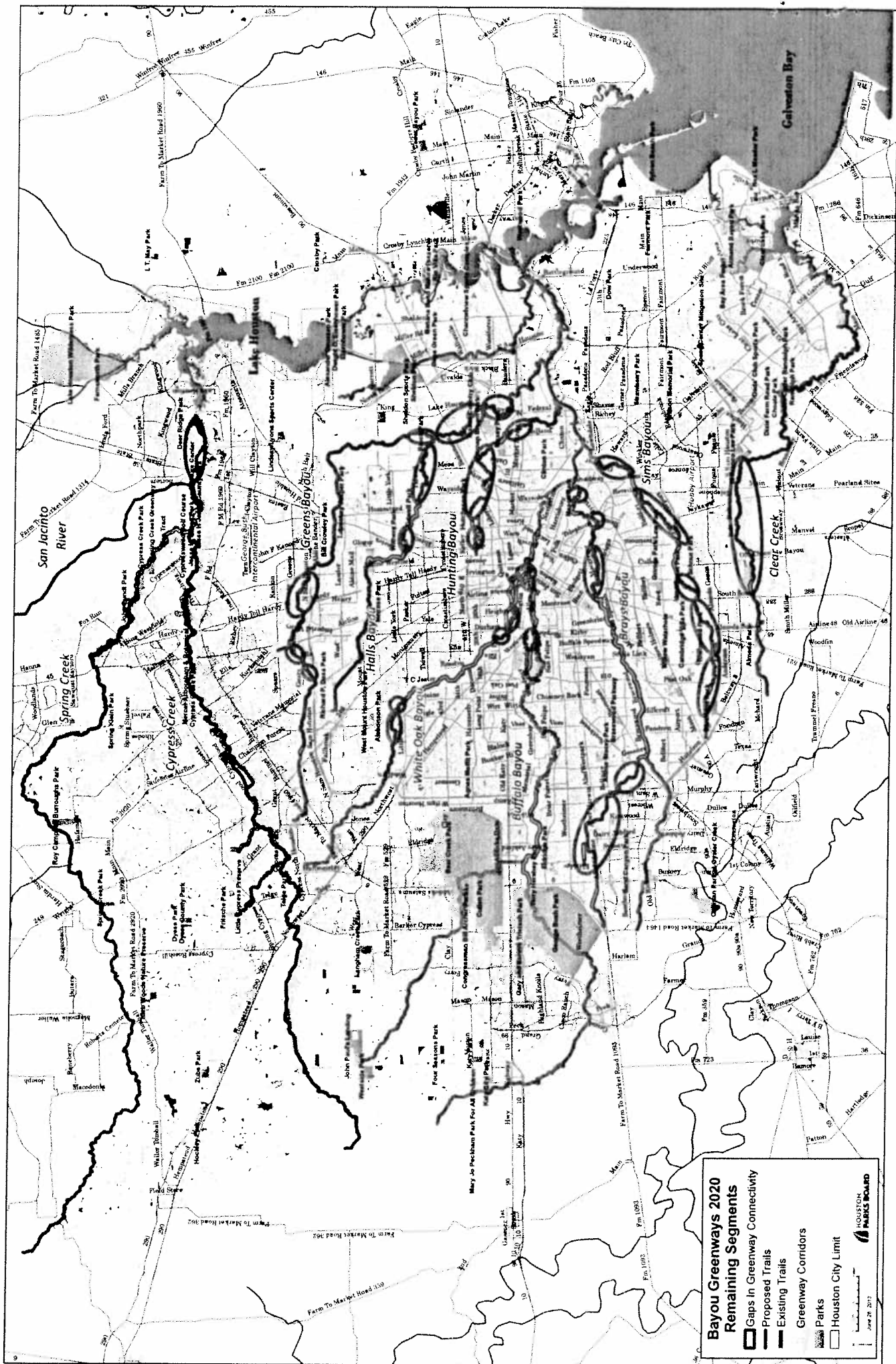
  
Sr. Assistant City Attorney  
L.D. File No. 0491300005001

EXHIBIT A

MAP OF BAYOU GREENWAYS 2020



*F. Alkin*



**Bayou Greenways 2020 Remaining Segments**

- Gaps in Greenway Connectivity
- Proposed Trails
- Existing Trails
- Greenway Corridors
- Parks
- Houston City Limit

HOUSTON PARKS BOARD  
June 29, 2017

**EXHIBIT B**

**PROJECT SCOPE, SCHEDULE AND ELIGIBLE COSTS MATRIX**

A handwritten signature or scribble in black ink, consisting of several horizontal strokes and a vertical stroke, located in the bottom right corner of the page.

ID	Item Name	Project ID	Cost	2013				2014				2015				2016				2017				2018				2019				2020			
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	Brayou Greenway 2010		\$118,245,191.44																																
2	Greenway Segments		\$4,949,901.44																																
3	Brays Bayou		\$10,300,147.00																																
4	Greenway Land Acquisitions		\$4,300,000.00																																
5	TRIGER Project 6 (OST to MLK)		\$1,390,712.00																																
6	Design		\$945,000.00																																
7	Construction		\$229,078.00																																
8	Trail Acceptance		\$2,214,634.00																																
9	Signage and Additional Amenities		\$2,116,650.00																																
10	Trail under Telephone Road Bridge		\$100,000.00																																
11	Land Acquisition		\$440,000.00																																
12	Design		\$0.00																																
13	Construction		\$70,000.00																																
14	Trail Acceptance		\$379,000.00																																
15	Signage and Additional Amenities		\$350,000.00																																
16	Mason Park Bridge		\$40,000.00																																
17	Design		\$340,000.00																																
18	Construction		\$1,796,000.00																																
19	Trail Acceptance		\$1,620,000.00																																
20	Signage and Additional Amenities		\$0.00																																
21	Trail under Telephone Road Bridge		\$80,000.00																																
22	Land Acquisition		\$2,146,000.00																																
23	Design		\$0.00																																
24	Construction		\$430,000.00																																
25	Trail Acceptance		\$2,120,000.00																																
26	Signage and Additional Amenities		\$2,000,000.00																																
27	Trail under Telephone Road Bridge		\$0.00																																
28	Land Acquisition		\$440,000.00																																
29	Design		\$60,000.00																																
30	Construction		\$385,555.54																																
31	Trail Acceptance		\$320,000.00																																
32	Signage and Additional Amenities		\$0.00																																
33	Trail under Telephone Road Bridge		\$50,555.56																																
34	Land Acquisition		\$1,240,000.00																																
35	Design		\$170,000.00																																
36	Construction		\$770,000.00																																
37	Trail Acceptance		\$0.00																																
38	Signage and Additional Amenities		\$300,000.00																																
39	Trail under Telephone Road Bridge		\$1,344,000.00																																
40	Land Acquisition		\$180,000.00																																
41	Design		\$836,000.00																																
42	Construction		\$340,000.00																																
43	Trail Acceptance		\$0.00																																
44	Signage and Additional Amenities		\$178,000.00																																
45	Trail under Telephone Road Bridge		\$636,000.00																																
46	Land Acquisition		\$0.00																																
47	Design		\$473,000.00																																
48	Construction		\$220,000.00																																
49	Trail Acceptance		\$1,444,760.94																																
50	Signage and Additional Amenities		\$1,044,760.96																																
51	Trail under Telephone Road Bridge		\$440,000.00																																
52	Land Acquisition		\$380,000.00																																
53	Design		\$0.00																																
54	Construction		\$500,000.00																																
55	Trail Acceptance		\$2,750,000.00																																
56	Signage and Additional Amenities		\$0.00																																
57	Trail under Telephone Road Bridge		\$100,000.00																																
58	Land Acquisition		\$1,939,000.00																																
59	Design		\$0.00																																
60	Construction		\$600,000.00																																
61	Trail Acceptance		\$2,750,000.00																																
62	Signage and Additional Amenities		\$0.00																																
63	Trail under Telephone Road Bridge		\$100,000.00																																
64	Land Acquisition		\$4,140,000.00																																
65	Design		\$5,740,000.00																																
66	Construction		\$0.00																																
67	Trail Acceptance		\$400,00																																





ID	Task Name	Project ID	Cont	2013		2014		2015		2016		2017		2018		2019		2020	
				Qtr.3	Qtr.4	Qtr.1	Qtr.2	Qtr.3	Qtr.4	Qtr.1	Qtr.2	Qtr.3	Qtr.4	Qtr.1	Qtr.2	Qtr.3	Qtr.4	Qtr.1	Qtr.2
383	Trail Construction	HA-TR-002	\$4,730,000.00																
384	Signage and Additional Amenities	HA-TR-002	\$140,000.00																
385	Mesa Transit Center to Thowell	HA-TR-002	\$4,870,000.00																
386	Land Acquisition	HA-TR-002	\$29,330.00																
387	Design	HA-TR-002	\$750,000.00																
388	Construction	HA-TR-002	\$3,774,899.88																
389	Trail Construction	HA-TR-003	\$140,000.00																
390	Signage and Additional Amenities	HA-TR-003	\$97,073.00																
391	Thowell to Britshike	HA-TR-003	\$246,000.00																
392	Land Acquisition	HA-TR-003	\$1,170,000.00																
393	Design	HA-TR-003	\$1,650,000.00																
394	Construction	HA-TR-003	\$80,000.00																
395	Trail Construction	HA-TR-004	\$2,845,158.01																
396	Signage and Additional Amenities	HA-TR-004	\$350,000.00																
397	Hirsh Road to U.S. 59	HA-TR-004	\$1,790,000.00																
398	Land Acquisition	HA-TR-004	\$1,650,000.00																
399	Design	HA-TR-004	\$140,000.00																
400	Construction	HA-TR-004	\$2,845,158.01																
401	Trail Construction	HU-TR-001	\$110,000.00																
402	Signage and Additional Amenities	HU-TR-001	\$24,887,644.00																
403	Hunting Bayou	HU-TR-001	\$10,000.00																
404	Greenway Land Acquisition	HU-TR-001	\$10,000.00																
405	Land Acquisition	HU-TR-001	\$2,272,000.00																
406	Design	HU-TR-001	\$382,000.00																
407	Construction	HU-TR-001	\$460,000.00																
408	Trail Construction	HU-TR-002	\$2,428,000.00																
409	Signage and Additional Amenities	HU-TR-002	\$2,000,000.00																
410	Herman Brown Park to Amoor Street (W of McCarty)	HU-TR-002	\$220,000.00																
411	Land Acquisition	HU-TR-002	\$4,045,843.04																
412	Design	HU-TR-002	\$535,983.04																
413	Construction	HU-TR-002	\$560,000.00																
414	Trail Construction	HU-TR-003	\$2,970,000.00																
415	Signage and Additional Amenities	HU-TR-003	\$2,750,000.00																
416	Amoor Street to Liberty Road	HU-TR-003	\$220,000.00																
417	Land Acquisition	HU-TR-003	\$2,478,888.84																
418	Design	HU-TR-003	\$489,559.96																
419	Construction	HU-TR-003	\$320,000.00																
420	Trail Construction	HU-TR-004	\$1,839,899.84																
421	Signage and Additional Amenities	HU-TR-004	\$1,539,899.84																
422	Liberty Road to Kelley Street	HU-TR-004	\$120,000.00																
423	Land Acquisition	HU-TR-004	\$2,430,000.16																
424	Design	HU-TR-004	\$498,899.98																
425	Construction	HU-TR-004	\$300,000.00																
426	Trail Construction	HU-TR-005	\$1,430,000.16																
427	Signage and Additional Amenities	HU-TR-005	\$0.00																
428	Kelley Street to Hutchison Park	HU-TR-005	\$200,000.00																
429	Land Acquisition	HU-TR-005	\$115,000.00																
430	Design	HU-TR-005	\$890,000.00																
431	Construction	HU-TR-005	\$550,000.00																
432	Trail Construction	HU-TR-006	\$40,000.00																
433	Signage and Additional Amenities	HU-TR-006	\$1,090,000.00																
434	Hutchison Park to Broyles Street	HU-TR-006	\$0.00																
435	Land Acquisition	HU-TR-006	\$165,000.00																
436	Design	HU-TR-006	\$770,000.00																
437	Construction	HU-TR-006	\$870,000.00																
438	Trail Construction	SL-TR-001	\$100,000.00																
439	Signage and Additional Amenities	SL-TR-001	\$45,000.00																
440	Sims Bayou	SL-TR-001	\$21,000.00																
441	Greenway Land Acquisition	SL-TR-001	\$3,550,000.00																
442	Design	SL-TR-001	\$160,000.00																
443	Construction	SL-TR-001	\$590,000.00																
444	Trail Construction	SL-TR-002	\$2,890,000.00																
445	Signage and Additional Amenities	SL-TR-002	\$2,750,000.00																
446	I-40 to Martin Luther King Blvd	SL-TR-002	\$140,000.00																
447	Land Acquisition	SL-TR-002	\$3,835,000.00																
448	Design	SL-TR-002	\$0.00																
449	Construction	SL-TR-002	\$3,300,000.00																
450	Trail Construction	SL-TR-002	\$0.00																

Sum \$9,913,118.84





EXHIBIT C

**EMINENT DOMAIN PROCEDURES**

A. Upon City's receipt of the Director's recommendation for the exercise of eminent domain pursuant to Section 2.4.A (ii) of this Agreement, and subject to approval by action of the City Council, the City will commence eminent domain proceedings as follows, using HPBLGC as its designated land and right-of-way acquisition agent, pursuant to the State of Texas Landowner's Bill of Rights as prepared by the Office of the Attorney General of Texas.

B. HPBLGC, as City's designated land and right-of-way acquisition agent, will adhere to will be responsible for the payment of all costs and expenses attendant to any proceedings in eminent domain, including but not limited to the amount of the final offer to the landowner, filing fees, special commissioners' fees, appraisal costs, title costs, amount of the special commissioners' award, amount of any final judgment plus any interest thereon, and any other necessary fees and expenses, but excluding City staff time, office supplies and other City administrative costs or expenses related to this Agreement.

C. HPBLGC, in its capacity as City's designated land and right-of-way acquisition agent, shall have the right: (i) to select and, at no cost to City, to retain special counsel, subject to the prior approval of the City Attorney which approval shall not be unreasonably withheld, for the acquisition of such real property through eminent domain or under threat of eminent domain; and (ii) to manage and supervise such special counsel's legal services in connection with such acquisition of real property for the Project. All offers to purchase real property and all pleadings filed by such special counsel in eminent domain cases and proceedings shall be made or filed in the name of the City, and title to such real property acquired through eminent domain or under threat of condemnation shall be taken in the name of the City.

D. HPBLGC shall have the right, upon notice to the Director and the City Attorney, to terminate any particular proceeding in eminent domain filed pursuant to this Agreement. In the event that the City dismisses any proceeding in eminent domain, whether at the request of HPBLGC or due to the failure of HPBLGC to provide all the necessary funds for the proceedings, or if such a proceeding is dismissed for any reason by a court, and, as a result the City is held liable for any of the costs incurred by the landowner and enumerated in Section 21.019 of the Texas Property Code, then such costs shall be paid by HPBLGC within thirty (30) days of receipt of notice from the City of the amount due.



**EXHIBIT D**

**REQUEST FOR DISBURSEMENT FORM**

**Greenway Segment(s):**

\_\_\_\_\_

\_\_\_\_\_

**Work to be completed:**

\_\_\_\_\_

\_\_\_\_\_

**A. TOTAL COST**

- 1. Qualified low bid: \$ \_\_\_\_\_
- 2. Contingency: 10% x A.1: \$ \_\_\_\_\_
- 3. Management: 4% x A.1+A.2: \$ \_\_\_\_\_
- 4. Total Cost, this Segment: \$ \_\_\_\_\_

**B. INITIAL CAPITAL DRAW REQUEST**

- 1. Total Cost (same as A.4): \$ \_\_\_\_\_
- 2. Initial Request: 20% x B.1: \$ \_\_\_\_\_

**C. ADDITIONAL REIMBURSEMENT REQUEST**

- 1. Total Cost (same as A.4): \$ \_\_\_\_\_
- 2. All Prior Requests, this Segment: \$ \_\_\_\_\_
- 3. Remaining Balance (C.1-C.2): \$ ( \_\_\_\_\_ )
- 4. Current Request: \$ ( \_\_\_\_\_ )
- 5. Management: 4% x C.4: \$ a \_\_\_\_\_
- 6. Total Current Request: \$ \_\_\_\_\_

- YES NO Executed Construction Contract submitted/attached
- YES NO Copy of bonds submitted/attached
- YES NO Proof of Insurance submitted/attached
- YES NO Copy of approved contractor pay form submitted/attached

**ADDITIONAL INFORMATION**

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 201\_:

HOUSTON PARKS BOARD LGC, INC.

By: Houston Parks Board, Inc.  
As Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

