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2021-0698**INTERLOCAL AGREEMENT**

This Interlocal Agreement ("Agreement") is entered into by and between **Harris County** ("County") and **City of Houston Parks and Recreation Department** ("COH") pursuant to the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001, *et seq.* County and COH 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**, both Parties agree 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 the COH within thirty (30) days of the Effective Date of this Agreement for their cost share percentage for construction of the project in accordance with Section 2 of this agreement.
- (iv) The County will submit 50%, 95%, and Final PS&E to the COH for review and approval.
- (v) Upon approval by the COH 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 the COH 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 to completion; and
  - (b) Through its contractor, construct the Project in accordance with the PS&E approved by the COH. 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.
  - (c) The County shall cause the COH to be a third-party beneficiary of all representations, warranties, and guarantees made by a contractor for the Project and cause the contractor to look solely to the County for any payment due under the contract. The County shall cause the COH to be a co-obligee on statutory and performance bonds.
- (viii) Upon completion of the construction of the Project, the County shall:
- (a) Provide an opportunity for the COH 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. COH's Responsibilities**

- (i) COH will review the PS&E provided by the County and provide its approval within ten (10) business days. Should the COH desire to make changes to such PS&E, the Parties agree to meet and resolve all issues within ten (10) business days of the COH's receipt of the PS&E in order to finalize an agreed upon PS&E for the Project. If the COH 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 the COH by the County will be deemed approved.
- (ii) Upon receipt of the bids and award recommendation from the County for construction of the Project, the COH 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 the COH 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 the COH will be deemed approved; and
  - (b) Remit payment to the County for the COH Funding Share for construction of the Project in accordance with Section 2 of this agreement.

**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. COH agrees to provide \$300,000.00 (“COH Funding Share”) necessary for the construction of the Project. The COH Funding Share is limited to building demolition, environmental remediation and site restoration. At any time and upon reasonable request, the County will make an accounting of the use of the COH Funding Share available to the COH so that the COH may confirm that expenditures are made in compliance with the terms of this Agreement.
- B. The COH agrees to provide payment of the COH Funding Share to the County within thirty (30) days of receipt of the invoice.
- C. The Parties agree that total completion of the Project shall cost \$1,625,000.00 and that the County shall be responsible for providing the remainder of the funds. The Parties understand and agree that the remainder of the funds will be sourced from (a) Texas Parks and Wildlife Department Grant, (b) Buffalo Bayou Partnership by separate agreement, and (c) County funds as generally illustrated on Exhibit B attached hereto and incorporated herein by reference.
- D. The 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 shall be funded by the County. COH may provide additional funds to the extent provided by law; however COH makes no further commitment to additional funds due to unexpected costs.

### **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 earlier termination of this Agreement, whichever occurs first (“Term”).
- B. This Agreement may be terminated:
  - a. Before Contract Award: By either Party before award of the construction contract by providing written notice to the other Party. If either Party terminates pursuant to this provision, the County shall, within ten (10) days of either delivering or receiving notice of such termination, return the COH Funding Share to the COH. The COH shall not be liable for any damages or financial losses that the County suffers as a result of the COH’s terminating this agreement pursuant to this provision.
  - b. After Contract Award:
    - i. The COH may terminate its performance under this Agreement if the County defaults and fails to cure such default within fourteen (14) days after receiving written notice of it. If a default occurs, the COH shall deliver a written notice to the County describing the default and the proposed termination date. The COH may extend the proposed termination date at any time, in writing, if it desires. Should the COH ever provide notice of default and the intent to terminate pursuant to this provision, the County shall, unless directed otherwise, immediately discontinue any further encumbrance of the COH Funding Share until having cured the default and received written notice to proceed from the COH. Should the City elect to terminate, the County shall reimburse the City for its COH Funding Share within fourteen (14) days of the COH’s written request. The COH shall not be liable for any damages or

financial losses that the County suffers as a result of the COH's terminating this agreement pursuant to this provision.

- ii. Should the County either (a) breach the terms of the Texas Parks and Wildlife Department Grant or (b) default on the separate agreement with Buffalo Bayou Partnership, the County shall immediately notify the COH. Should the County fail to remedy the breach or default to the City's satisfaction within thirty (45) days of receiving notice of it the COH shall have the right to terminate this Agreement and receive a reimbursement of that portion of the COH Funding Share not yet expended, within fourteen (14) days of the COH's written request. The COH shall not be liable for any damages or financial losses that the County suffers as a result of the COH's terminating this agreement pursuant to this provision.
- iii. Should the County fail to demonstrate, within thirty (30) days of the execution of this Agreement, that the required \$50,000.00 County contribution has been certified and allocated toward the completion of the Project the COH may terminate this Agreement and receive a reimbursement of its COH Funding Share.

#### **Section 4. Limitation of Appropriation**

- A. COH 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. The County warrants and represents that the funds are available out of its Fiscal Year 2021 Funds and have been allocated toward the completion of this Project and that it shall, within thirty (30) days of the execution of this Agreement, provide demonstration of the County Auditor's certification and allocation. The County may appropriate additional 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. COH 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.
- B. The Parties acknowledge that the COH's ability to fulfill its payment obligation is subject to the requirements of Article XI, Section 5 of the Texas Constitution, Article II, Sections 19 and 19(a) of the City of Houston Charter, and a lawful appropriation. It is expressly understood that the COH may not obligate itself by contract to pay more money than the amount the City Council appropriates and allocates for this Agreement. The COH has allocated \$300,000.00 to pay money due under this Agreement. Notwithstanding anything to the contrary herein, the County agrees that the COH's obligation for payment under this Agreement is limited to an amount no greater than \$300,000.00 and that the COH is not required to expend funds under this Agreement greater than that amount. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. The COH's duty to pay money for any purpose under this Agreement is limited, in its entirety, by the provisions of this section and City Council approval, if required.

#### **Section 5. Miscellaneous**

- A. Non-Assignability. The County and the COH 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 the COH 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 COH at the following addresses:

COH: City of Houston Parks and Recreation Department  
2999 S. Wayside Drive  
Houston, Texas 77023  
Attention: Director  
Email: Kenneth.Allen@houstontx.gov  
Additional Contact: Luci Correa  
Email: Luci.Correa@houstontx.gov

County: Harris County Engineering Department  
1001 Preston Avenue, 7<sup>th</sup> 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 the COH for any purpose. The COH, 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 the COH 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 the County.
- (2) The Parties agree that no provision of this Agreement extends the County'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 the County 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 construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

H. No Binding Arbitration; Right to Jury Trial. Neither Party agrees to binding arbitration, nor does either Party 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, both Parties warrant that the duties accorded to the them in this Agreement are within the powers and authority of each.

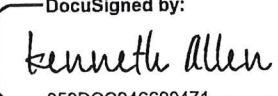

**[Execution Page Follows]**

EXECUTED in multiple counterparts, to be effective upon the date of the last signature hereto

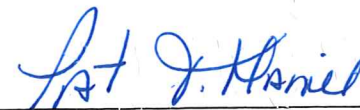
**CITY OF HOUSTON:**

By:   
SYLVESTER TURNER  
Mayor *Announce Washington*  
*8-12-2021*

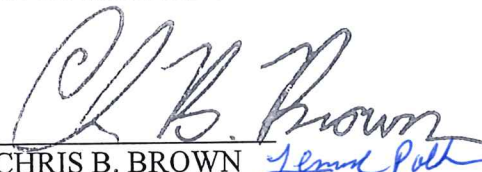
**APPROVED:**

DocuSigned by:  
  
By:   
KENNETH ALLEN  
Interim Director, Houston Parks and Recreation

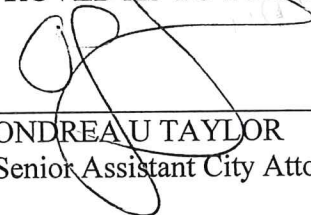
**ATTEST/SEAL:**

By:   
PAT JEFFERSON- DANIEL  
City Secretary

**COUNTERSIGNED BY:**

By:   
CHRIS B. BROWN *James Pate*  
City Controller

**APPROVED AS TO FORM:**

By:   
ONDREA U TAYLOR  
Senior Assistant City Attorney

**DATE COUNTERSIGNED:**

*8-17-21*



**HARRIS COUNTY**

By: \_\_\_\_\_  
Lina Hidalgo  
County Judge

**APPROVED AS TO FORM:**

CHRISTIAN D. MENEFEE  
County Attorney

**ATTEST**

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

By: Philip Berzins  
Philip Berzins  
Assistant County Attorney  
CAO File No.: 20GEN2874



# BUFFALO BEND TO HIDALGO GREENWAY SITE PLAN

Exhibit A

Proposed Trail Connection

Future Trail Connection

Future Trail

Proposed New Trail (~ 0.4 Mi.)

Property Lines

Trail Connection

Trail Connection

Existing Recreational Easement

Harris County Undeveloped Park Land

City of Houston R.O.W.

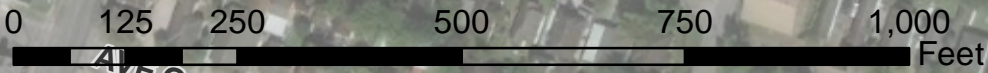
Building To Be Demolished

COH Undeveloped Property

Trail Connection to Hidalgo Park

Hidalgo Park (COH)

New Connection to Sunset Trails





## 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%	<b>Not to exceed \$300,000.</b> Funding is limited to building demolition, environmental remediation, and wetland mitigation
BBP	\$ 400,000.00	27%			\$ 400,000.00	25%	<b>Not to exceed \$400,000</b>
TPWD Grant	\$ 750,000.00	50%			\$ 750,000.00	46%	Grant amount
<b>Total</b>	<b>\$ 1,500,000.00</b>		<b>\$ 125,000.00</b>		<b>\$ 1,625,000.00</b>		

## 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 INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CITY OF HOUSTON PARKS AND RECREATION DEPARTMENT 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 Interlocal Agreement between Harris County and City of Houston Parks and Recreation Department 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.