

JOINT PARTICIPATION AGREEMENT

This Joint Participation Agreement (“Agreement”) is entered into by and between **Harris County** (“County”) and **The Buffalo Bayou Partnership**, a Texas non-profit corporation (“BBP”) pursuant to Tex. Loc. Gov’t. Code Sec. 81.032. County and BBP may each be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, it is of mutual benefit to both Parties to design, construct and maintain a Hike and Bike Trail from Buffalo Bend Nature Park to Hidalgo Park (“Project”) as generally illustrated in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, both Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project; and

WHEREAS, the County agrees that all funds used under this Agreement shall be from current fiscal funds.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:

TERMS

Section 1. Responsibilities of the Parties

A. County’s Responsibilities

- (i) The County will provide or cause to be provided, engineering services and related support services necessary to prepare plans, specifications, and estimates (“PS&E”) for the construction of the Project.
- (ii) The County shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the project.
- (iii) The County shall provide an invoice to BBP after the Effective Date for the BBP Funding Share for construction of the project in accordance with Section 2 of this Agreement.
- (iv) Upon completion of the PS&E the County will submit the PS&E to BBP for review and approval.
- (v) Upon approval by BBP of the PS&E, the County will advertise for and receive bids for construction of the Project, in a manner similar to that of other County projects.
- (vi) Upon receipt of bids for the construction of the Project the County shall determine the lowest and best bidder and provide the bids to BBP with its recommendation for award of the construction contract to such lowest and best bidder, as determined by the Harris County Commissioners Court.
- (vii) Upon award of a contract for construction of the Project, the County will:

- (a) Manage and inspect the construction of the Project in a manner similar to that of other County construction projects; and
- (b) Through its contractor, construct the Project in accordance with the PS&E approved by BBP. The County may make minor changes in the PS&E through change(s) in contract ("CIC") that the County deems to be necessary or desirable during the construction of the Project, so long as the original scope and intent of the Project is maintained.

(viii) Upon completion of the construction of the Project, the County shall:

- (a) Provide an opportunity for the BBP to participate in a final walk-through and preparation of a punch list in regards to the construction of the Project; and
- (b) Continue to assume full responsibility for the ongoing maintenance and repairs of the Project.

B. BBP's Responsibilities

- (i) BBP will review the PS&E provided by the County and provide its approval within ten (10) business days. Should BBP desire to make changes to such PS&E, the Parties agree to meet and resolve all issues within ten (10) business days of BBP's receipt of the PS&E in order to finalize an agreed upon PS&E for the Project. If BBP does not provide a response on the PS&E provided by the County within ten (10) business days from its receipt of the PS&E, then the PS&E submitted to BBP by the County will be deemed approved.
- (ii) Upon receipt of the bids and award recommendation from the County for construction of the Project, BBP will:
 - (a) Review the bids and provide concurrence for award of the construction contract to such lowest and best bidder within five (5) business days from receipt of the recommendation from the County. If BBP does not provide a response on the construction contract award recommendation within five (5) business days from its receipt of the recommendation from the County, then the recommendation submitted to BBP will be deemed approved; and
 - (b) Remit payment to the County for the BBP Funding Share for construction of the Project in accordance with Section 2 of this agreement. Notwithstanding the foregoing, in the event that (i) sufficient funding is not available to the County to construct the Project, or (ii) the County otherwise determines not to construct the Project, BBP shall have no obligation to remit payment of the BBP Funding Share, and in the event that such payment has been remitted, the County shall refund the BBP Funding Share to BBP.

Section 2. Funding of the Project

Notwithstanding any provision in this Agreement to the contrary, the following provisions will apply to all payments made under this Agreement:

A. BBP agrees to provide \$400,000.00 ("BBP Funding Share") necessary for the construction of the Project. The remaining funds for the Project come from a Texas Parks and Wildlife Department

Grant, the City of Houston Parks and Recreation Department and the County as generally illustrated in Exhibit B attached hereto and incorporated herein by reference. The County and the City of Houston Parks and Recreation Department have a separate agreement.

- B. BBP agrees to provide payment of the BBP Funding Share to the County within thirty (30) days of receipt of the invoice.
- C. Parties agree that any construction costs incurred during the construction of the project or other work to be performed under this Agreement in excess of the construction contract award amount may be funded by the County.

Section 3. Term and Termination

- A. This Agreement shall commence upon final execution by all the Parties (the “Effective Date”) and shall remain in full force and effect until the completion of construction of the Project or the County’s receipt of all payments due from BBP under this Agreement, whichever occurs later (“Term”).
- B. This Agreement may be terminated by the County before award of the construction contract and at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

Section 4. Limitation of Appropriation

- A. BBP understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the County is not currently appropriating any funds for the Project. County may appropriate funds to complete the Project, but such funds shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified available by the Harris County Auditor.
- B. BBP understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the Harris County Auditor to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

Section 5. Miscellaneous

- A. Non-Assignability. The County and BBP bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the County nor BBP shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party
- B. Notice. Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been (a) personally delivered to the address below, (b) deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or the BBP at the following addresses:

BBP:

Buffalo Bayou Partnership
1019 Commerce Street, Suite 200
Houston, Texas 77002
Attention: Anne Olson, President
Email: aolson@buffalobayou.org

Additional Contact: Jose Solis, Project Manager
Email: jsolis@buffalobayou.org

County: Harris County Engineering Department
1001 Preston Avenue, 7th Floor
Houston, Texas 77002-1893
Email: AgreementInfo@hcpid.org

Any Notice given by mail hereunder is deemed given upon deposit in the United States Mail and any Notice delivered in person shall be effective upon receipt.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

C. Independent Parties. It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of BBP for any purpose. BBP, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.

D. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than BBP for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to confer or create rights or remedies upon any third party, increase the rights or remedies of any third party, or the duties or responsibilities of County with respect to any third party.

E. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

F. No Personal Liability; No Waiver of Immunity.

(1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of any Party.

(2) The Parties agree that no provision of this Agreement extends either Party's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

(3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by either Party of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.

G. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

H. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

I. Contract Construction.

- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- (3) When terms are used in the singular or plural, the meaning shall apply to both.
- (4) When either the male or female gender is used, the meaning shall apply to both.

J. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

K. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

L. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

M. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

N. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

O. Warranty. By execution of this Agreement, BBP warrants that the duties accorded to BBP in this Agreement are within the powers and authority of BBP.

P. Anti-Boycott. In accordance with Tex. Gov't Code Ann. §2270.002, BBP warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this Agreement.

Q. Foreign Terrorist Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, BBP warrants and represents that, at the time of execution of this Agreement and for the duration of the term of this Agreement, BBP does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

BUFFALO BAYOU PARTNERSHIP

By: _____
Anne Olson
President

APPROVED AS TO FORM:

ATTEST

CHRISTIAN D. MENEFEE
County Attorney

By: Julian M. Bragg
Secretary

By: Philip Berzins
Philip Berzins
Assistant County Attorney
CAO File No.: 20GEN2875

BUFFALO BEND TO HIDALGO GREENWAY SITE PLAN

Exhibit A

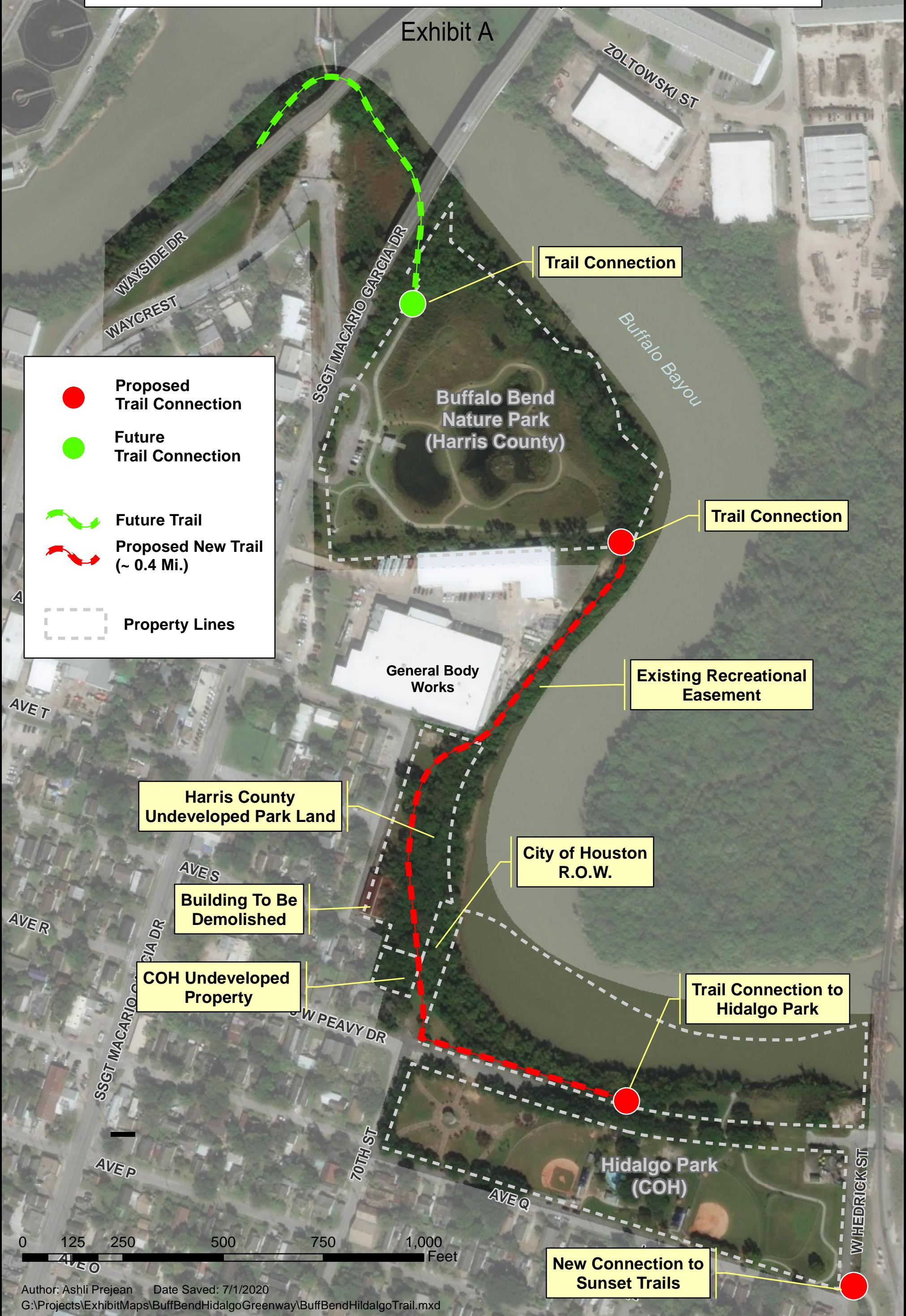


Exhibit B

Buffalo Bend Budget Breakdown

Partner	Grant Match	%	Overmatch	Total	%	Notes
Pct. 2	\$ 50,000.00	3%	\$ 125,000.00	100%	\$ 175,000.00	11%
COH	\$ 300,000.00	20%		\$ 300,000.00	18%	Not to exceed \$300,000. Funding is limited to building demolition, environmental remediation, and wetland mitigation
BBP	\$ 400,000.00	27%		\$ 400,000.00	25%	Not to exceed \$400,000
TPWD Grant	\$ 750,000.00	50%		\$ 750,000.00	46%	Grant amount
Total	\$ 1,500,000.00		\$ 125,000.00	\$ 1,625,000.00		

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the County of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN HARRIS COUNTY AND BUFFALO BAYOU PARTNERSHIP TO DESIGN, CONSTRUCT AND MAINTAIN A HIKE AND BIKE TRAIL FROM BUFFALO BEND NATURE PARK TO HIDALGO PARK AND ALL RELATED APPURTENANCES IN HARRIS COUNTY PRECINCT 2

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Joint Participation Agreement between Harris County and the Buffalo Bayou Partnership to design, construct and maintain a Hike and Bike Trail from Buffalo Bend Nature Park to Hidalgo Park and all related appurtenances in Harris County Precinct 2.

2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.