

AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AGREEMENT is made and entered into by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "District" or "HCFCD," and the **Buffalo Bayou Partnership**, a non-profit corporation, organized and existing under the laws of the State of Texas, hereinafter referred to as the "Partnership."

Recitals

WHEREAS, the Partnership desires to redevelop the Buffalo Bayou East area by implementing the Buffalo Bayou East Master Plan and the reconstruction and expansion of Tony Marron Park ("Project"); and

WHEREAS, the District desires to improve its boat access to Buffalo Bayou ("Bayou") and other bayous for maintenance purposes and wants to contribute to a portion of the Partnership's Project, which is located immediately west of North York Street/Hirsch Road on the south side of Buffalo Bayou, in future portions of Tony Marron Park; and

WHEREAS, the District desires to contribute to the improvement of an existing boat ramp area, construction of a paved lot and access drive, and the stabilization, regrading and bulkhead improvements of the adjacent channel slope and re-establishing of vegetation on the banks of the Bayou ("Select Portions") of the Project (as shown in blue outline in attached Exhibit A); and

WHEREAS, the estimated cost of the Project is \$46 million and the Partnership, as part of its contribution toward the Select Portions, will design and construct the work at the expected cost in excess of \$5,808,655.00, to further its objective to improve that section of the Bayou, which is property operated and maintained by the Partnership, in order to prevent erosion, improve stormwater quality, and provide an improved launch site for work and safety vessels operated or permitted to operate by the Partnership and the District and other government entities; and

WHEREAS, the Partnership will bid and manage the construction work using procurement procedures acceptable to the District and will maintain the Select Portions once they are complete; and

WHEREAS, the District uses the boat ramp for inspections and maintenance work on the Bayou and needs a paved lot to maneuver its boats; and

WHEREAS, the Partnership agrees to make the boat ramp accessible to the District at any time and free of any obstructions to the boat ramp; and

WHEREAS, the District, as part of its mission to provide flood reduction projects that work, with appropriate regard for community and natural values, desires to contribute \$1,680,000.00 ("District Contribution") toward the Select Portions of the Project.

NOW, THEREFORE, the District and the Partnership, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

TERMS

1.

Within 90 days of the execution of this Agreement, the District shall pay the Partnership \$1,680,000.00, ("District Contribution"). The District Contribution shall be used by the Partnership only for the Select Portions of the Project that involve improvements to the boat ramp, the construction of a paved lot and access drive and the cost of regrading and providing bulkhead improvements to the adjacent channel slope and re-establishing of vegetation on the banks of the Bayou.

2.

Upon execution of this Agreement, the Partnership shall prepare drawings and specifications ("Plans") for the Select Portions. The Partnership shall submit the 30, 60 and 90 percent Construction Design (CD's) Plans to the District's Infrastructure Division. The District shall promptly review and approve the drawings and specifications, which approval shall not be unreasonably withheld. The Partnership will not proceed with the Select Portions of the Project until the District has approved the final Plans. If needed, the Partnership will not proceed with the Select Portions without written authorization from the City of Houston to work within the City of Houston's right-of-way.

The Partnership may make changes and amendments to the drawings and specifications within the design intent of the Select Portions as the Partnership deems necessary or desirable during construction and shall notify the District of all such changes and amendments within five (5) calendar days after making such a change or amendment. The District shall review the changes or amendments and shall provide a documented decision within five (5) calendar days from receipt of such notice. The District will not be responsible for any additional costs over the District Contribution.

The Partnership will send to the District's Environmental Services Department for review and comment any applications to regulatory agencies for environmental permitting prior to submitting it to the regulatory agency.

The Partnership will allow the District to inspect the Select Portions at any reasonable time during the construction. The District will forward any comments it has to the Partnership.

3.

The Partnership will be responsible for the hiring of consultants and/or awarding of contracts for the design and construction phases of the Project, including the Select Portions. The Partnership will reach out to a variety of contractors and follow competitive requirements similar to those used by the District when procuring the construction contract for the Project. If the Partnership encounters environmental contamination or other issues that make it impossible to continue the Select Portions during construction, it shall immediately halt all work on the Select Portions until the Parties have discussed how to proceed. Under no circumstances shall the District be responsible for any remediation costs or any costs associated with contamination.

4.

The Partnership will strive to engage with prime contractors and sub-contractors representative of the diverse businesses of Harris County. The Partnership will use its best efforts to afford historically underutilized minority- and woman-owned businesses (M/WBEs) a fair and equal opportunity to participate in the Partnership's procurement process.

5.

The District shall have access to all relevant drawings, specifications, contract documents, and records to verify that the Select Portions are constructed in compliance with this Agreement. The Partnership will invite the District to all Select Portions design and construction progress meetings. The Partnership will provide the District's Infrastructure Division with final record drawings upon completion of the Select Portions. The Partnership will maintain the Select Portions upon completion.

6.

The Partnership shall submit periodic written reports of progress and funds expended to the District not less than once every thirty (30) calendar days while work on the Select Portions is ongoing. Not later than ninety (90) days after the completion of the Select Portions, the Partnership shall submit a final financial report to the District showing all expenditures associated with the Select Portions. The Partnership shall also submit a statement sworn to by an officer of the Partnership, in a form acceptable to the County Auditor of Harris County, setting forth the work complete and costs incurred and the compensation to which the Partnership is entitled pursuant to the same. All charges shown shall be itemized and certified by an officer of the Partnership to be true and correct. The District and the Harris County Auditor shall approve the statement after review, with such modifications as may be deemed appropriate.

In the event that costs associated with implementation of the Select Portions of the Project exceed the estimated cost of the Select Portions of the Project, the District shall not be liable for any of such cost overages. The District shall have the right to audit the Partnership's financial records for the Project upon request. If the audit reveals that the bills and expenses billed to the Select Portions of the Project do not correlate to the amount paid by the District, the Partnership shall reimburse the District for the cost of the audit and, within 30 calendar days after the audit, compensate the District for any amounts Partnership did not expend on the project, unless BBP provides adequate justification for its figures.

7.

The District or the Partnership may terminate this Agreement without cause upon thirty (30) days written notice to the other Party. Upon termination, the Partnership will pay the District any unused portion of the District Contribution or the Parties can agree the District can enter a new agreement and use any remaining Select portion funds to complete the Select Portions.

8.

The Partnership will make the boat ramp accessible to the District at any time and free of any obstructions to the ramp (pre-construction, during park construction, and post-construction, but not during actual construction of the ramp and adjacent facilities). The Partnership will make a sign at the top of the boat ramp that states, "Do not block boat ramp. Please use parking lot to prepare for launching and tying down boat. Please call Buffalo Bayou Partnership at its operations office number to facilitate use of the ramp." The Partnership shall construct improvements at the top of the boat ramp that restrict access and the Partnership will provide the District a key or other sufficient means to access the boat ramp. The Partnership is to keep the boat ramp and parking lot in good working order and maintain the Select Portions. Should any conflict arise with use of the Select Portions, the District can call or email Ian Rosenberg, irosenberg@buffalobayou.org at the Partnership to provide full access to the boat ramp and parking lot to the District. The Partnership will notify the District as soon as possible if the communication herein should be directed to another contact.

9.

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the Partnership at the following address:

Buffalo Bayou Partnership
1019 Commerce Street, Suite 200
Houston, Texas 77002
Attn: President

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address:

Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77092
Attn: Executive Director

10.

The Partnership clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that District shall have available the total maximum sum of One Million Six Hundred Eighty Thousand and No/100 Dollars (\$1,680,000.00) for this Agreement to fully discharge any and all liabilities that may be incurred by the District pursuant to the terms of this Agreement, and that the total maximum sum the Partnership may become entitled to hereunder and the total maximum sum the District shall become liable to pay to the Partnership for this Agreement shall not exceed One Million Six Hundred Eighty Thousand and No/100 Dollars (\$1,680,000.00), and that the total maximum sum for the contract term shall not under any conditions, circumstances, or interpretations hereof exceed the said total maximum sum provided for in this Article and certified as available therefor by the County Auditor.

11.

The Partnership will cause to be inserted in the construction contract for the Select Portions that the contractor will indemnify, defend, protect, covenant not to sue, release, and save and hold harmless the District and Partnership and all their representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the Select Portions or any associated improvements, or on account of any act of omission by the contractor.

12.

The District and the Partnership 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 the other party, in respect to all covenants of this Agreement. Neither the District nor the Partnership shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other, provided, however, that the Partnership may subcontract for work called for hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any corporation or public body that may be a party hereto.

13.

During the term of this Agreement, the Partnership agrees not to release any information about the District's contribution to the Select Portions to the news media, private citizens or community organization/leaders without the Director's, or their designee's approval. The Partnership shall acknowledge the District's participation in the Select Portions in all news/press releases and publications it produces concerning the Select Portions. To the maximum extent feasible, the Partnership shall coordinate contact with the news media, private citizens, or community organizations/leaders with the District's Director or Public Outreach Department.

14.

The Partnership agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill necessary to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and the Partnership's performance. The Partnership represents that, prior to performing hereunder, it has or shall obtain all necessary licenses, ownership, or permission for use of any and all proprietary information, materials, or trade secrets employed in the performance of work hereunder and agrees that it shall not copy, reproduce, recreate, distribute, or use any such proprietary information, materials, or trade secrets of any third party, except to the extent permitted by such third parties, or as otherwise authorized by law.

15.

The Partnership will require in its Agreement with any consultant or contractor chosen to perform the work on the Select Portions that the consultant or contractor will not discuss with the news media, private citizens or community organization/leaders any aspect of its work in connection with the Select Portions.

16.

In accordance with TEX. GOV'T CODE ANN. § 2271.002, the Partnership warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

17.

The Partnership represents and certifies that, at the time of execution of this Agreement, the Partnership (including, in this provision, any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same) is not listed by the Texas Comptroller of Public Accounts pursuant to Chapters 2252 or 2270 of the Texas Government Code, nor will the Partnership engage in scrutinized business operations or other business practices that could cause it to be listed during the term of this Agreement.

18.

The Partnership hereby verifies that to the extent that this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), Texas Government Code, as amended, neither the Partnership nor any affiliates of the Partnership boycott energy companies and, such entities will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that

is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and State law; or (B) does business with a company described by (A) above. The Partnership understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Partnership and exists to make a profit.

19.

The Partnership verifies that to the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), Texas Government Code, as amended, neither the Partnership nor any affiliates of the Partnership

- (a) Have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and
- (b) Such entities will not during the term of the Agreement discriminate against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" (A) means, with respect to the entity or association, to (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, State, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. The Partnership understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Partnership and exists to make a profit.

20.

This Agreement is not intended to and shall not create a joint enterprise between the Partnership and the District. The District is undertaking governmental functions or services under this Agreement and the purpose hereof is solely to further the public good, rather than any pecuniary purpose. The party undertaking work under this Agreement shall have a superior right to control the direction and management of such work and the responsibility for day-to-day management and control of such work, except as may otherwise expressly be provided herein. The Partnership shall obtain and maintain policies of general liability and workers compensation insurance. The District will be named as an additional insured, with coverages equal to or greater than the District's limits of liability set forth in the Texas Tort Claims Act.

21.

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing signed by both parties.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENELEE
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

DocuSigned by:
Laura Fiorentino Cahill
D9FE318CE1BA4BE...
By: _____
LAURA FIORENTINO CAHILL
Senior Assistant County Attorney

By: _____
LINA HIDALGO
County Judge

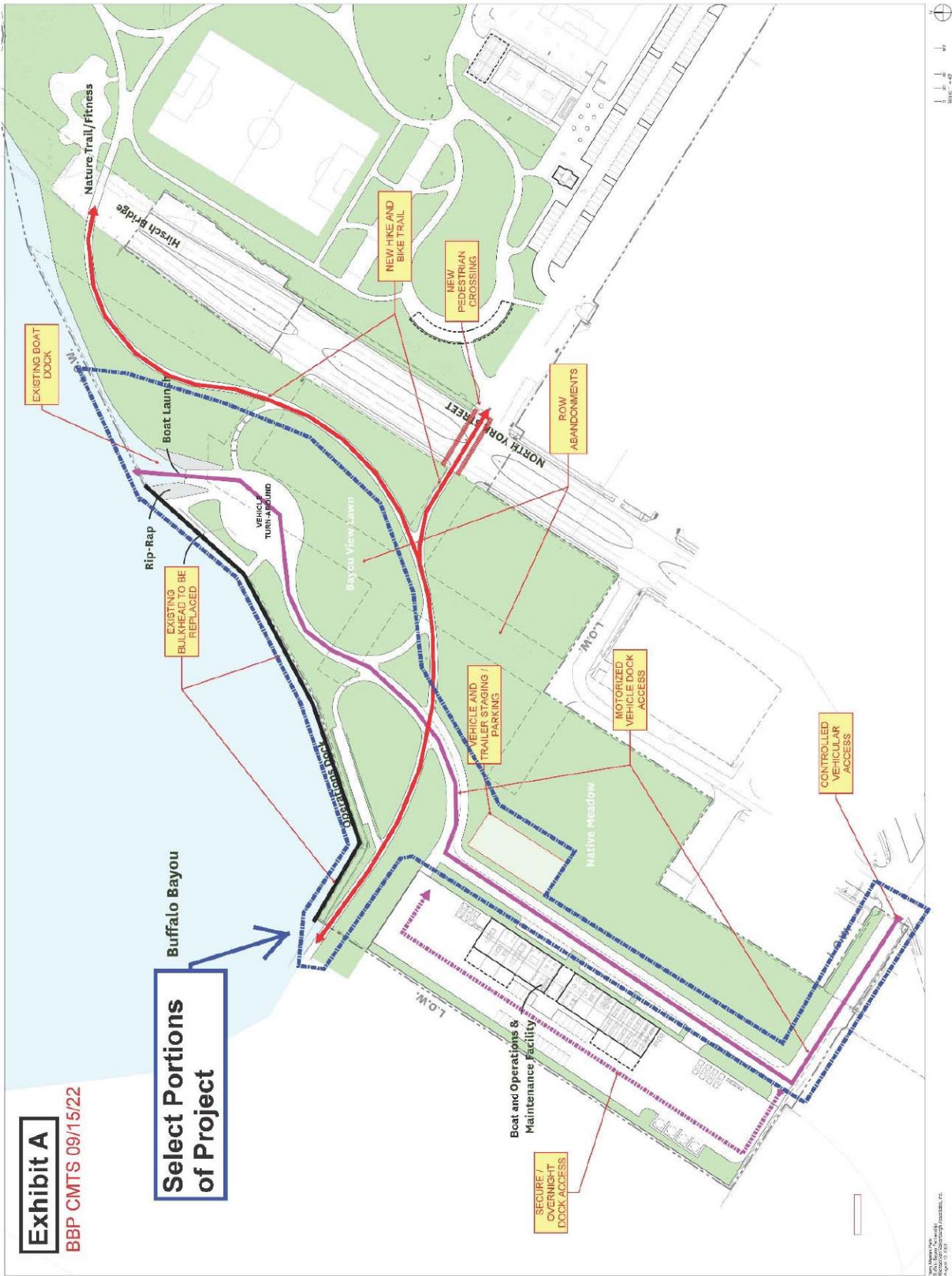
ATTEST:

BUFFALO BAYOU PARTNERSHIP

DocuSigned by:
Rebecca Leija
5994A267757B46E...
By: _____
REBECCA LEIJA
Office Assistant

DocuSigned by:
Anne Olson
ADE33663BC10477...
By: _____
ANNE OLSON
President

EXHIBIT A



THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, with the following members present, to wit:

Lina Hidalgo	County Judge
Rodney Ellis	Commissioner, Precinct No. 1
Adrian Garcia	Commissioner, Precinct No. 2
Tom S. Ramsey, P.E.	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

and the following members absent, to wit: _____, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING AGREEMENT BETWEEN
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND
 THE BUFFALO BAYOU PARTNERSHIP**

Commissioner _____ introduced an order and made a motion that the same be adopted. 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
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	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:

WHEREAS, the Partnership desires to redevelop the Buffalo Bayou East area by implementing the Buffalo Bayou East Master Plan and the reconstruction and expansion of Tony Marron Park ("Project"); and

WHEREAS, the District desires to improve its boat access to Buffalo Bayou ("Bayou") and other bayous for maintenance purposes and wants to contribute to a portion of the Partnership's Project, which is located immediately west of North York Street/Hirsch Road on the south side of Buffalo Bayou, in future portions of Tony Marron Park; and

WHEREAS, the District desires to contribute to the improvement of an existing boat ramp area, construction of a paved lot and access drive, and the stabilization, regrading and bulkhead improvements of the adjacent channel slope and re-establishing of vegetation on the banks of the Bayou ("Select Portions") of the Project (as shown in blue outline in attached Exhibit A); and

WHEREAS, the estimated cost of the Project is \$46 million and the Partnership, as part of its contribution toward the Select Portions, will design and construct the work at the expected cost in excess of \$5,808,655.00, to further its objective to improve that section of the Bayou, which is property operated and maintained by the Partnership, in order to prevent erosion, improve stormwater quality, and provide an improved launch site for work and safety vessels

operated or permitted to operate by the Partnership and the District and other government entities; and

WHEREAS, the Partnership will bid and manage the construction work using procurement procedures acceptable to the District and will maintain the Select Portions once they are complete; and

WHEREAS, the District uses the boat ramp for inspections and maintenance work on the Bayou and needs a paved lot to maneuver its boats; and

WHEREAS, the Partnership agrees to make the boat ramp accessible to the District at any time and free of any obstructions to the boat ramp; and

WHEREAS, the District, as part of its mission to provide flood reduction projects that work, with appropriate regard for community and natural values, desires to contribute \$1,680,000.00 ("District Contribution") toward the Select Portions of the Project.

NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District an Agreement by and between the Harris County Flood Control District and the Buffalo Bayou Partnership to improve the existing boat ramp area in the area immediately east of North York Street/Hirsch Road on the south side of Buffalo Bayou, including the regrading and temporary reseeding of, and providing bulkhead improvements to, the adjoining banks, for a maximum fee to be paid by the District of \$1,680,000.00, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.

