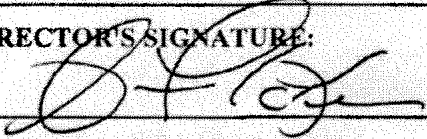


TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance establishing an economic development program and approving an economic development agreement between the City of Houston ("City") and Houston Parks Board, Inc. providing funding for the Maintenance of the Bayou Greenways 2020.		Category #	Page 1 of 1	Agenda Item #
FROM (Department or other point of origin): Office of the Mayor		Origination Date	Agenda Date	
DIRECTOR'S SIGNATURE: 		Council District affected: All		
For additional information contact: Andy Icken 832-393-1064		Date and identification of prior authorizing Council action: Ordinance #2013-635 June 26, 2013		

RECOMMENDATION: (Summary) It is recommended that City Council approve an ordinance establishing an economic development program and approving an economic development agreement between the City of Houston ("City") and Houston Parks Board, Inc. providing funding for the Maintenance of the Bayou Greenways 2020.

Amount and Source of Funding: No FY14 Expenditure

SPECIFIC EXPLANATION: 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 within the corporate City limits only, referred to as the Bayou Greenways 2020. The Houston Parks Board Local Government Corporation, and the Houston Parks Board, Inc. (the Board) acting as its manager, entered into an Interlocal Agreement with the City, approved by City Council on June 26, 2013, in which it committed to take all necessary steps to raise the remaining \$105,000,000 needed to develop the Bayou Greenways 2020 Project. An "angel donor" has offered to make a grant of \$50,000,000 to Houston Parks Board, Inc. (subject to the satisfaction of certain conditions that may be required by such entity as a condition to the contribution) provided the City and Houston Parks Board, Inc. execute a viable long-term maintenance agreement for the Bayou Greenways 2020 Project, including a long-term revenue source for the maintenance of the Bayou Greenways 2020 Project.

In order to secure the economic benefits of the Project over the long term, maintenance of this project has to be provided. The City is proposing an additional economic development program, allowable through City Ordinance 99-674 and State Local Government Code Chapter 380, which draws upon the expected increase in ad valorem taxes of property in close proximity to the nearby park improvements. The agreement would be between the City of Houston and the Board for a 30 year term. To demonstrate the expected growth the City will examine an area 1/4 mile in width, around all nine bayous included in the project. The value of all this property would then be calculated as of January 1, 2012, the year in which voters approved Proposition B. This would be the baseline value from which ad valorem tax values would be measured.

The estimated annual cost of maintenance for the project is \$9,400,000.00 when fully constructed in 2020 which would be paid to the Board twice per fiscal year; one half in July and one half in January. Additionally, the City and the Board propose an annual 20% contingency to be used for one-time unplanned expenditures (clean up after a hurricane) or for capital improvements. These improvements will be detailed in a 10 year CIP which will be available to the City. However, the contract will stipulate that, if the full 20% contingency is not spent either on one-time expenditures or necessary for the planned CIP, then the excess funds will be returned to the City prior to payment of the next year's funding. The planned payments to the Board will be budgeted annually.

Prior to the end of the calendar year, Council will be asked to review and approve a maintenance agreement which will outline the processes, procedures, and responsibilities for maintenance of the project.

REQUIRED AUTHORIZATION

Finance:	Other Authorization:	Other Authorization:

WHEREAS, pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380, Texas Local Government Code ("**Chapter 380**"), as amended, the City is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money, to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, 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 the corporate City limits only, referred to as the Bayou Greenways 2020 Project (the "**Bayou Greenways 2020**" or the "**Project**"). Bayou Greenways 2020 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. Bayou Greenways 2020 will add park land, 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; and

WHEREAS, upon completion of the Project, all Bayou Greenways within the City limits will be open to the public for fitness and multi-modal transportation.

WHEREAS, consistent with the election ordinance for Proposition B, 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 agreed in that certain Interlocal Agreement between City and the Houston Parks Board Local Government Corporation ("**HPBLGC**") (and Houston Parks Board, Inc. ("**HPB**") acting as its manager) approved by City Council on June 26, 2013 by Ordinance No. 2013-635 to take all necessary steps to commit \$100,000,000 in bond proceeds to the Project, with the understanding that the remaining \$105,000,000 necessary for the Project will be secured by HPBLGC, acting through its manager, HPB and HPB's 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, resulting in at least (or a minimum of) a one-to-one public-private funding ratio for the Project; and

WHEREAS, an Angel Donor has offered to make a grant of \$50,000,000 to HPB (subject to the satisfaction of certain conditions that may be required by such entity as a condition to the contribution), provided that the City and HPB execute a viable long-term maintenance agreement for Bayou Greenways 2020, including a long-term revenue source for maintenance of the Project; and

WHEREAS, implementation and continuing operation and maintenance of Bayou Greenways 2020 will make a highly visible and tangible contribution to the City's quality of life and economic development, by providing transportation and connectivity to and between business centers in the City, and attracting new business and retaining current business in the City and particularly a geographic area extending one-quarter mile on each side of the Bayou Greenways 2020, referred to as the "**Economic Impact Area**"; and

WHEREAS, long term continuous maintenance of the Bayou Greenways 2020 will attract tourism and commerce to the City, and particularly the Economic Impact Area, that otherwise would not occur, resulting in a positive economic impact and that the Project will bring to the City development and diversification of the economy, elimination of unemployment and underemployment, development and expansion of transportation and commerce, and attraction of new businesses; and

WHEREAS, the City Council finds that it is appropriate to create an economic development program pursuant to Chapter 380 of the Texas Local Government Code to provide for the maintenance of the Bayou Greenways 2020; and

WHEREAS, by Ordinance No. 99-674 adopted by City Council on June 20, 1999, the City previously established a Chapter 380 Program, pursuant to the provisions of Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City Council now desires to establish an additional program for economic development incentives in the Economic Impact Area, to be known as the Bayou Greenways Maintenance Program; and

WHEREAS, the City has concluded and hereby finds that this Bayou Greenways maintenance Program and this Bayou Greenways 2020 Economic Development Agreement with HPB (the "**Agreement**") promote economic development in the City of Houston and, as such, meet the requirements under Chapter 380 and Article III, Chapter 52-a of the Texas Constitution under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, and, further, is in the best interests of the Parties; and

WHEREAS, to ensure that the benefits the City provides under the Agreement are utilized in a manner consistent with Chapter 380 and other law, HPB has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to long-term Project maintenance to ensure the Project's longevity and economic viability;

NOW, THEREFORE:

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

Section 1. That the findings and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That there is hereby established the Bayou Greenways Maintenance Program pursuant to the provisions of Chapter 380 of the Local Government Code.

Section 3. That the City Council hereby approves and authorizes the contract, agreement or 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. That the Mayor, or

in the absence of the Mayor, the Mayor Pro Tem, is hereby authorized to execute such document and all related documents on behalf of the City of the City of Houston. That the City Secretary, or in the absence of the City Secretary, any Assistant City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations as may arise hereunder.

Section 4. Maintenance Fund. That there is hereby created and established a Maintenance Fund (the "**Fund**") which may be divided into subaccounts as authorized by the Agreement. The Annual 380 Contribution, as described in the attached agreement, shall be deposited into the Fund. The Fund and any subaccount shall be maintained at the depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. Prior to the termination of the Agreement, money shall be disbursed from the Fund only to pay obligations incurred pursuant to the Agreement.

Section 5. That 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 ____ day of _____, 2013.

APPROVED this ____ day of _____, 2013.

Mayor of the City of Houston, Texas

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

City Secretary

(Prepared by Legal Dept. _____)

Senior Assistant City Attorney

(Requested by Andy Icken, Chief Development Officer)

(L.D. File No. 0491300072001)

BAYOU GREENWAYS 2020 ECONOMIC DEVELOPMENT AGREEMENT

This BAYOU GREENWAYS 2020 ECONOMIC DEVELOPMENT AGREEMENT (this “**Agreement**”) by and among CITY OF HOUSTON, TEXAS, a Texas home rule municipality located in Harris, Fort Bend and Montgomery Counties, Texas (the “**City**”); and the HOUSTON PARKS BOARD, INC., a Texas nonprofit corporation, tax-exempt under Section 501(c)(3) of the Internal Revenue Code, as amended (“**HPB**”), is entered into as of the date the City Controller countersigns this Agreement (the “**Effective Date**”). Each of the City and HPB is individually referred to herein sometimes as a “**Party**,” and they are collectively referred to herein sometimes as the “**Parties**.”

RECITALS

WHEREAS, 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 the corporate City limits only referred to as the Bayou Greenways 2020 Project and which project constitutes, or will constitute after implementation of land acquisitions, approximately four thousand (4,000) acres of land (the “**Project**”). 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 as shown on **Exhibit A** attached hereto (the linear park system along each such major bayou being referred to herein as a “**Bayou Greenway**”), consisting of greenway segments existing as of the Effective Date of this Agreement plus additional greenway segments acquired, designed and constructed by HPB, acting as Houston Parks Board Local Government Corporation’s (“**HPBLGC**”) manager, pursuant to the Interlocal Agreement, defined below, and the terms of this Agreement. The Project will add park land, 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; and

WHEREAS, upon completion of the Project, all Bayou Greenways within the City limits will be open to the public for fitness and multi-modal transportation. The Project is estimated to reach substantial completion on or about the year 2020. The estimated cost to complete the Project within the City limits is \$205,000,000; and

WHEREAS, the HPBLGC is a Texas nonprofit local government corporation created on behalf of the City to provide support for the City’s park system. HPB works with the City and the City’s 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 to contract for the design, development, improvement, construction and installation of parks and open spaces approved by the Director of HPARD; and

WHEREAS, consistent with the election ordinance for Proposition B, 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 agreed in that certain Interlocal Agreement between the City and HPBLGC (and HPB acting as its manager) approved by City Council on June 26, 2013 (the “**Interlocal Agreement**”) to take all necessary steps to commit \$100,000,000 in bond proceeds to the Project, with the understanding that the remaining \$105,000,000 necessary for the Project will be secured by HPBLGC, acting through its manager, HPB and HPB’s 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, resulting in at least (or a minimum of) a one-to-one public-private funding ratio for the Project; and

WHEREAS, the “**Angel Donor**” (as defined herein), has offered to make a grant of \$50,000,000 to HPB, provided that the City and HPB execute a viable long-term maintenance agreement for the Project, including a long-term revenue source for maintenance of the Project; and

WHEREAS, the City and HPBLGC entered into the Interlocal Agreement setting forth obligations during the development phase of the Project; and as contemplated in and required by Section 3.4 of the Interlocal Agreement, the City and HPB have negotiated in good faith and desire to reach this Agreement setting forth their respective rights and obligations for maintenance of the Project, specifically the standard of maintenance and the revenue source to ensure the long-term maintenance of the Project; and

WHEREAS, the City and Harris County Flood Control District (“**HCFC**D”) entered into an Interlocal Agreement effective December 31, 1997, as amended (the “**HCFC**D Agreement”), whereby the City is authorized to maintain and the City represents that HPB may maintain improvements and appurtenances on HCFC D property within the Project, pursuant to the HCFC D Agreement; and

WHEREAS, the Project is expected to directly contribute to the economic development of the entire City, and most specifically to a geographic area extending one-quarter mile on each side of the center line of the bayous, as generally depicted in **Exhibit B**, and referred to as the “**Economic Impact Area**.” The City has evaluated the Incremental Property Tax Revenue (defined herein) estimated to be generated within the Economic Impact Area during the Term of the Agreement, which is projected to exceed the Annual 380 Grant (as defined herein) amounts; and

WHEREAS, implementation and continuing operation and maintenance of the Project will make a highly visible and tangible contribution to the City’s quality of life and economic development, by attracting new business and retaining current business, and providing transportation and connectivity to and between business centers in the City, and particularly the Economic Impact Area; and

WHEREAS, the City recognizes that the Project will attract tourism and commerce to the City, and particularly the Economic Impact Area, that otherwise would not occur, resulting in a positive economic impact and that the Project will bring to the City development and diversification of the economy, elimination of unemployment and underemployment,

development and expansion of transportation and commerce, and attraction of new businesses; and

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("**Chapter 380**") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the Parties; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, HPB has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to long-term Project maintenance to ensure the Project's longevity and economic viability;

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I GENERAL TERMS

A. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

B. Definitions and Terms. The terms defined in this Agreement shall have the meanings set forth herein, and the following terms have the following meanings:

"Ad Valorem Tax" is defined as the City ad valorem tax on the value of the real property located within the Economic Impact Area as certified by Harris County Appraisal District. Ad Valorem Tax generated by tax parcels located partially within such impact area and partially outside such impact area shall be calculated as if the entire tax parcel were located within the Economic Impact Area if the center of the tax parcel is located within the Economic Impact Area.

"Angel Donor" means a non-profit corporation that (i) has agreed to contribute (subject to the satisfaction of certain conditions that may be required by such entity as a condition to the contribution) no less than \$50,000,000 in the aggregate towards the development, land acquisition, construction, maintenance or repair of the Project, and (ii) has been disclosed to the City by HPB on or before July 1, 2014. Upon receipt of written notice by HPB to the City pursuant to the foregoing, such entity designated by HPB shall constitute the "Angel Donor" under this Agreement and be entitled to the rights of the Angel Donor hereunder.

“Annual 380 Contribution” is the sum to be deposited by the City into the Maintenance Fund each year during the Term of this Agreement, in the annual amount equal to (i) the Base Maintenance Fee for such year, plus (ii) the Coverage Ratio Amount.

“Annual 380 Grant” is the sum to be disbursed by the City to HPB from the Maintenance Fund, in two annual disbursements in accordance with Section IV.E below in each year during the Term of this Agreement, in the aggregate annual amount equal to the Annual 380 Contribution.

“Base Maintenance Fee” means the annual fee to cover all costs of the HPB Maintenance Work for the Project in accordance with the Maintenance Manual, subject to Section IV.D.

“Base Property Tax” means the amount of Ad Valorem Tax levied and collected by the City, based on the total taxable value of the Economic Impact Area as of January 1, 2012, excluding Tax Abatements.

“Coverage Ratio Amount” means an annual amount equal to 20% of each year’s Base Maintenance Fee, as the same is adjusted pursuant to Section IV.D.

“Director” means the Director of the HPARD.

“Economic Impact Area” is defined in the recital above.

“Escalator Index” shall mean the 12-month Employment Cost Index (“**ECI**”) for total compensation for private industry workers for the Houston-Baytown—Huntsville, TX combined statistical area, not seasonally adjusted, as published quarterly by the United States Bureau of Labor Statistics, Office of Compensation Levels and Trends for the 12-month period ending in December of the previous calendar year. If the ECI shall cease to be published or is replaced by another index, or if the basis on which the ECI is calculated is materially modified, from time to time during the Term, the Standards Committee shall select a substitute index as the Escalator Index that is calculated on a basis that is most similar to the ECI and is otherwise applicable to the major components of HPB’s annual budget for the fiscal year in which such publication ceases or modification is made. In such event the actual dollar amount of the Base Maintenance Fee for such fiscal year shall serve as the base for future calculations of the Escalator Index for purposes of Section IV.D of this Agreement.

“HPB Maintenance Work” means the work of maintaining the Project, which work in all events shall at a minimum meet the standards delineated in the Maintenance Manual, subject to Section III.D.4.

“Incremental Property Tax Revenue” means an amount equal to the Ad Valorem Tax levied and collected by the City derived from the Economic Impact Area in any given year, excluding Tax Abatements, above the Base Property Tax.

“Maintenance Manual” means the Maintenance Standards Manual attached hereto as **Exhibit C**, as the same may be amended from time to time by the Standards Committee.

“Maximum Capital Replacements Reserve Cap” is an amount equal to the Ten-Year CIP cumulative total, at the time in question.

“Tax Abatements” means any abatement or rebate (pursuant to tax abatement agreements, economic development agreements or otherwise, and including but not limited to commitments to and participation in Tax Increment Reinvestment Zones) during each year of the Term of the Agreement which is applicable to any property located within the Economic Impact Area.

“Ten-Year CIP” means HPB’s rolling ten-year plan identifying any major maintenance (as opposed to ordinary or routine maintenance included in the Maintenance Manual), capital repairs or replacements it expects will be needed during such ten-year period after the then-current fiscal year, together with projections of costs therefore and of anticipated balances in the Capital Replacements Reserve for such items, and describing any future Project replacements or repairs it plans to construct during such ten-year period, which Ten-Year CIP must be approved by at least five (5) of the seven (7) members of the Standards Committee.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

ARTICLE II STANDARDS COMMITTEE

A. Creation of Committee. Within six (6) months of the Effective Date of this Agreement, the Parties shall appoint a 7-member Standards Committee consisting of two (2) representatives of HPB (or its permitted successor or assign), two (2) representatives of the City as appointed by the Mayor, two (2) representatives of the Angel Donor, and a seventh (7th) committee member selected by the other six committee members. The Standards Committee shall also include a representative appointed by HCFCD, HPBLGC, and a representative appointed by HPARD, each of whom shall serve in an ex-officio, non-voting advisory role to the Standards Committee. The jointly selected seventh committee member shall be an individual who (i) has knowledge and expertise in the efficient and cost effective operation and maintenance of parks and green space, and (ii) is an independent, neutral party with respect to all Parties, the Angel Donor, or the other committee members, i.e., one who has no contractual, financial, fiduciary or other business or family relationship to any of such entities or individuals. Such seventh committee member shall serve for a term of three (3) years, each such term ending on the anniversary of the Effective Date of this Agreement; provided, however, (i) there shall be no maximum number of terms that such seventh committee member may serve if reappointed in accordance with this provision at the end of a term; and (ii) that during any such term, the seventh committee member shall withdraw, or the Standards Committee shall replace such member, if such member enters into a relationship with, and loses his or her independent, neutral status with respect to, any Party, the Angel Donor, or other committee members.

B. Committee Functions and Powers. The Standards Committee shall meet at a location in the City of Houston at least quarterly each calendar year. The Standards Committee shall have the following powers:

- (1) Approval of amendments to the Maintenance Manual; provided that any amendments to the Maintenance Manual that would lower the maintenance standards therein or materially reduce the scope of the maintenance, repair or replacement of any portion of the Project would require consent of five (5) of the seven (7) members of the Standards Committee;
- (2) Approval of any (i) future development of improvements and hardscape in any segment in the Project, and (ii) future property acquisitions into the Project other than those properties described by the Interlocal Agreement; *provided, however*, each of the City, HPB and the Angel Donor must also approve any such future developments or acquisitions; and
- (3) To perform all functions expressly assigned to the Standards Committee in this Agreement.

ARTICLE III HPB COMMITMENTS

A. Maintenance Agreement. HPB shall maintain the Project in accordance with the Maintenance Manual, subject to Section III.D.4 and Article V. In order to maintain the Project, HPB may negotiate with potential contractors in good faith and enter into a maintenance agreement or agreements for the Project no later than June 30, 2014 (the “**Maintenance Agreement**”), which shall require that such maintenance be performed in accordance with the Maintenance Manual. HPB shall provide the Standards Committee with the opportunity to review and provide comments to the Maintenance Agreement(s). Notwithstanding the above, at its option HPB may request (without relieving it of its obligations under this Agreement, including, but not limited to, being primarily responsible for the maintenance of the Project) HPBLGC to negotiate and enter into the Maintenance Agreement in place of HPB. The Parties agree that (i) the City is the owner of the hardscape and improvements contained in the Project, (ii) HPB does not own or operate the hardscape and improvements in the Project, and (iii) HPB’s obligations with respect to the Project under this Agreement are solely limited to the responsibilities set forth herein.

B. Contracting. HPB shall have the right to contract and/or delegate all or any part of its rights and obligations under this Agreement or the Maintenance Agreement, but in all events shall remain primarily responsible for the maintenance of the Project and all obligations under this Agreement, subject to Article V herein, as HPB deems necessary or desirable for the efficient and cost-effective performance of such rights and obligations, as follows:

1. HPARD Maintenance. HPB agrees that HPARD is the preferred maintenance contractor for the performance of the HPB Maintenance Work. HPB and the City will enter into a Maintenance Agreement setting forth their respective rights and responsibilities by December 31, 2013 (the “**HPARD Maintenance Agreement**”). The HPARD Maintenance Agreement will provide accountability measures and determinations associated with the costs to complete the HPB Maintenance Work covered by the HPARD Maintenance Agreement, compliance with standards set forth in the Maintenance Manual, and remedies if the work or these standards are not being met. The remedies will include terminating the HPARD Maintenance Agreement and

contracting with an alternate party to perform the work after an appropriate notice and cure process to be provided for in the Maintenance Agreement.

2. Non-HPARD Maintenance. For any of the HBP Maintenance Work not covered by the HPARD Maintenance Agreement or not performed satisfactorily by HPARD as determined by the HPARD Maintenance Agreement, HPB shall have the right to contract and/or delegate all or any part of its rights and obligations under this Agreement as HPB deems necessary or desirable for the efficient and cost-effective performance of such rights and obligations under this Agreement. In the event any such contractor fails to perform, and fails to cure such failure to perform, in accordance with the terms of their Maintenance Agreement, HPB shall have the right to terminate such contractor.

3. Cure Periods. Notwithstanding anything herein to the contrary, neither the HPARD Maintenance Agreement nor any other Maintenance Agreement shall provide for a cure period longer than ninety (90) calendar days (or an extension thereof other than as a result of Force Majeure) with respect to a default in connection with performance of any of the maintenance, repair or replacement of the Project as provided for in such agreement without the consent of the Angel Donor, such consent not to be unreasonably withheld.

C. Maintenance of HPB Entity Status. HPB will at all times maintain its status as a Texas non-profit corporation in good standing in the State of Texas and exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended. HPB shall at all times maintain its fiscal year beginning July 1.

D. Accounts. No later than the first business day of July, 2014, HPB shall establish and thereafter maintain at all times during the Term a project operating account (the "**Project Operating Account**"), and accounts for a maintenance reserve (the "**Maintenance Reserve**") and for a capital replacements reserve (the "**Capital Replacements Reserve**"), for use exclusively in connection with the Project, and HPB shall maintain complete records providing accounting for such accounts. HPB shall not borrow from any one of such accounts to cover a shortfall in any other of such accounts except as expressly provided in this Agreement; provided, however, that the foregoing shall not apply to (i) scheduled transfers from the Capital Replacements Reserve account to the Project Operating Account as expressly planned for in HPB's annual budget and Ten-Year CIP, and (ii) transfers from the Maintenance Reserve to the Project Operating Account as provided in Section III.D.2 below. HPB shall have the right to establish and maintain any additional accounts that it deems necessary or appropriate for the management of its financial affairs in connection with the Project, provided, however, that no funds from any payment of Annual 380 Grant shall be held in such additional accounts.

1. Project Operating Account. Each payment of the Annual 380 Grant shall be deposited by HPB in the Project Operating Account, and contemporaneously therewith, or as soon as reasonably practicable, HPB shall transfer the Coverage Ratio Amount of such payment into the Maintenance Reserve. The remaining Base Maintenance Fee portion of the Annual 380 Grant shall be retained in the Project Operating Account and used by HPB for costs of maintenance substantially as set forth in its approved annual budget for such fiscal year, as supplemented by transfers from the Maintenance Reserve for uses permitted under Section

III.D.2. below. HPB may transfer funds in the Project Operating Account to the Capital Replacements Reserve.

2. Maintenance Reserve. HPB shall have the right to expend funds held in the Maintenance Reserve only to cover costs for unexpected and unbudgeted HPB Maintenance Work resulting from: (i) extraordinary expenses resulting from events of Force Majeure, such as silt removal following a flood event; and (ii) casualties or other unanticipated and extraordinary damages other than wear and tear (for example, severe vandalism or illegal dumping) not covered by insurance, including insurance deductibles. Within sixty (60) days after the end of each fiscal year, HPB shall determine whether any surplus funds remain in the Maintenance Reserve from the prior fiscal year's Coverage Ratio Amount (the "**Maintenance Reserve Surplus**"). HPB shall transfer the Maintenance Reserve Surplus to the Capital Replacements Reserve within fifteen (15) business days.

3. Capital Replacements Reserve. The projected and estimated needs of the Capital Replacements Reserve are set forth in **Exhibit D-2 – Capital Replacements Reserve**. HPB shall have the right to expend funds held in the Capital Replacements Reserve to perform major maintenance (as opposed to ordinary or routine maintenance included in the Maintenance manual), capital repairs or replacements as necessary with respect to any portion of the Project improvements or fixtures (i) which are no longer economically feasible to continue to repair, (ii) which are near or have exceeded their useful life as determined by industry standards, or (iii) whose capital repair or replacement are necessary to ensure that the Project is in substantially the same condition as it was upon final completion in approximately 2020, subject to normal wear and tear. HPB shall not be in default if accumulated funds are insufficient to cover projected or actual costs of such capital repairs and replacements, and HPB shall have no duty to raise other funds for the Capital Replacements Reserve. In any given year, if the flow of funds from the Maintenance Reserve results in the Capital Replacements Reserve account balance exceeding the Maximum Capital Replacements Reserve Cap, HPB shall refund the excess amount (the "**Capital Replacements Reserve Surplus**") to the City. HPB shall determine by October 31 of each fiscal year, beginning in 2015, whether a Capital Replacements Reserve Surplus exists, and if such surplus does exist, will refund the Capital Replacements Reserve Surplus to the City by December 31 of that year. Notwithstanding the above, the City may waive its right to the Capital Replacements Reserve Surplus in any given year or may provide for alternative sources of funds for the Capital Replace Reserve, which alternative funds shall not be applied to the Maximum Capital Replacements Reserve Cap. In no event shall the funds in the Capital Replacements Reserve be used for the construction of any improvements or fixtures which are not part of the original Project as of final completion (other than improvements or fixtures which are intended to act as substitutes for existing improvements or fixtures) without the consent of five (5) of the seven (7) members of the Standards Committee.

4. HPB's Options If Insufficient Funding. If the Annual 380 Grant in any year of the Term is insufficient to cover the HPB Maintenance Work for the Project, or HPB's funds in the Capital Replacements Reserve are insufficient to cover the cost of capital repairs or replacements of existing Project improvements or fixtures, then upon request by HPB, the City shall have the right, but not the duty, to pay HPB additional sums to cover the increased cost of such HPB Maintenance Work or such capital repairs and replacements. If the City in such event does not pay HPB the requested additional sums, then HPB may recommend to the Standards

Committee an adjustment of the Maintenance Manual commensurate with the available funds. If the Standards Committee determines not to make the requested adjustment, then HPB shall have the right to (i) reduce the scope of the HPB Maintenance Work to levels that can be covered by the Annual 380 Grant subject to Angel Donor's consent which shall not be unreasonably withheld, and/or, (ii) shut down the improvements or fixtures of the Project or, only if reasonably necessary to protect public health and safety, to ask the City to close areas of the Project, where such capital repairs or replacements are needed so long as such capital repairs and replacements are insufficiently funded.

E. Reporting Requirements.

1. Prospective: Annual Budget; Capital Replacements Plan for Project. No later than March 15 of each calendar year during the Term, HPB shall deliver to the City and Angel Donor (i) a copy of HPB's proposed annual budget for the HPB Maintenance Work for the next succeeding year, and (ii) a copy of HPB's Ten-Year CIP.

2. Retrospective: Reconciliation of Prior Year's Budget. No later than October 31, 2015, and by such date in each fiscal year thereafter during the Term, HPB shall deliver to the City (i) an annual year-end report for the Project for the prior fiscal year, and (ii) HPB's audited financials for the Project. The year-end Project report shall include (i) a separate schedule reflecting reconciliation of the annual budget for the Project provided by HPB prior to the beginning of such fiscal year against actual financial results for the Project for such fiscal year, and (ii) a separate schedule showing whether a Capital Replacements Reserve Surplus existed for the reporting period.

F. Business Opportunity. HPB shall comply and shall require its contractors to comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. The City's policy does not require HPB to in fact meet or exceed this goal, but it does require HPB to objectively demonstrate that it has made good faith efforts to do so. To this end, HPB's contractors shall maintain records showing: (i) subcontracts with MWBEs, and (ii) specific efforts to identify and award subcontracts and supply agreements to MWBEs. HPB shall submit period 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. The agreements between HPB and its contractors and any subcontractor must expressly require compliance with such Chapter 15 requirements.

G. Deposit of Annual 380 Grants. In accordance with Section III.D., HPB shall deposit the Annual 380 Grant in the following accounts: Project Operating Account, Maintenance Reserve account, and Capital Replacements Reserve account.

ARTICLE IV CITY COMMITMENTS

A. Maintenance Fund. The City hereby covenants and agrees upon the Effective Date of this Agreement to create a special fund to be known as the Maintenance Fund (the "**Maintenance Fund**") solely for the benefit of HPB for the purpose of depositing each year's

Annual 380 Contribution in the Maintenance Fund and disbursing each year's Annual 380 Grant to HPB to maintain the Project as described in the Maintenance Manual.

B. Annual 380 Contributions. The City agrees to deposit the Annual 380 Contribution at least annually, from any lawfully available source of funds, into the Maintenance Fund. The Parties acknowledge and agree that in no event will the City be required to deposit more than the Annual 380 Contribution into the Maintenance Fund.

C. Segregated, Unencumbered Fund. The Maintenance Fund shall always remain unencumbered by the City and segregated from all other funds of the City. Such funds are held in trust by the City for HPB to be used in accordance with the terms hereof as long as HPB is not in default pursuant to the terms of this Agreement beyond any cure period. To the fullest extent permitted by law, the City agrees that: (i) it will not pledge or apply the Maintenance Fund to any other purpose or payment of any obligation of the City except for the obligations arising under this Agreement; (ii) it will not commingle the Maintenance Fund with any other funds of the City, other than investments done through a common fund; (iii) it will not take any action or omit to take any action that will affect the continued existence of the Maintenance Fund or the availability for deposit therein of the Annual 380 Contribution; and (iv) it will direct the investment of the Maintenance Fund in accordance with Texas law applicable to investment of funds by municipalities. The Maintenance Fund shall be used only to pay the City's obligations to HPB under the terms of this Agreement.

D. Adjustment of Base Maintenance Fee.

1. Annual Increase. The Base Maintenance Fee shall be increased annually in fiscal year end 2021 and each year thereafter based on increases in the Escalator Index. The Coverage Ratio Amount shall be calculated annually based on the adjusted Base Maintenance Fee, and the sum of such adjusted Base Maintenance Fee plus such recalculated Coverage Ratio Amount shall be the adjusted Annual 380 Grant for such year. For fiscal years ending in 2015 through 2020, the Base Maintenance Fee shall be the amounts shown in **Exhibit D-1—Phase In Schedule**, shown in fiscal year 2013 dollars and requiring the application of the Escalator Index. For fiscal year end 2021, it is estimated that the costs of the HPB Maintenance Work for the Project (projected to be substantially completed in fiscal year 2020) will be \$9,400,000 in fiscal year 2013 dollars, provided that such amount will be adjusted annually based on increases in the Escalator Index to establish that Base Maintenance Fee that will be increased commencing 2021 in accordance with the first sentence of this Section IV.D.1.

2. Fiscal Year 2020/21 Evaluation. No later than December 2020, the Parties agree to evaluate the projected costs of the HPB Maintenance Work for the Project for the fiscal year ending on June 30, 2021, based on a review of the available fiscal year end 2019 and 2020 budgets and reconciliations provided by HPB pursuant to the reporting requirements in Section III.E. The City agrees that its designee for this purpose is the City's Chief Development Officer, or if such title does not exist, the Mayor's designee within the Mayor's Office (the "**City's Designee**"). In the event the HPB and the City's Designee determine that the initial estimate of \$9,400,000 in fiscal year 2013 dollars (as adjusted pursuant to Section IV.D.1) is not accurate for the HPB Maintenance Work for the Project for fiscal year end June 30, 2021, then HPB and the City's Designee may adjust, up or down, the Base Maintenance Fee for fiscal year end 2021 (and

as a result all future fiscal years during the term) to more accurately reflect the cost of the Base Maintenance Fee. Any adjustment must be approved by five (5) of the seven (7) members of the Standards Committee and, if such adjustment would result in an increase in the Base Maintenance Fee for the fiscal year ending June 30, 2021 by more than twenty percent (20%), the amount in excess of twenty-percent would require City Council approval.

3. HCFCFCD Contributions. Notwithstanding the above, to the extent HPB receives contributions from HCFCFCD (either in cash or continuation of HCFCFCD's current maintenance services on greenway segments on HCFCFCD property) in a given year for maintenance of the Project, the Base Maintenance Fee in that year shall be reduced by the HCFCFCD contribution amount. The Coverage Ratio Amount, however, shall be calculated without regard to such HCFCFCD contribution.

E. Disbursements of Annual 380 Grants. HPB will invoice the City twice a year for payments to be due on July 10 and January 10 of each year of the Term. The City shall disburse the Grant to HPB thirty days after receipt of the invoice, but in no event later than July 10 and January 10 of each year of the Term, beginning in July, 2014, subject to HPB's timely compliance with the reporting requirements in Section III.E.

F. Utilities. In addition to the Annual 380 Grant, the City shall (i) furnish, at no cost to HPB, all water, sewer and stormwater drainage services required for the Project, together with maintenance of the City's facilities providing such services, and (ii) furnish electricity and natural gas required for the Project at the City's actual cost therefor, in order to allow the Project to benefit from the City's bulk purchase rates for such utilities.

G. Events. The City shall have the exclusive right to conduct, or to book or permit charity walks, foot races, bicycle tours, or other public and private events in the Greenway segments; provided however, that the City for its own events, or the third party sponsor of any event, shall be liable, at no cost to HPB or to the Maintenance Fund, for all costs of such events, including but not limited to set up/break down, security, supplemental sanitation, and trash pick up, and for the cost of repair or replacement of any damage to Project improvements and/or landscaping arising out of such events as well as any actual costs incurred by HPB or its maintenance provider in connection with maintenance after such event. With respect to any third party event, the City shall require the third party to: (i) be a person or legal entity, (ii) provide a security deposit as reasonably determined by the City but which shall in all events take into consideration the nature of the event and the potential damage to the Project, and (iii) provide a certificate of insurance with adequate liability coverage (including damage to person or property) naming HPB as an additional insured. The City agrees that in the event that any damage from an event (whether produced by the City or a third party) occurs and the City fails to either repair the damage or provide HPB with compensation for such damages within ninety (90) days after the occurrence of such damage, the Base Maintenance Fee for the following fiscal year shall be automatically be increased to include the costs necessary for HPB to repair such damages.

H. Restrictive Covenants. The City hereby agrees that notwithstanding anything to the contrary contained in this Agreement and without limiting the express rights of the Standards Committee provided for in Article II, with respect to any portion of the real property constituting the Project in which the City currently possesses a real property interest or subsequently acquires

a real property interest, the following shall constitute covenants running with the land constituting the Project (the "**Restrictive Covenants**") and which shall require that:

1. the real property constituting the Project and each Bayou Greenway shall at all times be park land or open green space;
2. all development within the Project be constructed and operated in a manner that is compatible with and supportive of the Project;
3. all portions of the Project (including all improvements and fixtures therein) be maintained in accordance with the standards set forth the Maintenance Manual; and
4. provide for the right, but not the obligation, for enforcement of the Restrictive Covenants by HPB (or its permitted successor or assign) or the Angel Donor and no other person or entity.

The Parties hereby acknowledge and agree that the Restrictive Covenants are not established for the benefit of, and are not enforceable by, any neighboring property owner, any member of the public, or by any natural person or legal entity other than as provided above, acting jointly or severally. On or before the substantial completion of the Project, the City and HPB shall execute and record in the Real Property Records of each county in which all or any portion of the Project is located a Declaration of Restrictive Covenants evidencing the above.

I. Connected Linear Park System. The City acknowledges that it is the intent of the Parties to cause the implementation and construction of the Project to result in an interconnected linear park, trail and open green space system that extends the full length of each bayou and Bayou Greenway within the City corporate limits even though some portions of such system will not be within the boundaries of the Project. During the Term of this Agreement and except for Force Majeure or emergency situations, the City will ensure that any portions of the Bayou Greenway that are not within the boundaries of the Project, but are within the City's jurisdictional limits, will remain park land or open green space and it will not close any trails within such areas so that there will at all times during the Term be an interconnected linear park, trail and green space system along the nine (9) bayous system.

ARTICLE V DEFAULT AND REMEDY

A. Payment Default. The City agrees that its failure to either fully fund the Maintenance Fund or to pay a disbursement when due, is an event of default (a "**Payment Default**") and that HPB shall be entitled to any and all of the remedies available in this Article or otherwise at law or equity.

B. General Events of Default. Except for a Payment Default, a Party shall be deemed in default under this Agreement (a "**Performance Default**") if such Party (i) fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement, and (ii) fails to cure

pursuant to the provisions below. Before any such failure by any Party shall be deemed to be a Performance Default under this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform the alleged failure and the Third Party Beneficiaries and shall demand performance by the alleged non-performing Party.

C. Remedies Cumulative. Upon a default under this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance (such as through writ of mandamus) of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. City expressly acknowledges that this Agreement constitutes a contract with HPB under which HPB is providing goods and services, for purposes of Section 271.152 of the Texas Local Government Code. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. If City at any time fails to fully and timely pay a disbursement of any year's Annual 380 Grant, then HPB, in addition to its rights in Section V.D. below, shall also have the right to (i) reduce the scope and actual cost of the HPB Maintenance Work to levels that can be covered by the Annual 380 Grant actually paid in any such year, subject to Angel Donor's consent which shall not be unreasonably withheld, and/or, (ii) shut down the improvements or fixtures of the Project or, only if reasonably necessary to protect public health and safety, to ask the City to close areas of the Project. HPB agrees that the foregoing rights to reduce the scope and cost of the HPB Maintenance Work, shut down improvements/fixtures, or close areas of the Project are subject to HPB having commenced enforcement actions against the City and that it is diligently pursuing such enforcement actions.

D. Termination Rights. Either HPB or the City, as the injured Party, may terminate its performance under this Agreement (but may not terminate this Agreement) if the other Party has caused a Payment Default or a Performance Default, if the non-performing Party fails to cure such Payment Default within thirty (30) days, or to cure such Performance Default within ninety (90) days, of receiving a written termination notice from the injured Party describing the proposed termination date. In addition, HPB may terminate its performance under this Agreement during a Renewal Term (but may not terminate this Agreement) in the event the City fails to approve annual appropriation for the Annual 380 Grant in its annual budget approval process. The injured Party, at its sole option, may extend the proposed termination date to a later date. If the defaulting Party cures the Payment Default or the Performance 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.

E. Transition Upon Termination. Upon the termination of this Agreement pursuant to Section V.D, the Parties will transition this Agreement and the Project from HPB to the City or to such successor to HPB as the City may designate, with the approval of either the City or a third party successor taking over the Project being subject to the consent of a majority of the Standards Committee and the Angel Donor, in each case which consent must not be unreasonably withheld; *provided, however,* that (i) in the event of a transition of HPB's

responsibilities hereunder to the City (or any City affiliate), the Angel Donor may withhold its consent in its sole and absolute discretion and (ii) in the event that HPB has exercised its right terminate this Agreement as a result of a City Payment Default, the Angel Donor may select the successor to HPB provided such person or entity has knowledge and expertise in the efficient and cost effective operation and maintenance of parks and green space. In connection with such transition, HPB shall transfer all of its rights, title and interests to the City or such successor all contracts and materials relating to the Project. All funds in the Project Operating Account, Maintenance Reserve and Capital Replacements Reserve shall be transferred to the City or such successor, as the successor operator of the Project, for use solely in connection with the Project and solely for the purposes to which such accounts are limited. HPB shall deliver to such successor operator copies of HPB's books and records for the Project for not less than two (2) full calendar years prior to the date of such transition, and copies of all service contracts then in effect.

F. Force Majeure. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such Party and could not have been reasonably anticipated (which circumstances may include, but not be limited to, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire, flood or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes], industry-wide labor action, strikes or similar acts [but not strikes limited to either Party's work force]) the time for such performance shall be extended by the amount of time that such delay is actually in effect ("**Force Majeure**"). The Party affected by Force Majeure shall promptly give notice to the other Party of the occurrence of the Force Majeure event and shall use commercially reasonable efforts to mitigate the impact and duration of the Force Majeure event.

ARTICLE VI GENERAL PROVISIONS

A. Time of the essence. Time is of the essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, but not limited to, subject to HPB's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate HPB's timely procurement of all entitlements required for the Project.

B. Third Party Beneficiary. The terms of this Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. The Parties hereby expressly acknowledge and stipulate their intent that the Angel Donor shall be a third party beneficiary of this Agreement, and shall have the right and legal standing to enforce the respective obligations of the Parties hereunder and thereunder to the full extent allowed at law or in equity; provided, however, that in no event shall Angel Donor have the right to bring suit for money damages against any Party to this Agreement in any case or cause of action in which a direct Party to this Agreement would have no right to bring suit for money damages under the terms of this Agreement.

C. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by electronic transmission confirmed by mailing written confirmation at substantially the same time as such electronic transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to City: Chief Development Officer, Office of the Mayor
City of Houston
900 Bagby
Houston, TX 77002

With a copy to: Director, Parks and Recreation Department
City of Houston
2999 South Wayside
Houston, TX 77023

And a copy to: Section Chief, Real Estate Section
City Attorney's Office
PO Box 368
Houston, TX 77001-0368

If to HPB: Executive Director
HPB
300 North Post Oak Lane
Houston, TX 77024

With a copy to: Cassie B. Stinson
Boyar Miller
4265 San Felipe, Ste. 1200
Houston, TX 77027

If to Angel Donor: Contact information to be added at such time as an Angel Donor is designated by HPB pursuant to the terms of this Agreement.

Notice shall be deemed to have been received on the date such notice is personally delivered or otherwise actually received by the intended recipient. Any party may change its address by written notice in accordance with this Section VI.C.

D. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Parties. No course of dealing on the part of the Parties nor any failure or delay by the Parties with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section D. Notwithstanding the above, the Parties agree that the Maintenance Manual may be revised and amended as agreed to by the Standards Committee.

E. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of

this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

F. Successors and Assigns.

1. Binding on Successors; Limitations on Assignment. This Agreement binds and benefits the Parties and their permitted legal successors and assigns; *provided, however*, this provision does not alter the restrictions on assignment and disposal of assets set out below or elsewhere in this Agreement. This Agreement does not create any personal liability on the part of any officer or agent of the City or HPB. The City shall not assign this agreement whether by operation of law or otherwise. HPB shall not assign this Agreement whether by operation of law or otherwise without the Standards Committee's and the Angel Donor's prior written consent and City approval. Notwithstanding the foregoing, HPB may assign the Agreement to its wholly owned subsidiary which it controls (other than HPBLGC, a local government corporation or any other governmental entity) at its discretion and without the consent of the Standards Committee, the Angel Donor or the City. In the case of a permitted assignment by HPB in accordance with this Section VI.F.1, HPB 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.

2. Transition Upon Assignment. Upon the assignment of this Agreement by HPB as expressly permitted herein, HPB shall cooperate with the assignee to accomplish the orderly transition of HPB's operations and obligations relating to the Project. All funds in the Project Operating Account, Maintenance Reserve and Capital Replacements Reserve shall be transferred to the assignee, as the successor operator of the Project, for use solely in connection with the Project and solely for the purposes to which such accounts are limited pursuant to this Agreement. HPB shall deliver to such successor operator copies of HPB's books and records for the Project for not less than two (2) full calendar years prior to the date of such assignment, and copies of all service contracts then in effect.

G. Exhibits, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement between the Parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

H. Applicable Law; Venue. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas or the United States District Court for the Southern District of Texas. Each Party hereby submits themselves to the exclusive jurisdiction of such courts and expressly waives any claim of non-convenience with respect to such forums.

I. Entire Agreement. This Agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

J. Term of Agreement; Renewal Options.

1. Initial Term. This Agreement expires thirty (30) years after the Effective Date and the City's final payment to HPB of any outstanding obligations, unless extended or sooner terminated under this Agreement.

2. Renewal Terms. HPB shall have the option to renew this Agreement on the same terms as set forth herein for two (2) consecutive renewal terms (each, a "**Renewal Term**") of twenty-five (25) years each, by giving the City written notice of renewal no less than one (1) year before the last day of the then current Term; provided that during any Renewal Term the Annual 380 Grant shall be subject to annual appropriation by City Council. The Initial Term and any Renewal Term(s) are individually and collectively referred to as the "**Term**."

3. Secondary Renewal Options. If HPB fails to timely submit its renewal notice renewing the term for one of the Renewal Terms, the Parties agree that the Angel Donor shall have the secondary right to exercise the renewal option by sending written notice of renewal to all Parties hereto during the period beginning one (1) year before and ending six (6) months before the last day of the then current Term. Such notice shall indicate a successor entity to replace HPB, as HPB's assignee, subject to the reasonable approval of City but which consent may not be withheld in the event that the proposed assignee (i) is the Angel Donor or (ii) agrees to assume in writing all of the rights and obligations of HPB under this Agreement and has knowledge and expertise in the efficient and cost effective operation and maintenance of parks and green space. If the Angel Donor timely exercises such secondary renewal option, then HPB and the Angel Donor or the Angel Donor's approved successor entity, as applicable, shall cooperate in making an orderly transition of HPB's activities in connection with the Project. On or before the last day of the then current term, HPB shall assign this Agreement and all of the Project-related contracts and assets to the Angel Donor or Angel Donor's designated successor entity, as applicable, for the continuation of the Project during the Renewal Term.

K. Enforcement; Audit Rights. The City Attorney or his or her designees, including HPBLGC, may enforce all legal rights and obligations under this Agreement without further authorization of the City. HPB shall make available to the City Attorney, at HPB's offices, at a time mutually agreed upon by HPB and the City Attorney, all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining HPB's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation. Upon at least three (3) business days' advance notice to HPB, City and the Controller of City will have the right, directly or through its duly authorized representatives, during normal business hours and at its expense, to audit and obtain copies of HPB's books and records relating to the Project, provided, however, that HPB shall not be subject to audit more frequently than once in any City fiscal year during the Term. Any such audit shall be performed in HPB's offices at a time mutually agreed upon by HPB and the City. In connection with any such review or audit all charges for copying or duplication shall be at the expense of the reviewing or auditing entity.

L. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

M. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

N. Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.


O. Conflicts with Ordinances. The City and HPB agree that any City ordinance, or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, that addresses matters that are covered by this Agreement shall not be enforced by the City or the other regulatory agency with respect to the Project if contradictory to the scope of this Agreement, and that the provisions of this Agreement and the Maintenance Agreement govern the maintenance of the Project and the funding thereof.


P. Powers. The City hereby represents and warrants to HPB that the City has full constitutional and lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

[EXECUTION PAGE FOLLOWS]


IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of HPB and the City effective as of the Effective Date defined herein.

HPB:
HOUSTON PARKS BOARD, INC.

By: 
Name: Thomas G. Bacon
Title: Chairman
Tax ID No.: 74-1860046

By: 
Name: Roxsan Okan-Vick
Title: Executive Director

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

By: 
Name: Rebecca A Porteous
Title: Finance Manager

CITY:
CITY OF HOUSTON, TEXAS

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

APPROVED:

Chief Development Officer

APPROVED:

Director, Finance Department

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:



Sr. Assistant City Attorney

L.D. File No. 0491300072001

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of HPB and the City effective as of the Effective Date defined herein.

HPB:
HOUSTON PARKS BOARD, INC.

By: _____
Name: Thomas G. Bacon
Title: Chairman
Tax ID No.: _____

By: _____
Name: Roksan Okan-Vick
Title: Executive Director

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

By: _____
Name: _____
Title: _____

**CITY:
CITY OF HOUSTON, TEXAS**

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

APPROVED:

Chief Development Officer

APPROVED:

Director, Finance Department

COUNTERSIGNED BY:

City Controller

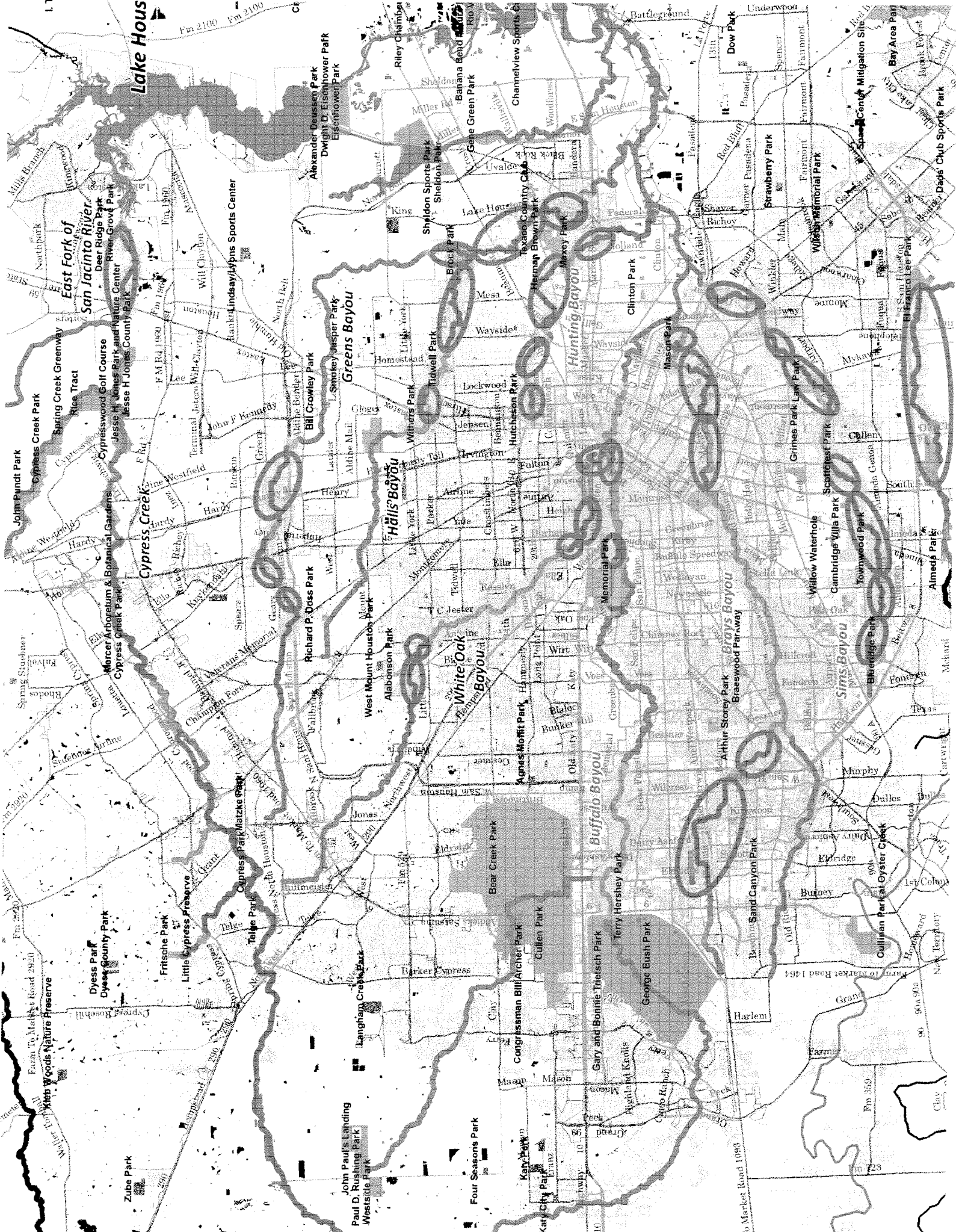
DATE COUNTERSIGNED:

APPROVED AS TO FORM:

Sr. Assistant City Attorney
L.D. File No. 0491300072001

EXHIBIT A

MAP OF THE PROJECT



Lake Hous

San Jacinto River
East Fork of San Jacinto River

Greens Bayou

Halls Bayou

White Oak Bayou

Buffalo Bayou

Sims Bayou

Braeswood Parkway

John Paul's Landing
Paul D. Rushing Park
Westistie Park

Four Seasons Park

Katy City Park

Congressman Bill Archer Park

Cullen Park

Gary and Bonnie Trietsch Park

George Bush Park

Terry Hershey Park

Darryl Ashford Park

Buffalo Bayou Memorial Park

Agnes Moffit Park

West Mount Houston Park

Zube Park

Fritsche Park

Little Cypress Preserve

Langham Creek Park

Cypress Park

Richard P. Doss Park

Westfield

Bill Crowley Park

Widener Park

Lockwood

Jensen

Hutcherson Park

Memorial Park

Arthur Storey Park

Willow Waterhole

Cambridge Villa Park

Townwood Park

Berridge Park

Cullinan Park

Oyster Creek

Dyess Park

Fritsche Park

Little Cypress Preserve

Langham Creek Park

Cypress Park

Richard P. Doss Park

Westfield

Bill Crowley Park

Widener Park

Lockwood

Jensen

Hutcherson Park

Memorial Park

Arthur Storey Park

Willow Waterhole

Cambridge Villa Park

Townwood Park

Berridge Park

Cullinan Park

Oyster Creek

Dyess County Park

Fritsche Park

Little Cypress Preserve

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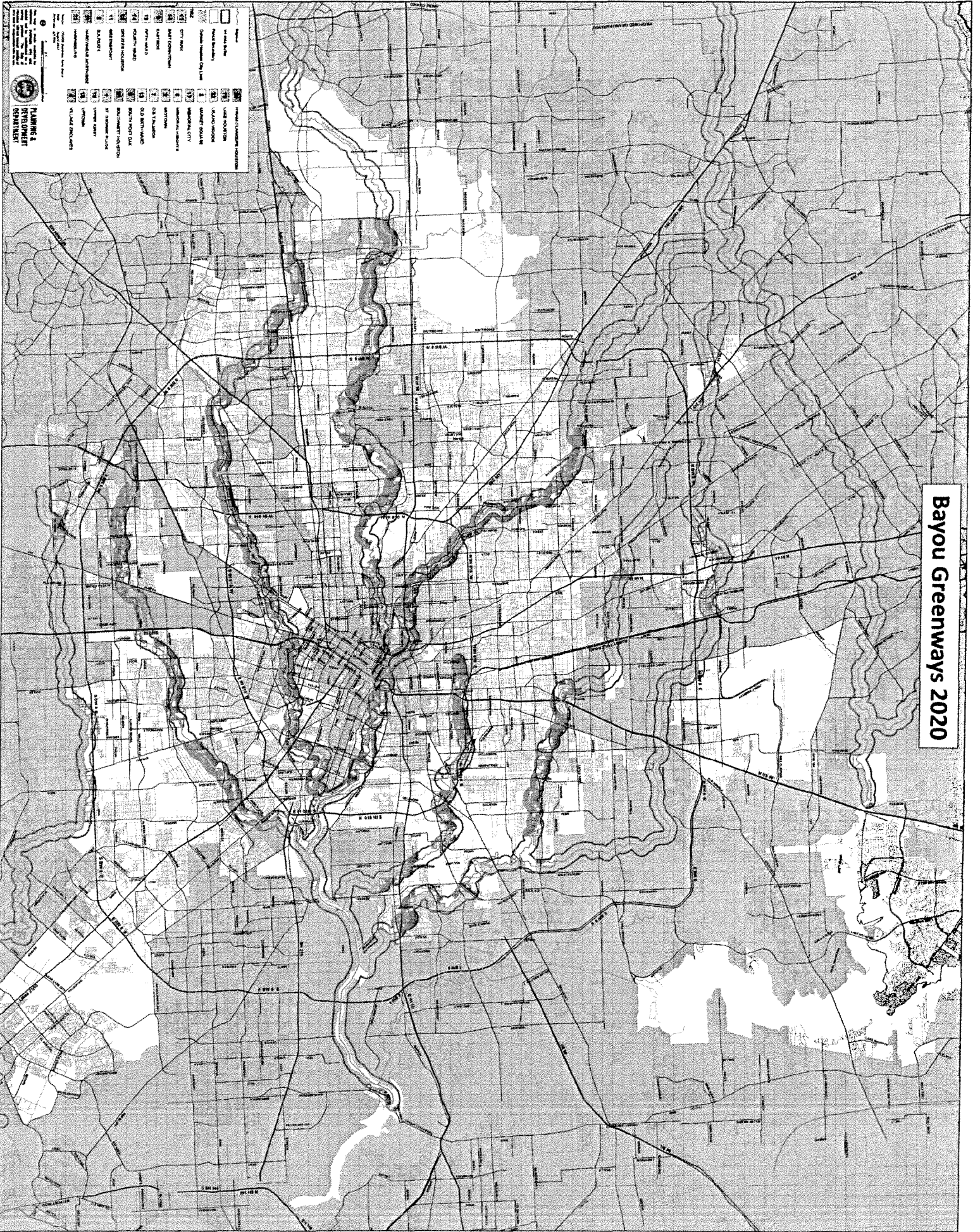
Cullinan Park

Oyster Creek

EXHIBIT B

ECONOMIC IMPACT AREA

Bayou Greenways 2020



Legend

	Bayou Greenway		Land Use - Residential
	Bayou		Land Use - Commercial
	Street		Land Use - Industrial
	Waterway		Land Use - Office
	Canal		Land Use - Retail
	Ditch		Land Use - Public Use
	Road		Land Use - Agriculture
	Highway		Land Use - Forest
	Airport		Land Use - Wetland
	Park		Land Use - Water
	School		Land Use - Open Space
	Hospital		Land Use - Vacant
	University		Land Use - Other

Scale
1 inch = 1 mile
1 centimeter = 0.625 miles

North Arrow

City of Houston Planning & Development Department

EXHIBIT C

MAINTENANCE MANUAL

BAYOU GREENWAYS 2020 MAINTENANCE STANDARDS

**Prepared for:
Houston Parks Board**

Table of Contents

Introduction

Part I.

Maintenance Inventory

- A. Geographic Reach
- B. Landscape Categories
 - I. Multi-use Trails
 - II. Bayou Banks
 - III. Expanded Uplands
 - IV. Trailheads
 - V. Greenway Edge (within existing City/County Parks and Detention Basins)
- C. Landscape Types
 - I. Lawns
 - II. Meadows
 - III. Woodlands
 - IV. Concrete Paving and Infrastructure
 - V. Seating Areas
 - VI. Secondary Trails

Part II.

Maintenance Tasks and Standards

- A. Basic Maintenance
- B. Unforeseen Maintenance Conditions
- C. Vandalism
- D. Flood Clean-up
- E. Environmental Controls
- F. Maintenance Facilities

Part III.

Exhibits

- A. Maintenance Zone Diagrams (Exhibit A)
- B. General Maintenance Standards, Tasks, and Frequency (Exhibit B)
- C. Landscape Category Plan Diagram (Exhibit C)
- D. Landscape Category Typical Section (Exhibit D)

INTRODUCTION

The goal of maintenance is to ensure that the bayou greenways are clean, attractive, safe and usable for visitors at all times and during all seasons. High quality maintenance is essential to protecting the long-term capital investment in the Bayou Greenways 2020 Project.

The maintenance standards in this document are based on the Operation Guidelines for Grounds Management, 2001, published by APPA, the National Recreation and Park Association and Professional Grounds Management Society. These standards have been adapted, however, in some circumstances to meet the unique maintenance needs of a park system built around the bayous. In this way, the Bayou Greenways 2020 Maintenance Standard provides for a national standard that encompasses the complexity of a park system along the water where consistent flood events are expected.

The maintenance standards in this document are for basic landscape maintenance, such as mowing, de-littering, and maintenance of meadow areas. Maintenance intensive features such as ornamental plantings, or other intensive landscape features are not accounted for in these standards. Inclusion of these elements in any future bayou greenway projects will entail development of maintenance standards for those features and will require an additional funding commitment for maintenance.

Management of the maintenance tasks associated with the Bayou Greenways 2020 project will be done through a public private partnership where public entities will continue in some capacity to maintain aspects of the system but at the agreed upon standard outlined in this document. Currently, it is envisioned that the Houston Parks Board, a 501(c)(3) non-profit organization, will receive and disburse funds for the maintenance of the Bayou Greenways 2020 project and be responsible for ensuring that the national standards outlined here will be met. To the extent practicable, the non-profit organization will also coordinate the efforts of all parties with maintenance responsibility for the Bayou Greenways 2020 Project areas including the Houston Parks and Recreation Department (HPARD), Harris County Flood Control District (HCFCD), County Precincts and any other public or private entity that currently, or in the future, may assist with maintenance of the Bayou Greenways 2020 Project. The Houston Parks Board is referred to as the "Managing Party" throughout this document.

During the first seven years of construction, the standards outlined here must be applied with recognition for delayed activity. The first seven years will entail a gradual ramp-up to the full standards outlined in Exhibit B, as areas are restored with additional vegetation and as vegetation reaches a sustainable growth. In effect, as construction and restoration are completed, the maintenance of the system will ramp up to a high point in year seven with on-going responsibilities and efficiencies created within the system.

PART I: MAINTENANCE INVENTORY

A. Geographic Reach:

The geographic areas within which the maintenance standards apply are the areas depicted in Exhibit A as the Bayou Greenways 2020 Potential Maintenance Zone. The areas which may add up to approximately 4,000 acres represent the limits of the full geographic reach which will take several years to complete as properties are acquired or otherwise included as part of the Bayou Greenways 2020 Project, and as trails are added per the Bayou Greenways 2020 Project scope identified in the June 2013 Construction Interlocal Agreement between the Houston Parks Board LGC and the City of Houston. Generally, these areas include linear parcels of greenspace outside the primary channel of the bayous with one single line of trail. The maps exclude city or county operated parks, secondary trails into city or county parks, restrooms, and other built features typically associated with a city park.

Likewise, the primary bayou channel is not included in the maintenance inventory. The maintenance of the primary channel is the responsibility of HCFCD (See Exhibit D for typical section).

B. Landscape Categories:

The geographic reach contains basic landscape categories which are in turn comprised of various landscape types. The categories are as follows:

- I. Multi-use Trails: Typical Multi-use Trails are typically concrete, 10' wide with a 6' wide strip of lawn along each edge. Trails will be located on flat areas above the primary channel banks and on minimum 22' wide flood benches within slopes. Trails may also be located in limited areas on lower flood benches adjacent to the primary channel, pursuant to HCFCD approval.
- II. Bayou Banks: Bayou Banks include the slopes and upper benches above the primary channel, which are generally areas adjacent to the primary channel and Multi-use Trails. Maintenance and management of the Bayou Banks is currently the primary responsibility of the HCFCD. The Managing Party will provide supplemental maintenance to enhance the standards currently followed by HCFCD.
 - i. HCFCD is currently responsible for removal of debris within the Bayou Banks. The Managing Party will supplement current HCFCD efforts with additional litter removal to maintain the standard outlined in Exhibit B. Litter removal will be limited to small objects only and does not include remove of larger debris such as tires or shopping carts. The maintenance reach for removals will be limited from the top of bank to the channel edge. Debris floating along the water edge that can be reached from land with a pool skimmer or similar device will be removed.

- ii. HCFCD is currently responsible for removal of dead or dying trees, downed trees, dead tree limbs, fallen tree limbs, and selective clearing of undesirable species within the Bayou Banks. The Managing Party will supplement current HCFCD efforts with clearing to maintain the standard outlined in Exhibit B.
- iii. HCFCD is currently responsible for flood clean-up and removal of silt drifts and deposits within the Bayou Banks. The Managing Party will supplement current HCFCD efforts with removal of silt and flood debris to maintain the standard outlined in Exhibit B.

III. **Expanded Uplands:** Expanded Uplands includes areas beyond and upland of the Bayou Banks.

IV. **Trailheads:** Trailheads are located at intervals along the greenway to provide access and seating areas. Trailheads generally consist of a parking area, averaging 5,000 sf. and could also include additional amenities such as benches or picnic tables, a drinking fountain, an information kiosk, wayfinding signage, trash/recycling containers, and/or bike racks. Small high maintenance planting areas may be installed at select trailheads which may include shrub plantings, ornamental plantings, or planting beds. These planting beds will typically have irrigation systems.

V. **Greenway edge within Existing City and County parks and detention basins:** Existing City and County parks and detention basins are administered by either the city or county parks departments. Sections of the greenways will frequently be in close proximity to, or connect with city and county parks and detention basins. Maintenance of parks and basins will remain with the respective agency. Where the greenway edge meets existing City and County Parks or detention basins and is noted to be included in the maintenance area, the maintenance reach extends approximately 50' upland of the trail edge to the edge of the primary channel.

C. Landscape Types:

- I. Lawns: Lawns are typically located within Trailhead areas and along the Multi-use Trails. All lawns are in highly visible areas and should thus be kept attractive and accessible.
- II. Meadows: Meadows in the Bayou Greenways include two types: Bayou Banks Conservation meadows and Expanded Uplands meadows. Each meadow type will have its own maintenance needs and the degree of maintenance work will vary depending on the location. The primary maintenance goal for meadows is to maintain an attractive landscape that "looks good". Undesirable species (which include non-native and/or invasive species) are to be actively managed; however, not all non-native invasive species are to be removed. Some grass species considered non-native, such as Bermuda Grass will be tolerated as part of the species diversity

within meadows. Over seeding of flowering species will also be a component of meadow management of meadow areas.

- a. Within Bayou Banks: The Bayou Banks Conservation meadows are for passive use and are hybrid in nature combining a variety of grasses and flowers. Meadows within the Bayou Banks landscape category will be less visible to the public and more prone to flooding. These two factors influence their standards of care. Because they have lower visibility within the Bayou Greenways, they will be maintained to a different standard than meadows in high profile/visibility/use areas.
- b. Within Expanded Uplands: These areas have little to no slope and include the Multi-use Trails. Meadows within the Expanded Uplands will be maintained to a higher standard as they will be within the more heavily used and viewed areas of the greenways. Meadows in the Expanded Uplands may have limited secondary trails with scattered trees.
- c. Meadows in both the Expanded Uplands and Bayou Banks will include various wildflower species to enhance their visual appearance. Meadow mowing schedules will largely depend on the species mix during peak flowering times to encourage seed germination, dispersal, and flowering. In this way, there is some flexibility in a mowing schedule during certain seasons to accomplish a more desired aesthetic.
- d. The first seven years will entail a gradual ramp-up to the full meadow standards outlined in Exhibit B, as areas are restored with additional vegetation and as vegetation reaches a sustainable growth.
- e. Undesirable Plant Species: All meadows will have some level of undesirable plant species for which long-term planning will include a measure of eradication. Several undesirable species have been identified as the target species for control and eradication efforts including: Johnson Grass, Bahia Grass, King Ranch Bluestem and Old World Bluestem varieties, as well as Guinea Grass. Control and eradication efforts within meadow areas will focus on these invasive species to maintain a visually acceptable landscape with the presence of these species limited to the percentages shown in Exhibit B.

III. Woodlands: Woodlands occur on the Bayou Banks and Expanded Upland areas, and typically have limited sight lines. They will have a natural forest floor with most maintenance operations focused on visible edges.

- a. Undesirable Plant Species: Most woodlands will have some level of undesirable plant species for which long-term planning will include a measure of eradication.

- b. Clearing: Most woodland areas will get limited use, however existing secondary trails in these areas will encourage public access. Woodland management efforts will focus on the more visible woodland edges and areas along multi-use trails where users will be present. Any cleared existing secondary trail through woodlands will require clearing of encroaching woodland plants and fallen tree limbs to maintain safe accessibility.

- IV. Concrete Paving and Infrastructure: Reinforced concrete paving will be the primary hardscape surface for all Multi-use Trails and Trailheads as well as vehicle parking areas. They will be maintained to adequately meet users' needs. These paved areas will see moderate to heavy levels of use (walking, running, biking, blading, and parking).
 - a. Pedestrian bridges and other structural elements present along Multi-use Trails and at Trailheads will be maintained, or repaired as needed, barring any major capital replacement of this type of infrastructure.

 - b. Any catch basins present in paved areas will be cleared of surface debris such as leaves. Any observed blockages or accumulated debris within the drainage infrastructure shall be reported to the appropriate managing agency (HCFCD, City of Houston, or appropriate County Precinct).

- V. Seating Areas: Seating Areas occur at Trailheads and regular intervals along Multi-use Trails. They should be kept attractive and maintained for greenway visitors. Site furnishings and amenities will vary depending on location and may include trash/recycling containers, benches or picnic tables, information kiosks, bike racks, and/or wayfinding or interpretive signage. All site amenities must be inspected after flood events and maintained in good working order per original design intent (i.e. sign posts to be vertical and no damaged furnishings).

- VI. Secondary Trails: Secondary Trails are existing trails located within select areas of meadow and woodland landscapes. These trails are cleared dirt pathways and will require regular clearing to maintain safe access, and litter/debris removal.

PART II: MAINTENANCE TASKS AND STANDARDS

A. Basic Maintenance:

The broad categories of basic maintenance are as follows:

- I. Cleaning – work having to do with the appearance and sanitary conditions such as de-littering and trash removal.

- II. Horticulture – work having to do with the health of meadows, lawn, trees, and woodlands, including the following:

- a. Riparian Vegetation Management: Regular vegetation management, consisting of limited removal of undesirable plants and trimming trees.
- b. Re-seeding: Application of supplemental flower species or native grass seed to select meadow areas.

III. Sediment Deposits: Removal of sediment as outlined in Exhibit B.

IV. Repair – work having to do with preventative maintenance and repair such as painting, and minor repair of greenway asset components.

B. Unforeseen Maintenance Conditions:

Certain unforeseen maintenance conditions such as major accidents, environmental incidents, windstorms, fires, riots, terrorist incidents, extreme drought, hurricanes, or large storm events may result in damage to the greenway asset components requiring maintenance beyond what is routinely done and covered in this document. In such cases a Maintenance Reserve Fund is set aside to manage the impact of those unforeseen conditions.

The City of Houston and HCFCD may also perform additional maintenance within their jurisdictions depending on the severity of the disaster.

C. Vandalism:

Within the constraints of the limited times and locations that maintenance staff are present on the greenways and notice illegal activities that results in vandalism, heavy trash dumping, graffiti and other damage within the greenway, the Managing Party will notify the Houston Police Department (HPD) about those activities of which it acquires knowledge. Managing Party will not be held to a standard of no damage to the greenways. Managing Party shall coordinate its work with the HPD and, unless unusually significant in scale, abate graffiti and damage resulting from vandalism as noted in Exhibit B. For unusually destructive vandalism events, the Managing Party may use Maintenance reserve funds to restore the greenway components.

D. Flood Clean-up:

The Managing Party will not interfere with any jurisdictions' ability to respond to a natural disaster, or flood, as needed and appropriate. For example, during and immediately after floods, HCFCD and the City of Houston may enter the greenways to remove obstructions to the flow of floodwaters as they deem necessary.

After minor flood events (such as 1-year floods), the greenways will be inspected for damage, debris, and silt deposits. If required, clean-up will include debris removal, selective silt removal, cleaning of hardscapes, and cleaning/repair of site furnishing as described in Exhibit B. Flood clean-up efforts performed by the Managing Party within the Bayou Banks must be coordinated with HCFCD. Flood clean-up will need to be carried out in each of the landscape categories and efforts will depend on the specific

location, elevation and proximity to flood waters. For major flood events (such as 10-year or 100-year floods) that cause extensive damage or large silt deposits that exceed depths specified in Exhibit B, it is envisioned that additional efforts will likely be required and require the use of funds from the Maintenance Reserve Fund.

E. Erosion Control:

Erosion control is currently the responsibility of HCFCD within the Bayou Banks. Erosion issues within the Expanded Upland areas caused by events other than bayou water flows, will be the responsibility of the Managing Party. Any areas of erosion within the Expanded Uplands caused by poor drainage or other means shall be immediately repaired if determined to be a threat to public health or safety.

Any areas of erosion within the Bayou Banks shall be brought to the attention of HCFCD.

F. Environmental Controls

The Managing Party recognizes the environmental controls described below, but none of its activities are meant to conflict with or replace any jurisdiction's compliance with its on-going responsibilities under these regulations. The Managing Party's maintenance efforts will not take the place of any political jurisdiction's responsibilities under federal, state, or local law.

- I. **Removal of Sediment:** Sediment deposited during and immediately after floods affecting the bayou greenways may not be returned to the bayou's water except in compliance with Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004685000, or any successor permit held by either HCFCD or City ("Stormwater Permit"), and the Bacteria Implementation Plan, approved by TCEQ in 2013, in each case as amended or replaced. Sediment must be disposed of in an upland area outside of U.S. Army Corps of Engineers (USACE) jurisdictional wetlands unless a permit has been obtained to do otherwise.
- II. **Endangered or Nesting Species:** Appropriate local, state, or federal agencies must be notified and consulted if any endangered or migratory species are identified within active maintenance areas. Appropriate action must be taken based on recommendations and guidelines of the US Fish and Wildlife Service and the Migratory Bird Treaty Act of 1918.
- III. **Cultural Resource Artifacts:** If any potential artifact or cultural resource is encountered, work must be stopped in the area in question. Local, state, or federal agencies with jurisdiction must be contacted (including but not limited to the Texas Historical Commission) to comply with all applicable laws or regulations.

- IV. Pesticides, Herbicides or Fertilizers: Application of pesticides, herbicides or fertilizer along the greenways must be in strict compliance with the HCFCD's TPDES Pesticide General Permit, the Bacteria Implementation Plan, and Applicable Laws.
- V. Other Environmental Conditions: If, during maintenance or repair activities that may involve excavation, a Party has a reasonable basis to believe that it has encountered soil or groundwater that may contain regulated material that exceeds action levels under applicable laws, the land owner shall address that soil or groundwater in order to comply with applicable laws.
- VI. Coordination with HCFCD: HCFCD plants and maintains natural areas along the bayous (including destructive species management) in compliance with the National Environmental Policy Act (NEPA), U.S Army Corps of Engineers (USACE), and stormwater permit compliance. Any supplemental maintenance of Landscape categories and types described within the HCFCD maintenance reach should be coordinated with HCFCD to ensure that maintenance activities are consistent with permit obligations and agency compliance. But any activity is not meant to comply or meet HCFCD's regulatory requirements, and is instead supplemental.

G. Maintenance Facilities

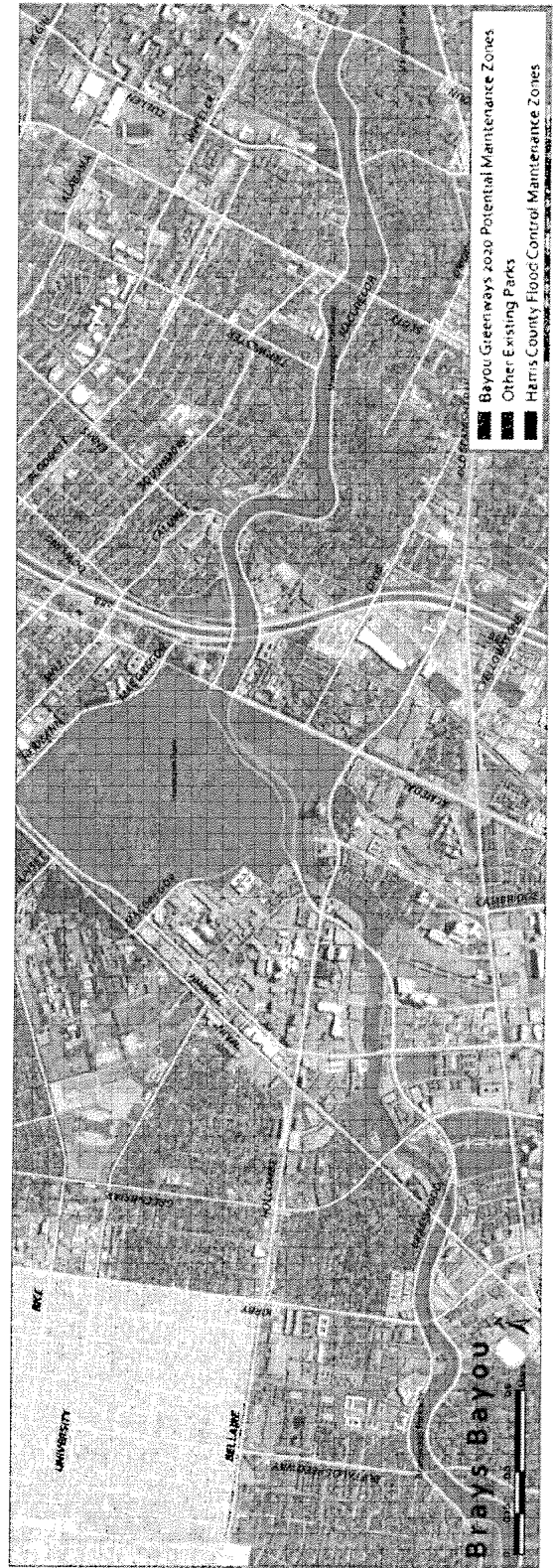
Each of the agencies that currently maintain the bayous and associated greenspaces (HPARD, county precincts, HCFCD, and management districts) has maintenance facilities throughout the city of Houston providing storage and mobilization points for their respective equipment. In many cases, however, these existing facilities will not provide additional usable space, adequate proximity, or access to the future greenways. Additional small temporary bayou greenway specific maintenance facilities may be added at strategic locations along the greenways to support efficient maintenance and mobilization. These facilities would provide points to start/stop, pick up additional supplies, and drop off litter and debris accumulated during the course of the work day.

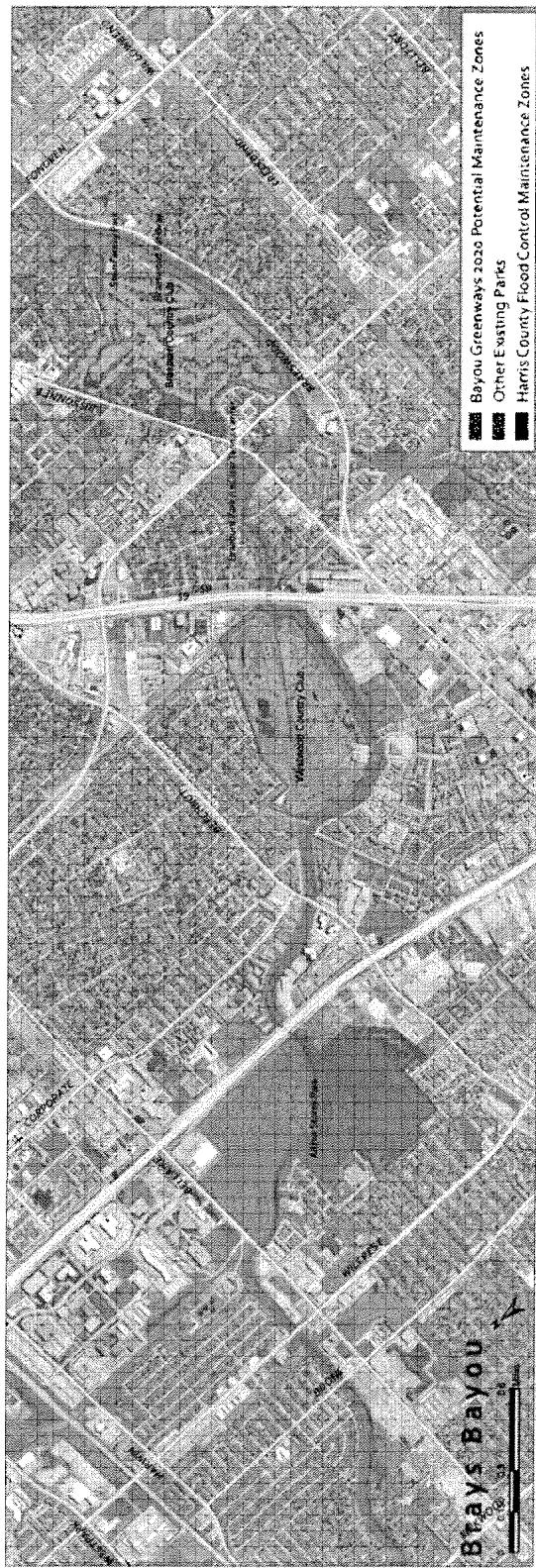
PART III: EXHIBITS

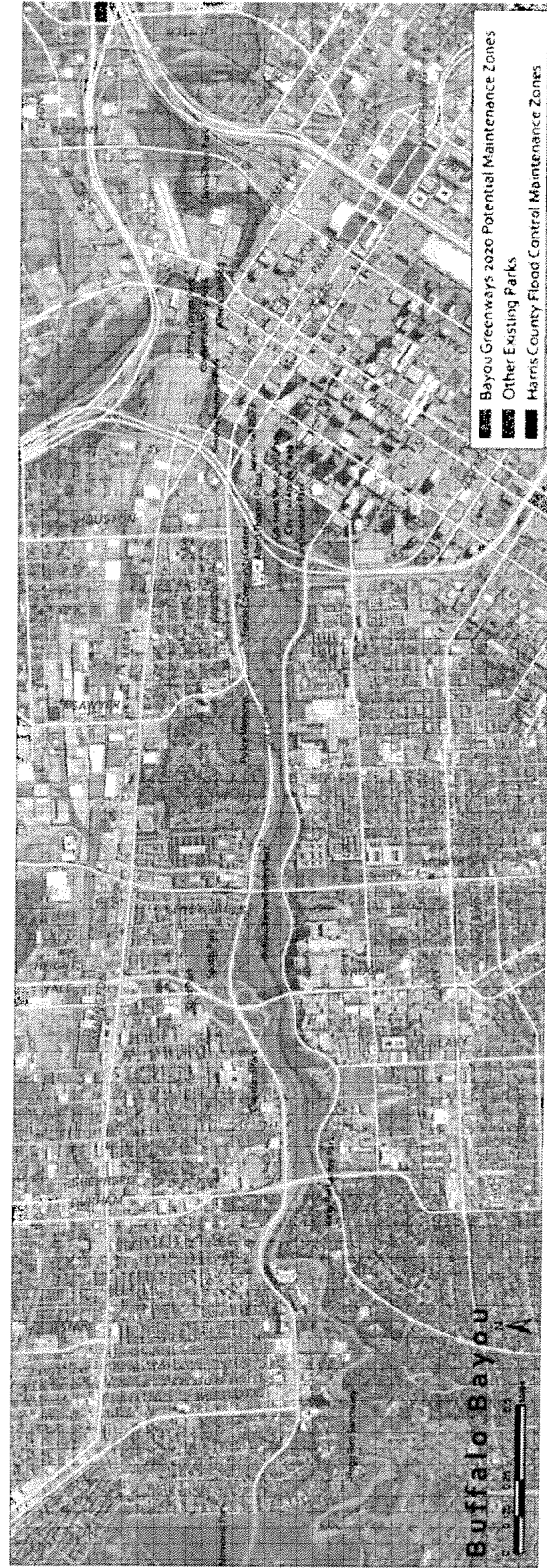
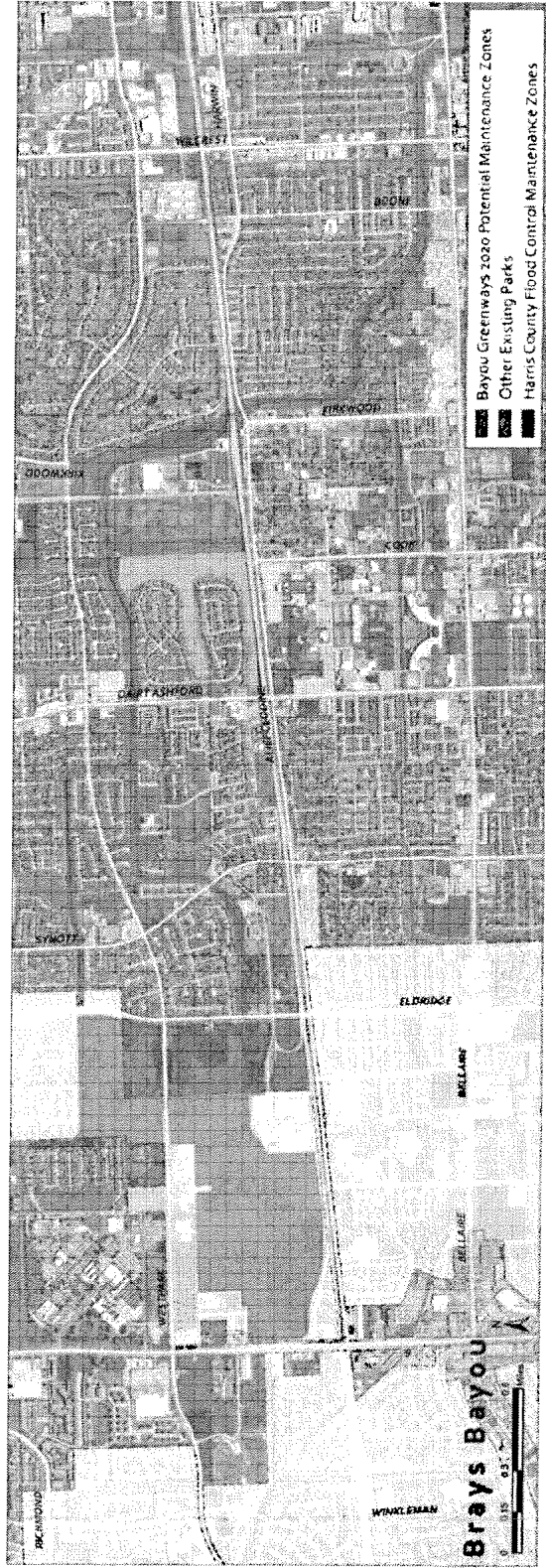
- A. Maintenance Zone Diagrams (Exhibit A)
- B. General Maintenance Standards, Tasks, and Frequency (Exhibit B)
- C. Landscape Category Plan Diagram (Exhibit C)
- D. Landscape Category Typical Section (Exhibit D)

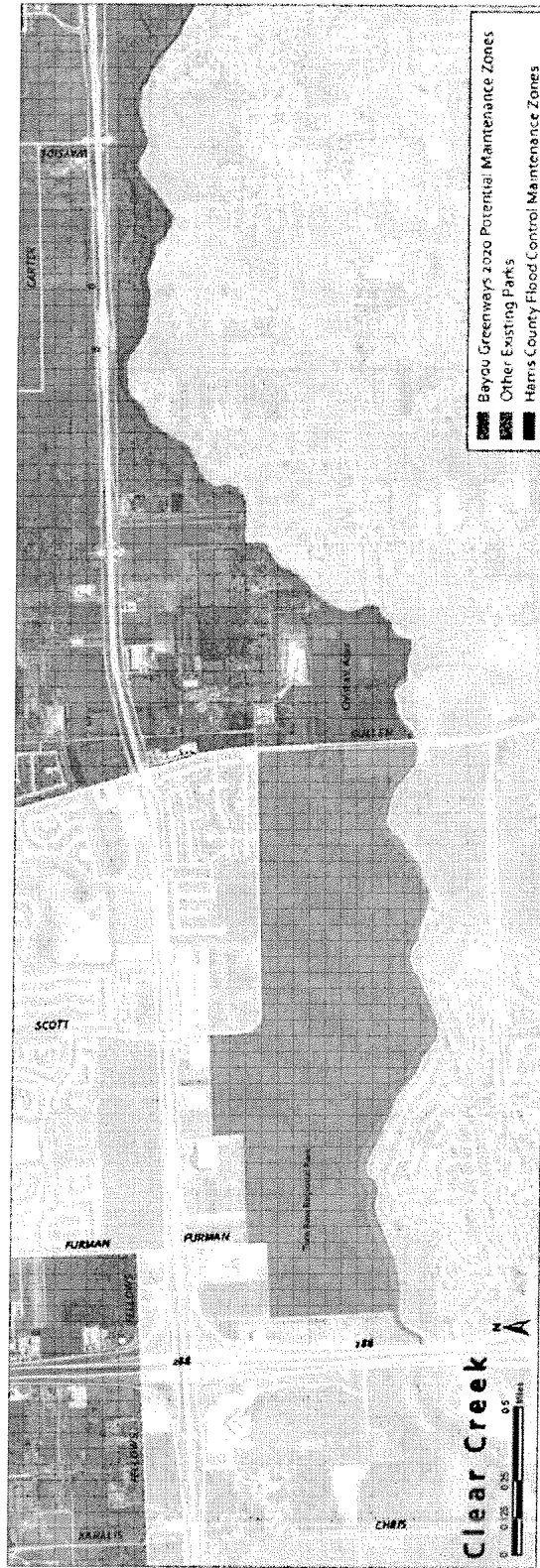
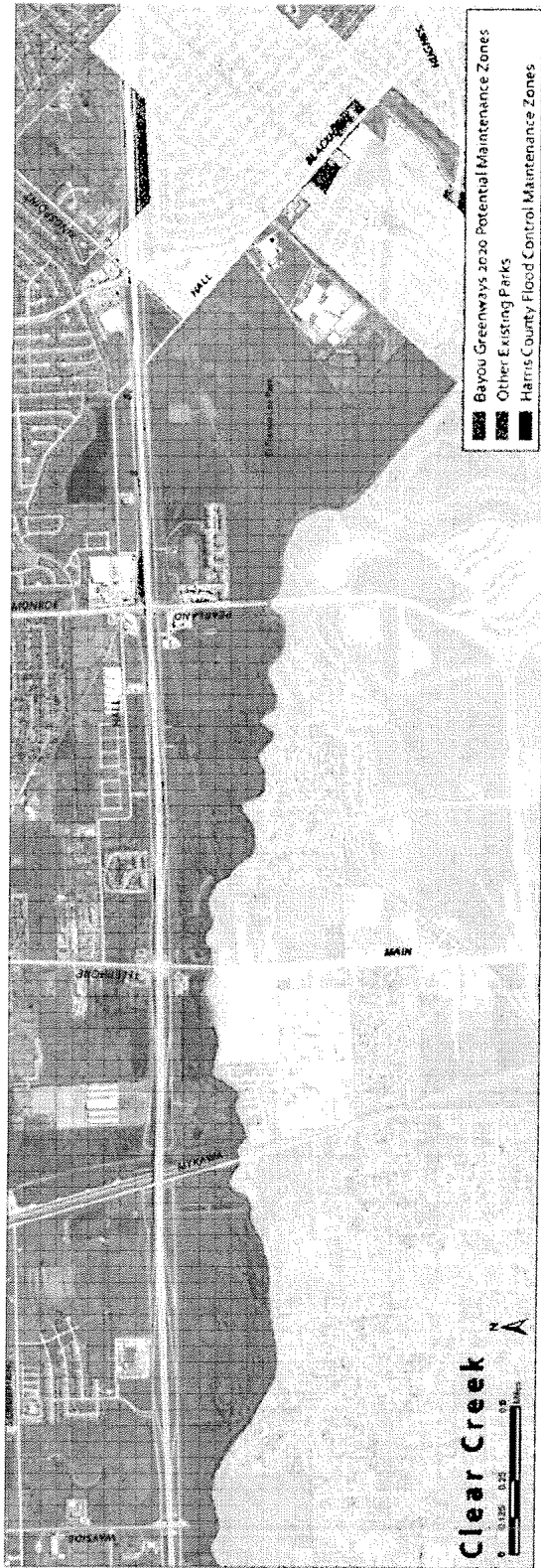
EXHIBIT A – MAINTENANCE ZONE DIAGRAMS

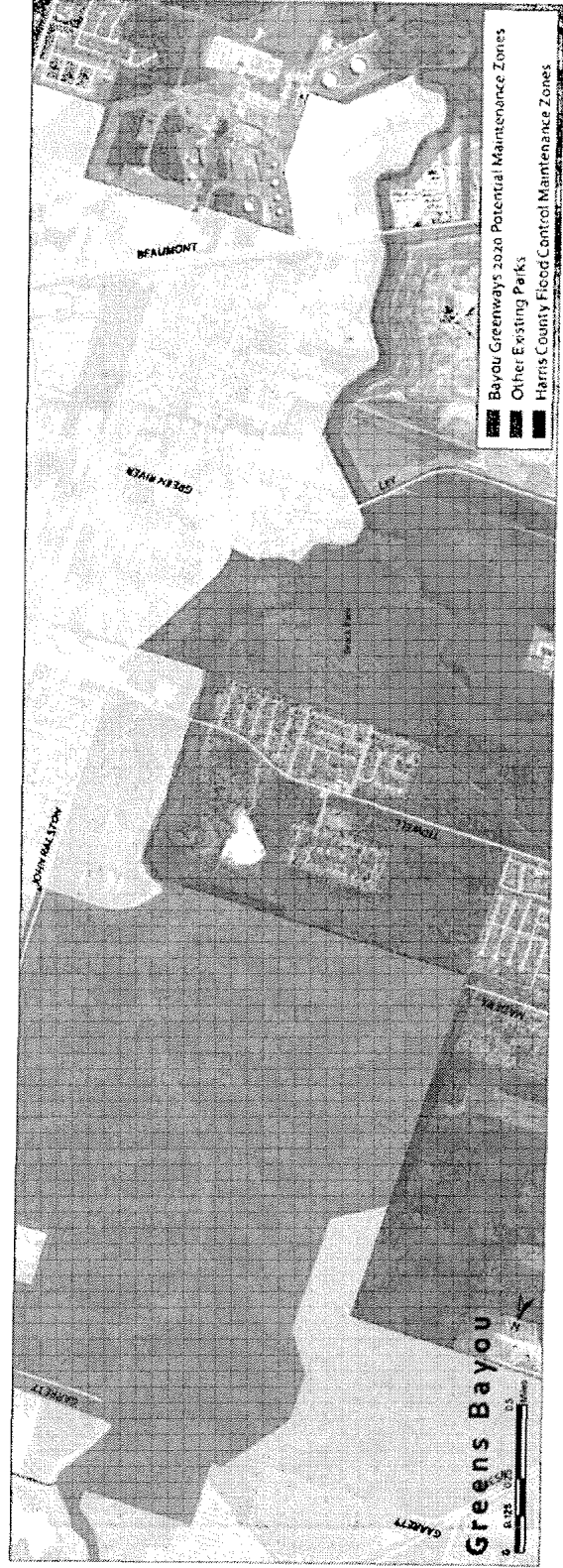
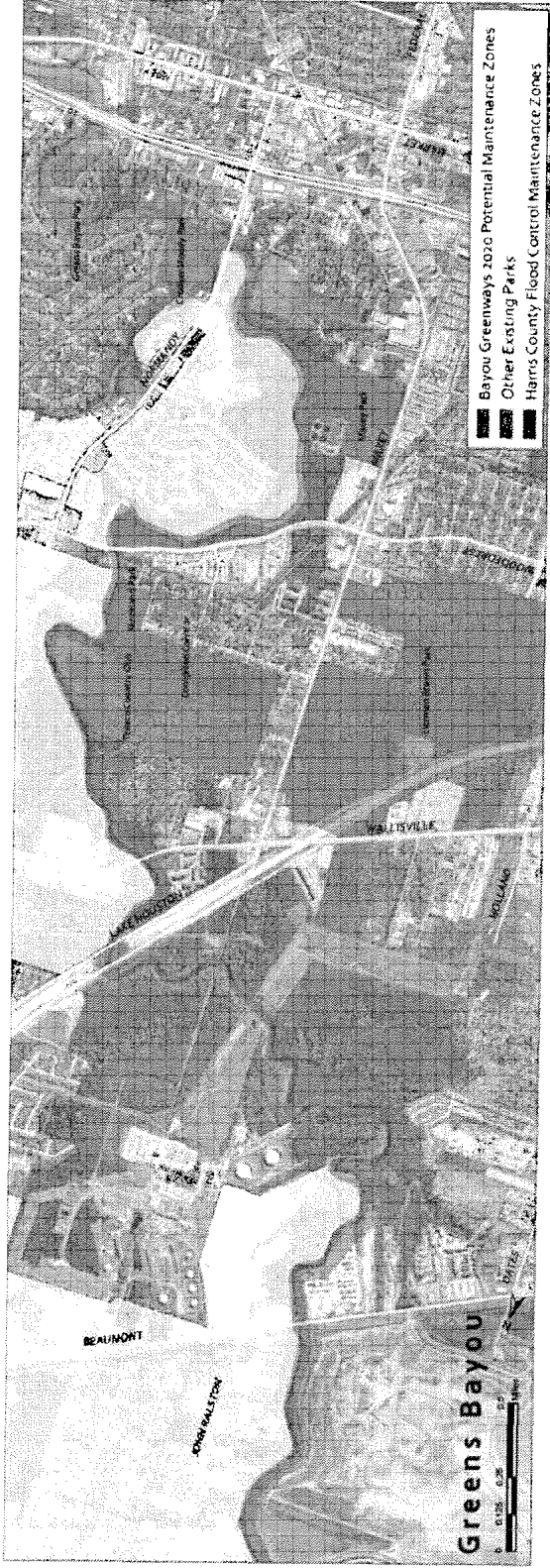
Please note that the areas on the following diagrams depicted as Bayou Greenways 2020 Potential Maintenance Zones represent approximately 2,900 acres. In addition, the Bayou Greenways 2020 Potential Maintenance Zones may include an additional estimated 1,000 acres that will be added along certain bayou segments over the next seven years as part of the Bayou Greenways Project in the form of nature parks (primarily meadows and woodlands). In total, the Bayou Greenways 2020 Potential Maintenance Zones subject to the standards outlined in this manual and covered under this Agreement is expected to include a total of approximately 4,000 acres.

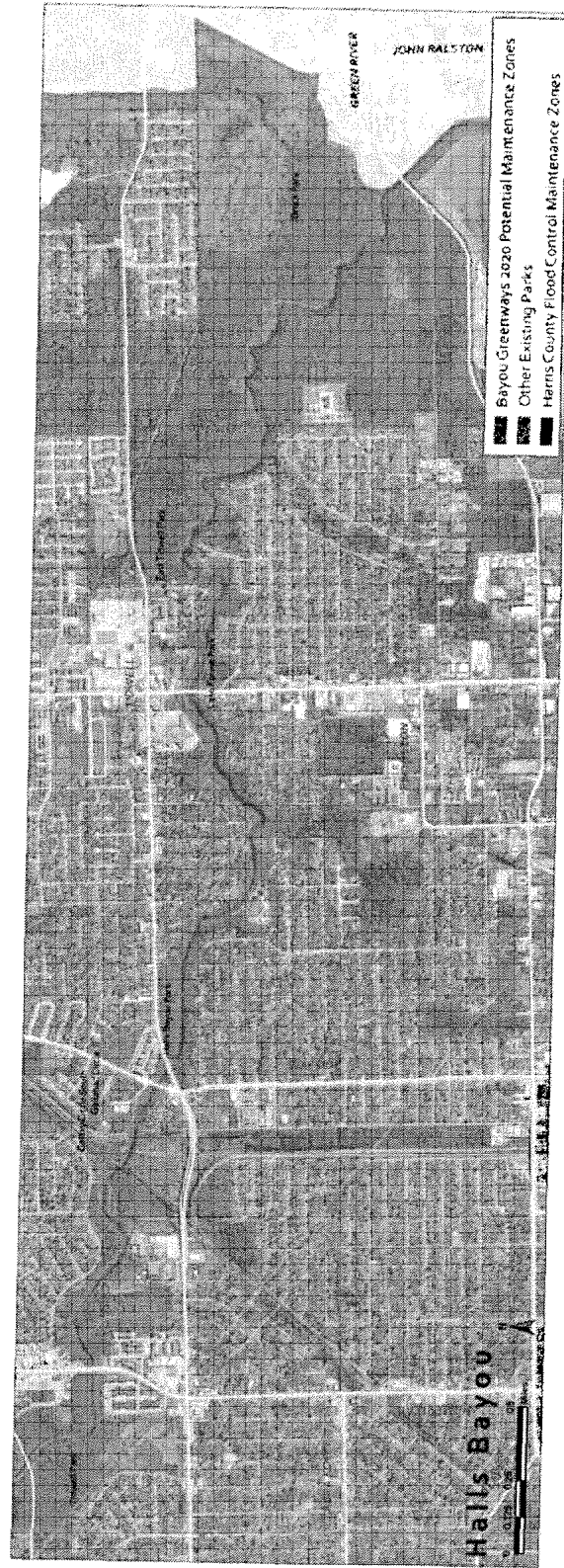
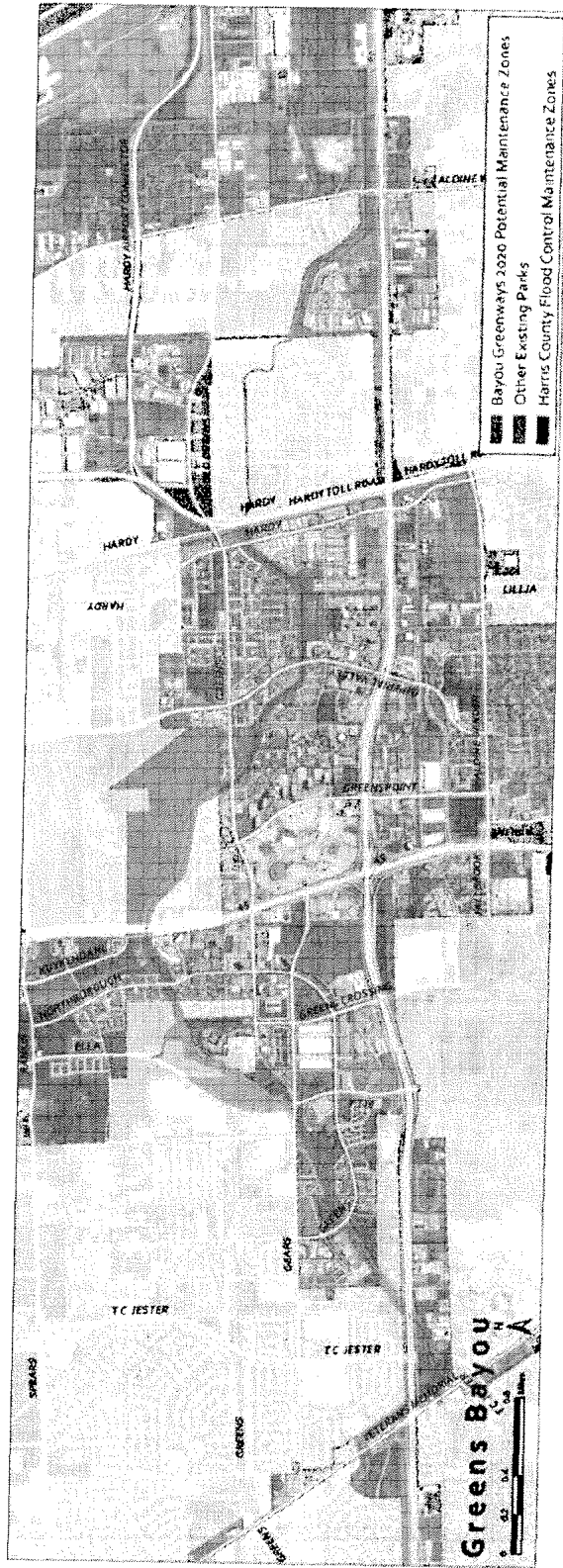


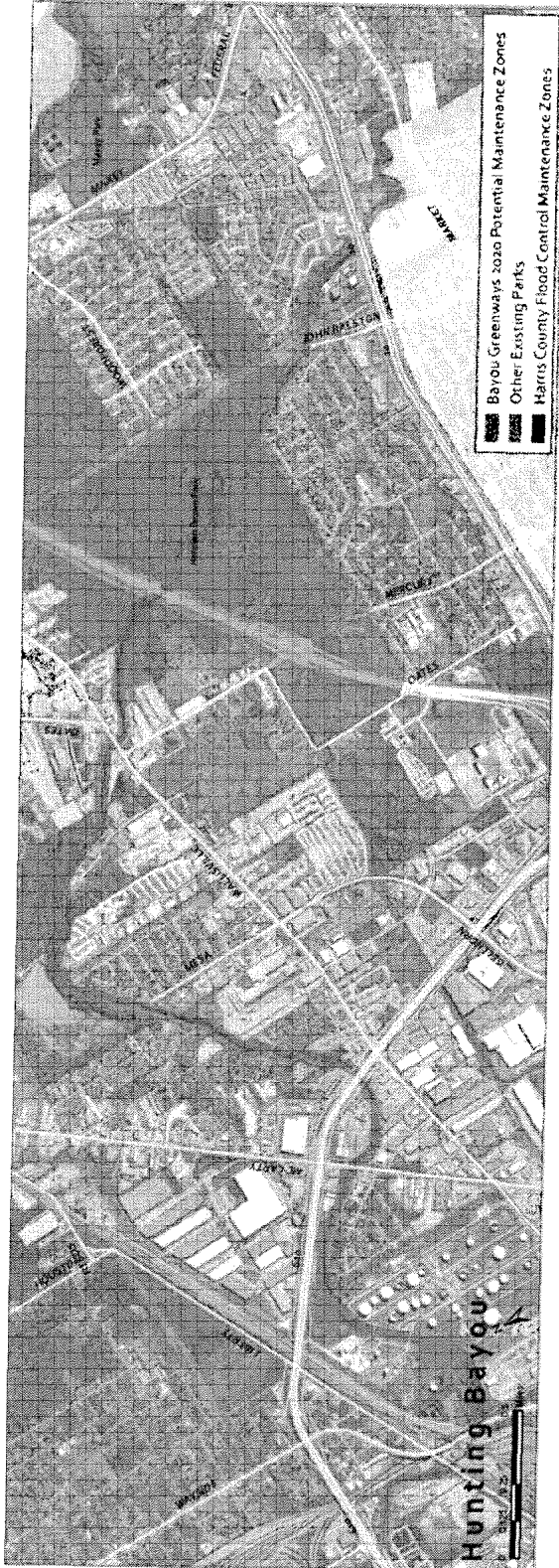
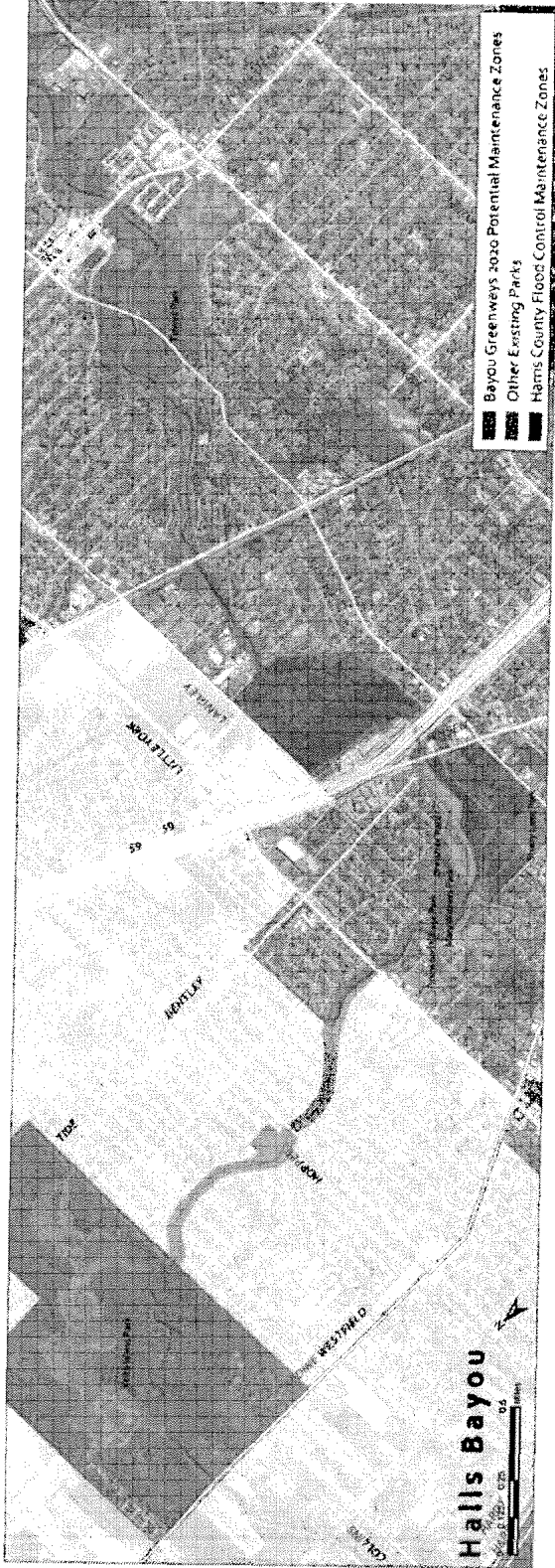


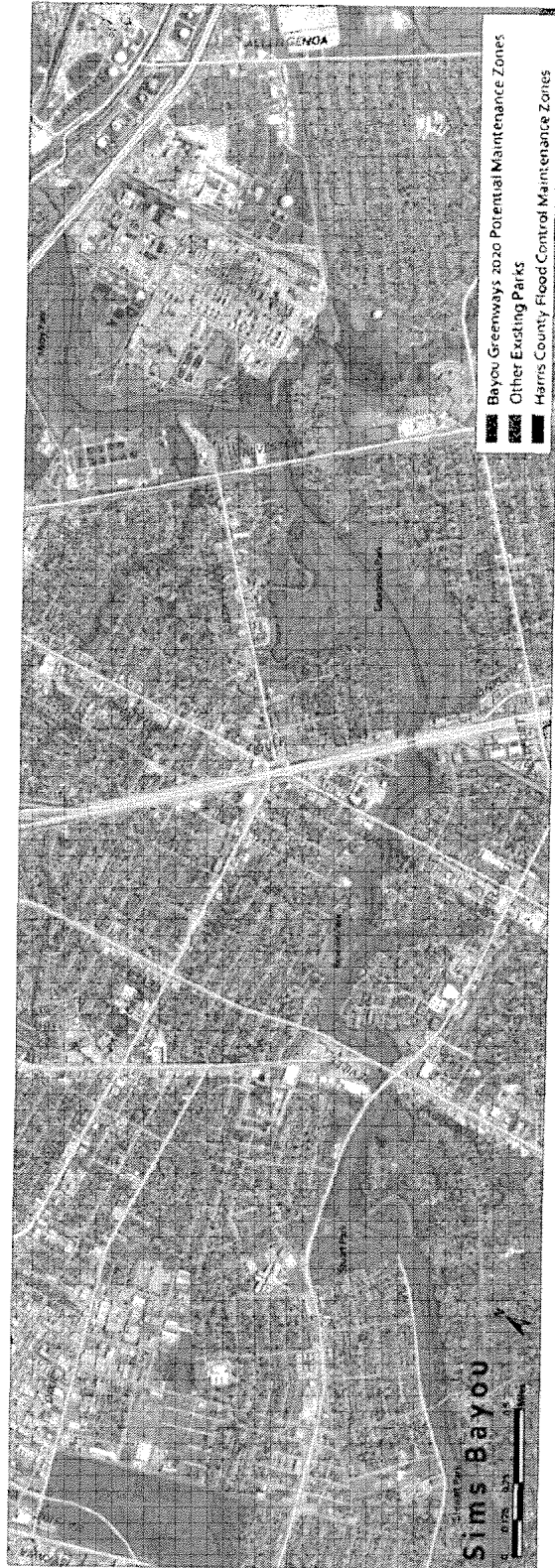
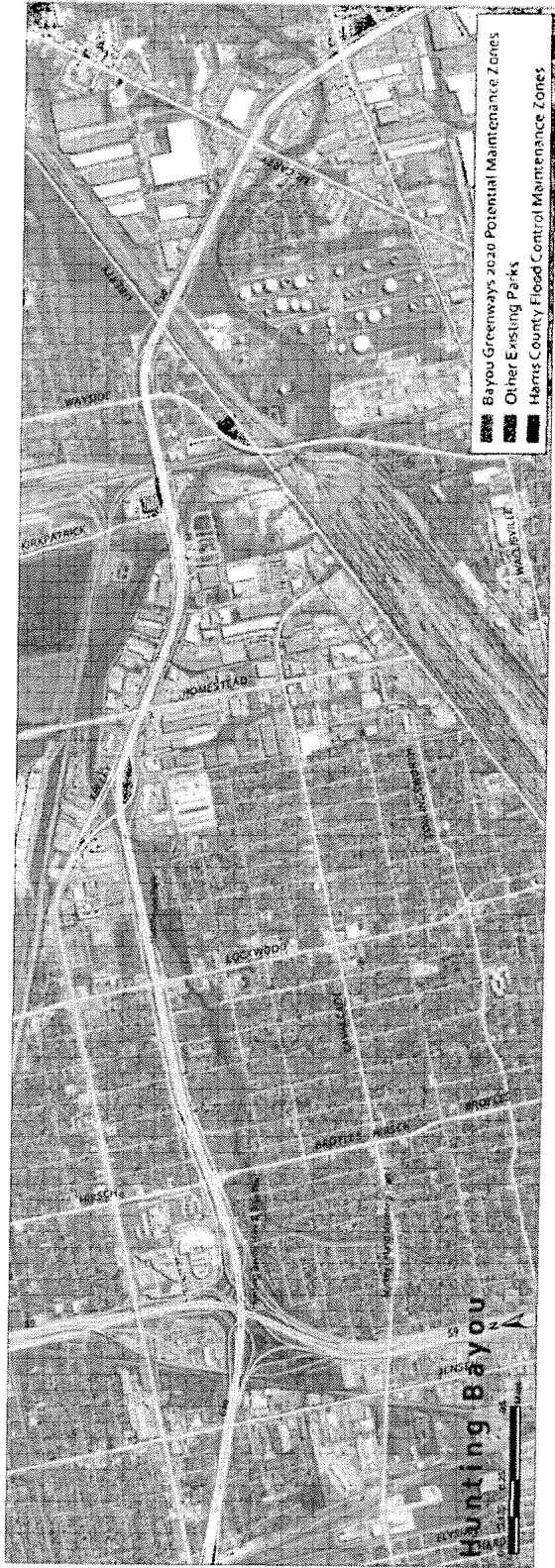


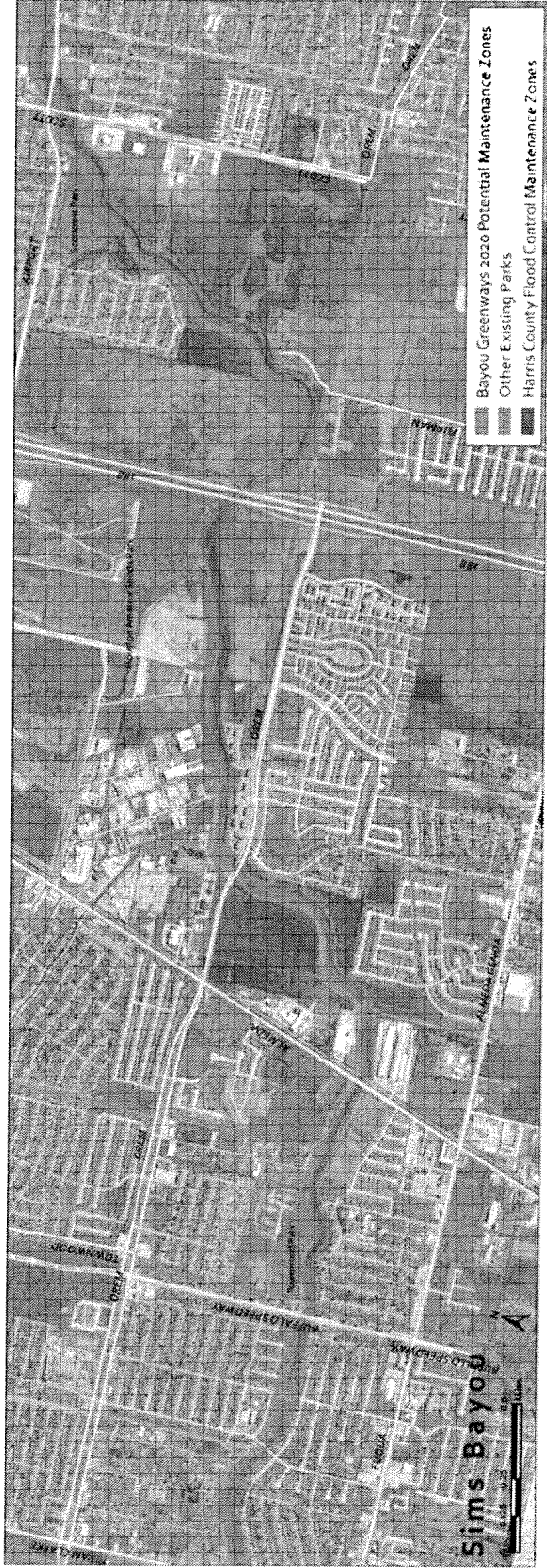
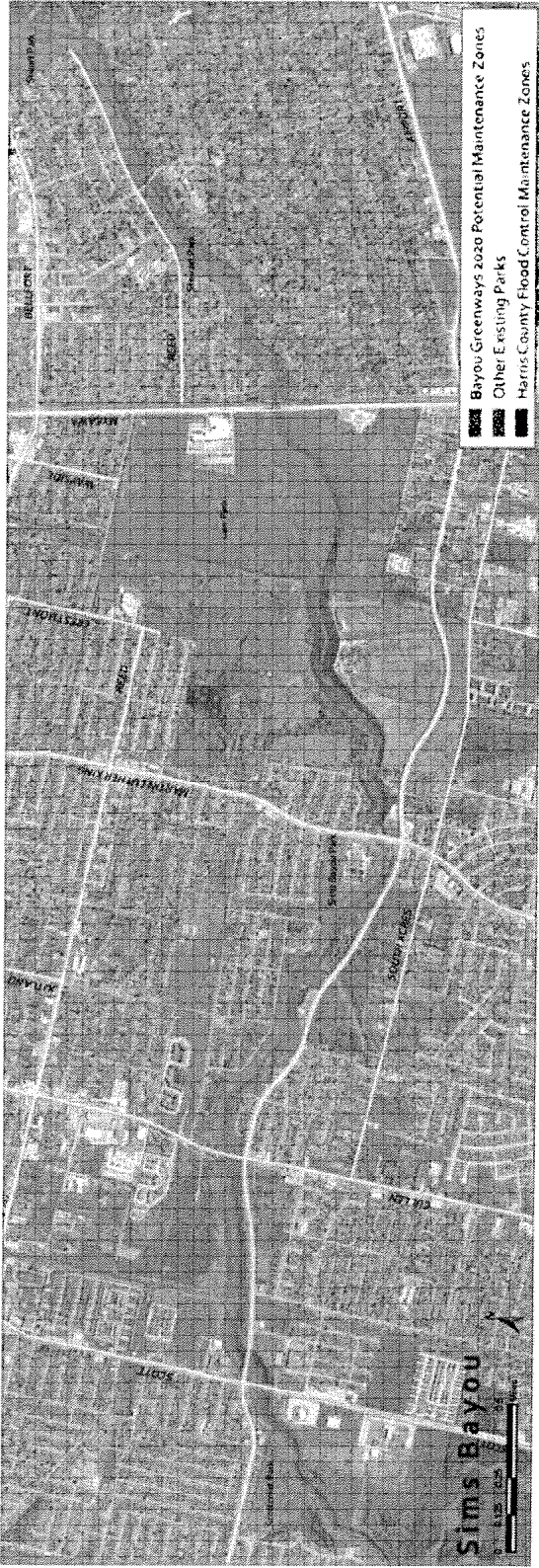


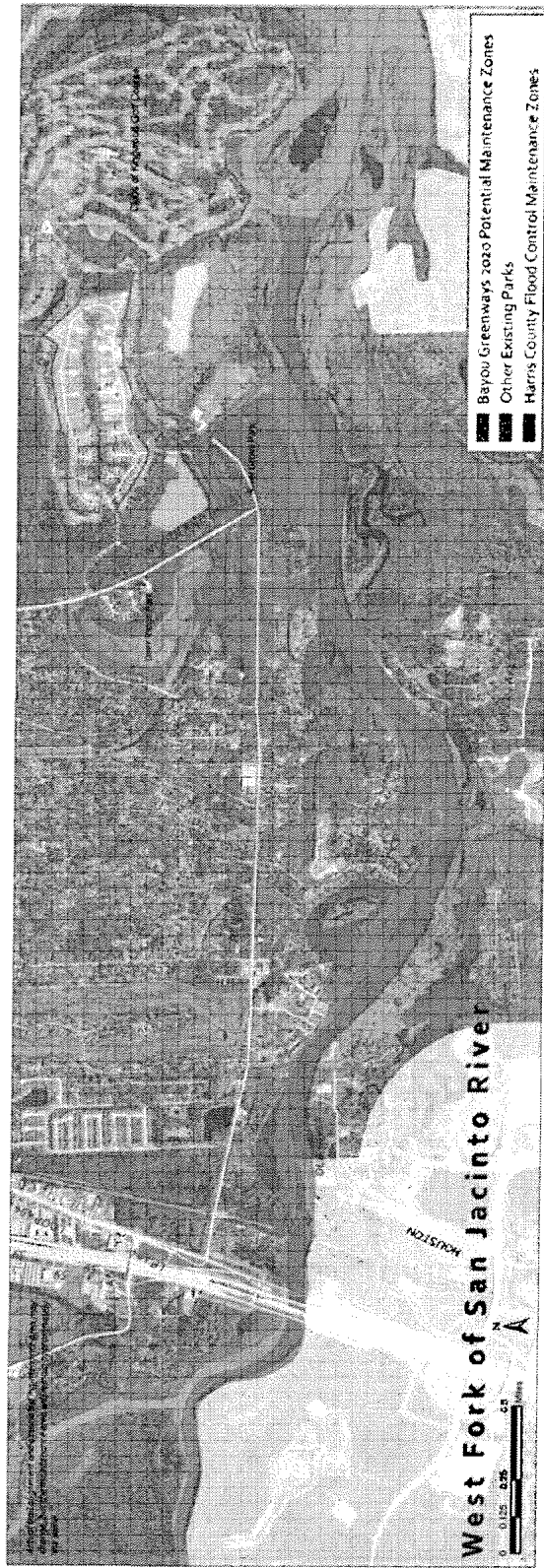
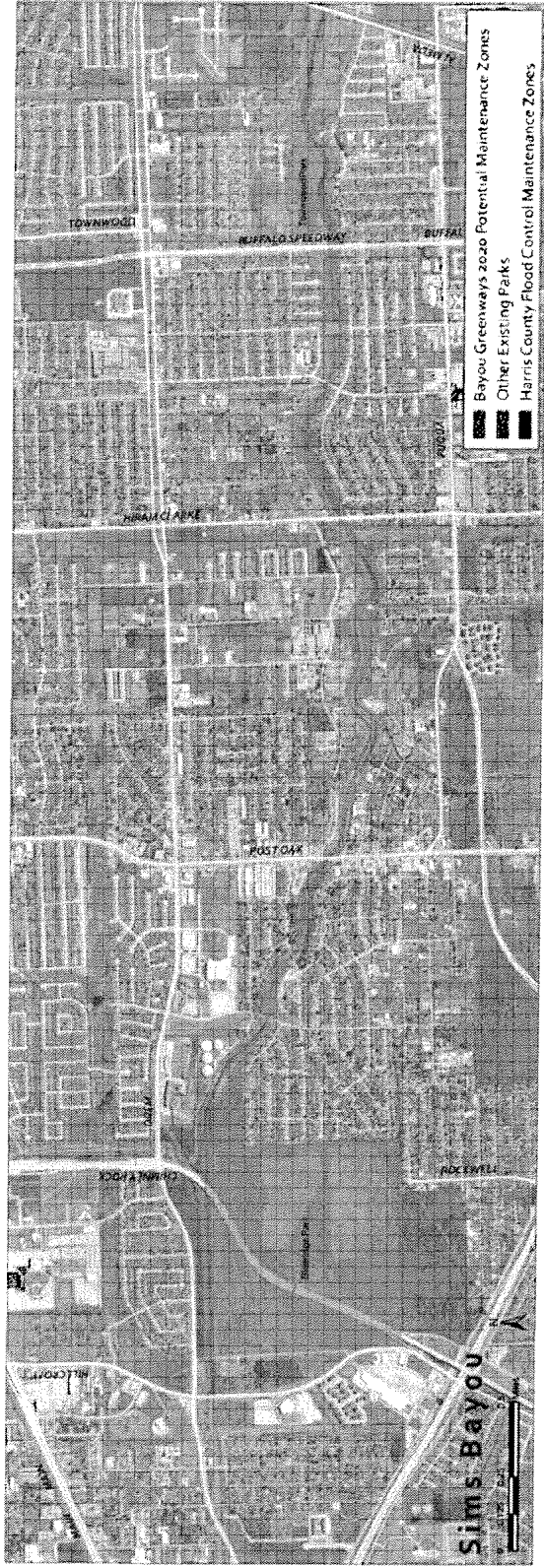


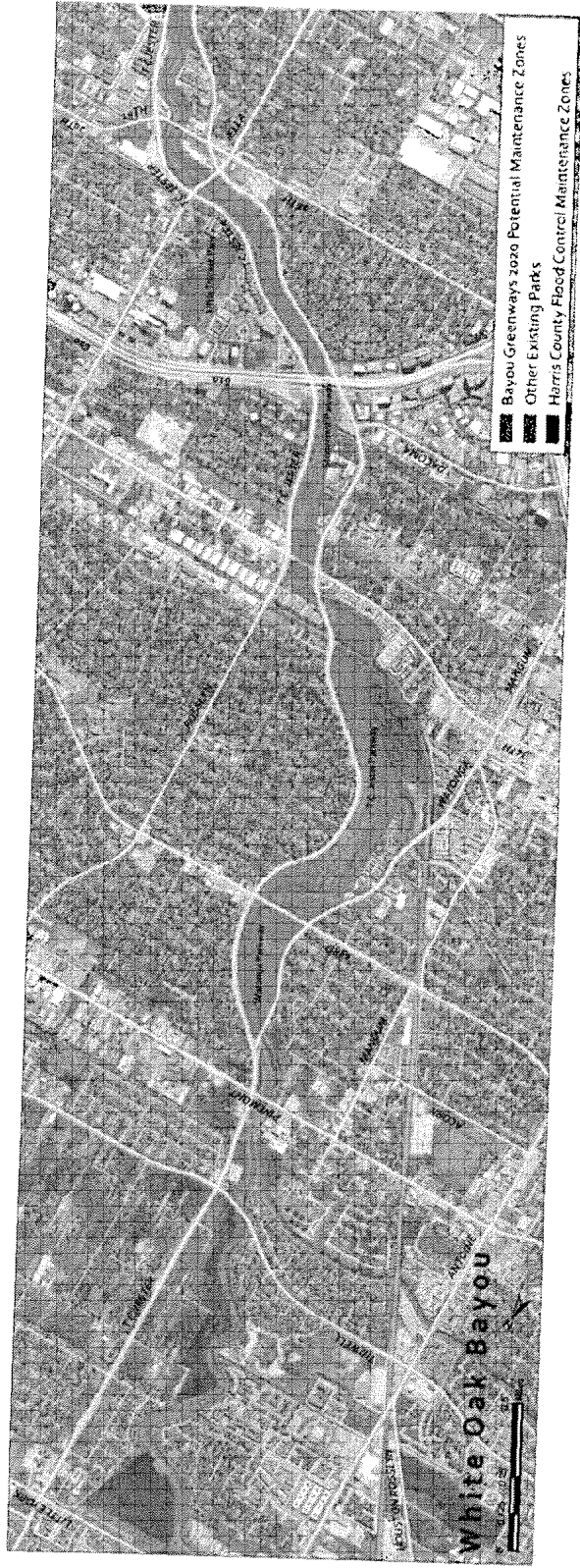












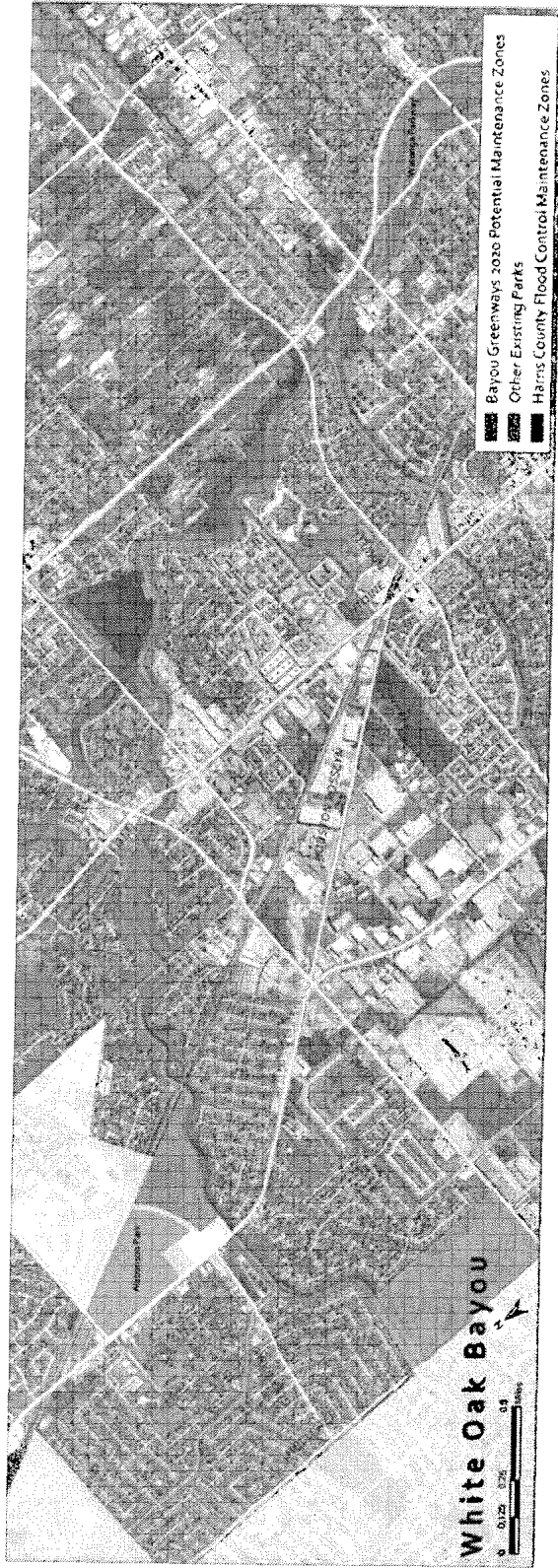


EXHIBIT B – GENERAL MAINTENANCE STANDARDS, TASKS, AND FREQUENCY

Expanded Uplands (Urban Parkland, Forested Fringe, Bottomland Forest)

Landscape Types (Components)	General Maintenance Standard	Key Tasks	Frequency	Comments
Lawn	Well groomed; except after flood events and during droughts. Kept usable for events. Regularly mowed and clear of litter and debris.	Mow and trim Aerate high use areas (5% of area) Seed bare or thin spots Remove litter Inspect and clear leaves from surface of catch basins Prune trees	27x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed 52x/year or more often if needed 1x/month, or after major rain event 1x/year or more often if needed	High visibility/use landscape to be maintained at high level. Larger areas may support some small events. Mowing frequencies are subject to seasons, periods of drought, and rainfall.
Meadow	Managed meadow; maintained at heights between 6" - 30". Less than 30% undesirable species permitted Mowing cycles should coincide with flowering meadow blooming cycles.	Mow 3x/year to a height of 6" Monitor and control undesirable species levels Overseed flowering species in select areas (25% of area) Remove litter (all perimeter areas including channel edges) Prune trees	3x/year or more often if needed 1x/year or more often if needed 1x/year 52x/year 1x/year or more often if needed	Meadow areas within the Expanded Uplands will experience less annual flooding than meadow areas within the Bayou Bank areas. Expanded Upland meadow maintenance can focus more on refining species mixture/ increasing flowering species percentages due to reduced flood effects. (See Part 1, Section C.1.e for list of undesirable species).
Woodland	Managed woodland; maintained understory and canopy edge.	Remove litter (perimeter areas and accessible channel edges) Inspect and prune dead/dying tree limbs at woodland edges and any visible or high profile areas Clear and remove fallen trees/branches at woodland edges Manage/remove undesirable species in select areas (woodland edges and high use/visibility areas)	27x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed	Woodland areas within the Expanded Uplands will experience less annual flooding than woodlands located within the Bayou Banks. Woodland maintenance in the Expanded Uplands can focus more efforts on refining understory species mixture and tree canopy health.
Paving and Infrastructure	Clean, safe, well maintained surfaces with no visible damage. Well maintained infrastructure (bridges, crossings) with no visible damage.	Remove litter (all paving surfaces and infrastructure) Blow grass clippings from paving surface after lawn mowing Inspect, repair, and maintain paved surface Inspect and clear leaves from surface of catch basins Inspect, repair, and maintain bridges and infrastructure Inspect and maintain bridge lighting (both over and under) Remove dead or dying tree branches along trails and paving	52x/year or more often if needed 27x/year or more often if needed 1x/year 1x/month, or after major rain event 1x/year or more often if needed 4x/year As needed, upon detection	High use areas to be maintained at high level.
Seating Areas	Clean, well maintained site furnishings and amenities with no visible damage (benches, trash/recycling, drinking fountains, signage components).	Empty trash/recycling stations Clean, inspect, and maintain site amenities and signage components Repair site amenities and signage components	80x/yr or more often if needed 2x/year and after flood events As needed, upon detection	Trash/recycling schedules will fluctuate based on location and use patterns.
Secondary Trails	Well maintained; except after flood events and during droughts. Regularly cleared of undesirable vegetation and clear of litter, debris, and tree limbs.	Clear trail of any undesirable or encroaching growth Remove Litter Clear and remove fallen trees/branches Inspect and prune dead/dying tree limbs over or near trail	27x/year or more often if needed 27x/year or more often if needed As needed, upon detection 1x/year or more often if needed	Secondary trails are present within Woodland and Meadow Landscapes. Some areas may experience heavy user traffic and may need to be temporarily closed for clearing.

Bayou Banks (Urban Channel, Forested Fringe, Bottomland Forest)				
Landscape Types (Components)	General Maintenance Standard	Key Tasks	Frequency	Comments
Meadow	Managed conservation meadow; maintained at heights between 6"-30". Up to 50% undesirable species permitted. Mowing cycles should coincide with flowering meadow blooming cycles.	Mow or string trim to a height of 6" Monitor and control undesirable species levels Overseed flowering species (select areas, approx. 15% of area) Remove litter in all visible areas per Part 1 - Section B (1) Prune trees	3x/year or more often if needed 1x/year or more often if needed 1x/year 52x/year 1x/year or more often if needed	Conservation meadows located within the Bayou Banks will experience frequent flooding which may cause a shift in maintenance focus to more undesirable species control efforts. A lower area percentage of flowering species overseeding will be done in these areas, approximately 15%. (See Part 1, Section C.11.e for list of undesirable species).
Woodland	Managed woodland; maintained understory and canopy edge.	Remove litter (all perimeter areas) Inspect and prune dead/dying tree limbs at woodland edges and any visible or high profile areas Clear and remove fallen trees/branches at woodland edges Manage/remove undesirable or destructive species in select areas (woodland edges and high use/visibility areas)	27x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed	Frequent flooding of Bayou Bank Woodland areas will impact basic maintenance requirements. More effort may be required to maintain reduced levels of undesirable species and removal of dead or dying trees and tree limbs.
Paving and Infrastructure	Clean, safe, well maintained surfaces with no visible damage. Well maintained infrastructure (bridges, crossings) with no visible damage.	Remove litter (all paving surfaces and infrastructure) Blow grass clippings from paving surface after lawn mowing Inspect, repair, and maintain paving surface Inspect and clear leaves from surface of catch basins Inspect, repair, and maintain bridges and infrastructure Inspect and maintain bridge lighting (both over and under) Remove dead or dying tree branches along trails and paving	52x/year or more often if needed 27x/year or more often if needed 1x/year 1x/month, or after major rain event 1x/year or more often if needed 4x/year As needed, upon detection	High use areas to be maintained at high level. Paving and infrastructure located in the Bayou Banks may experience more frequent damage due to flooding and will require inspection after flood events and repair on an as needed basis.
Seating Areas	Clean, well maintained site furnishings and amenities with no visible damage (Benches, trash/recycling, drinking fountains, signage components).	Empty trash/recycling stations Clean, inspect, and maintain site amenities and signage components Repair site amenities and signage components	80x/yr or more often if needed 2x/year and after flood events As needed, upon detection	Some seating areas along Multi-use Trails will experience frequent flooding. Immediate inspection, cleaning, and repair of site amenities will be required after flood water has receded.
Secondary Trails	Well maintained; except after flood events and during droughts. Regularly cleared of undesirable vegetation and clear of litter, debris, and tree limbs.	Clear trail of any undesirable or encroaching growth Remove Litter Clear and remove fallen trees/branches Inspect and prune dead/dying tree limbs over or near trail	27x/year or more often if needed 27x/year or more often if needed As needed, upon detection 1x/year or more often if needed	Secondary trails are present within Woodland and Meadow Landscapes. Some areas may experience heavy user traffic and may need to be temporarily closed for clearing.

Trailheads				
Landscape Types (Components)	General Maintenance Standard	Key Tasks	Frequency	Comments
Lawn (with potential additional plantings)	Well groomed; Regularly mowed, maintained, cleaned, and clear of litter and debris.	Mow and trim Aerate high use areas Seed bare or thin spots Remove Litter (Prior to mowing) Inspect and clear leaves from surface of catch basins Prune and maintain trees, shrubs, and planting beds Water high maintenance planting areas	27x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed 52x/year or more often if needed 1x/month, or after major rain event 4x/year or more often if needed As needed during drought periods	High visibility/use landscape to be maintained at high level. Several trees as well as shrub plantings, ornamental grasses, or planting beds may be present in these areas. Mowing frequency may need to be adjusted during periods of drought conditions or frequent rainfall. Hand watering of selected planting areas may be required during periods of drought.
Paving and Infrastructure	Clean, safe, well maintained surfaces with no visible damage. Well maintained infrastructure with no visible damage.	Remove litter (all paving surfaces and infrastructure) Blow grass clippings from paving surface after lawn mowing Inspect, repair, and maintain paving surface Inspect and clear leaves from surface of catch basins Inspect, repair, and maintain bridges and infrastructure Inspect and maintain bridge lighting (both over and under) Remove dead or dying tree branches along trails and paving	52x/year or more often if needed 27x/year or more often if needed 1x/year 1x/month, or after major rain event As needed, not less than 1x/year 4x/year As needed, upon detection	Paving located at Trailheads will provide vehicular entry and parking as well as pedestrian and bike access. Maintenance of these areas will be more intensive than Multi-use Trail paved areas.
Seating Areas	Clean, well maintained site furnishings and amenities. (Benches, picnic tables, information kiosks, signage, drinking fountains, trash/recycling, bike racks).	Empty trash/recycling stations Clean, inspect, and maintain site amenities and signage components Repair site amenities and signage components	80x/yr or more often if needed 2x/year and after flood events As needed, upon detection	Trailheads will be located in high use, high visibility areas along roadways and Greenway access points. A high level maintenance standard will be required at these areas.

Multi-Use Trails				
Landscape Types (Components)	General Maintenance Standard	Key Tasks	Frequency	Comments
Lawn (Strips adjacent to concrete trail)	Well groomed; except after flood events and during droughts. Regularly mowed and clear of litter and debris.	Mow and trim Aerate required areas (approx. 10% of area) Aerate required areas (approx. 10% of area) Remove Litter	27x/year or more often if needed 1x/year or more often if needed 1x/year or more often if needed 52x/year or more often if needed	High visibility/use landscape to be maintained at high level. High user traffic will increase areas of bare, thin, and compacted lawn areas. Mowing frequencies are subject to seasons, periods of drought, and rainfall.
Paving and Infrastructure	Clean, safe, well maintained surfaces with no visible damage. Well maintained infrastructure (bridges, crossings) with no visible damage.	Remove litter (all paving surfaces and infrastructure) Blow grass clippings from paving surface after lawn mowing Inspect, repair, and maintain paving surface Inspect and clear leaves from surface of catch basins Inspect, repair, and maintain bridges and infrastructure Inspect and maintain bridge lighting (both over and under) Remove dead or dying tree branches along trails and paving	52x/year or more often if needed 27x/year or more often if needed 1x/year 1x/month, or after major rain event 1x/year or more often if needed 4x/year As needed, upon detection	Paving surface cleaning of litter and debris should be performed immediately after mowings. Multi-use trails will be the main user surface along the greenways and should be maintained in a safe, usable condition at all times.
Seating Areas	Clean, well maintained site furnishings and amenities with no visible damage (benches, trash/recycling, drinking fountains, signage components).	Empty trash/recycling stations Clean, inspect, and maintain site amenities and signage components Repair site amenities and signage components	80x/yr or more often if needed 2x/year and after flood events As needed, upon detection	Seating Areas will be located periodically along Multi-use Trails. A high level maintenance standard will be required at these areas.

Flood Clean-up				
Landscape Types (Components)	General Maintenance Standard	Key Tasks	Priority Level	Comments
Multi-use Trails Trailheads	Debris removed within 1 week. Silt removed from paved surfaces after all minor and major flood events within 2 weeks after water recedes to ensure trails and access points are safe and usable.	Remove debris from entire area including planting areas. Remove silt from hardscape areas after each flood event so that use of the trails can begin. Remove and clean silt and mud from all site furnishing and signage. Power wash any surfaces if necessary.	1	Proper equipment must be used to limit disturbance and damage to landscapes and surfaces. USACE regulations restrict washing any silt deposits into the channel.
Lawns	Debris removed within 2 weeks. Silt removed from lawn areas when deposits negatively impact the health of lawn areas or has a negative visual impact (~4" above design elevation).	Remove debris from entire lawn area after flood event. Remove silt from lawn areas when a noticeable buildup occurs (~ 4" depth).	2	Proper equipment must be used to limit disturbance, compaction, and damage to landscape.
Meadows	Debris removed within 2 weeks. Silt removed from meadow areas when deposits negatively impact the health of lawn areas or has a negative visual impact (~12" above design elevation).	Remove debris from entire meadow area after flood event. Remove silt from meadow areas when a noticeable buildup occurs (~ 12" depth).	3	Proper equipment must be used to limit disturbance, compaction, and damage to landscape.
Secondary Trails	Debris removed within 2 weeks. Silt removed from trail sections when deposits reach a height of ~12" above design elevation.	Remove debris from entire trail length after flood event. Remove silt from trails when a noticeable buildup occurs (~12" depth).	4	Proper equipment must be used to limit disturbance, compaction, and damage to landscape.
Woodlands (Visible areas only)	Debris removed within 2 weeks. Silt removal to occur only in woodland areas if determined to be a public health or safety issue.	Remove debris from woodland edges area after flood event. Replant where appropriate, subject to extent of damage, funding, and season.	5	Proper equipment must be used to limit disturbance, compaction, and damage to landscape.

Vandalism			
Categories	General Maintenance Standard	Key Tasks	Comments
Graffiti	Graffiti removed within 72 hours of reporting.	Graffiti to be removed within 72 hours of reporting. Report and coordinate with HPD when needed.	
Site Features	Properly maintained to ensure public use. Repairs to maintain design and detailing.	Repairs made to site features as soon as possible to ensure usability and safety. May be closed or fenced-off temporarily while waiting on materials or crew. Report and coordinate with HPD when needed.	
Landscapes	Properly maintained to ensure aesthetics, public use, and proper function of other park systems, drainage, stormwater runoff, etc.	Damaged areas may be closed or fenced-off temporarily. Replanting subject to extent of damage, funding, and season. Report and coordinate with HPD when needed.	Landscaping vandalism includes trailblazing areas. Vandalizing of greenway areas to create trailblazed paths will be reported to the appropriate agency(s).
Heavy Trash Removal	Heavy trash (other than typical litter) removed within 2 weeks of reporting.	Heavy trash removed within 1 week. Report and coordinate with HCFCD when needed.	Heavy trash such as old tires and furniture may be dumped along properties comprising the bayou greenways. Depending on severity and frequency, a funding request may be required from the Maintenance Reserve Fund.

EXHIBIT C – LANDSCAPE CATEGORY PLAN DIAGRAM

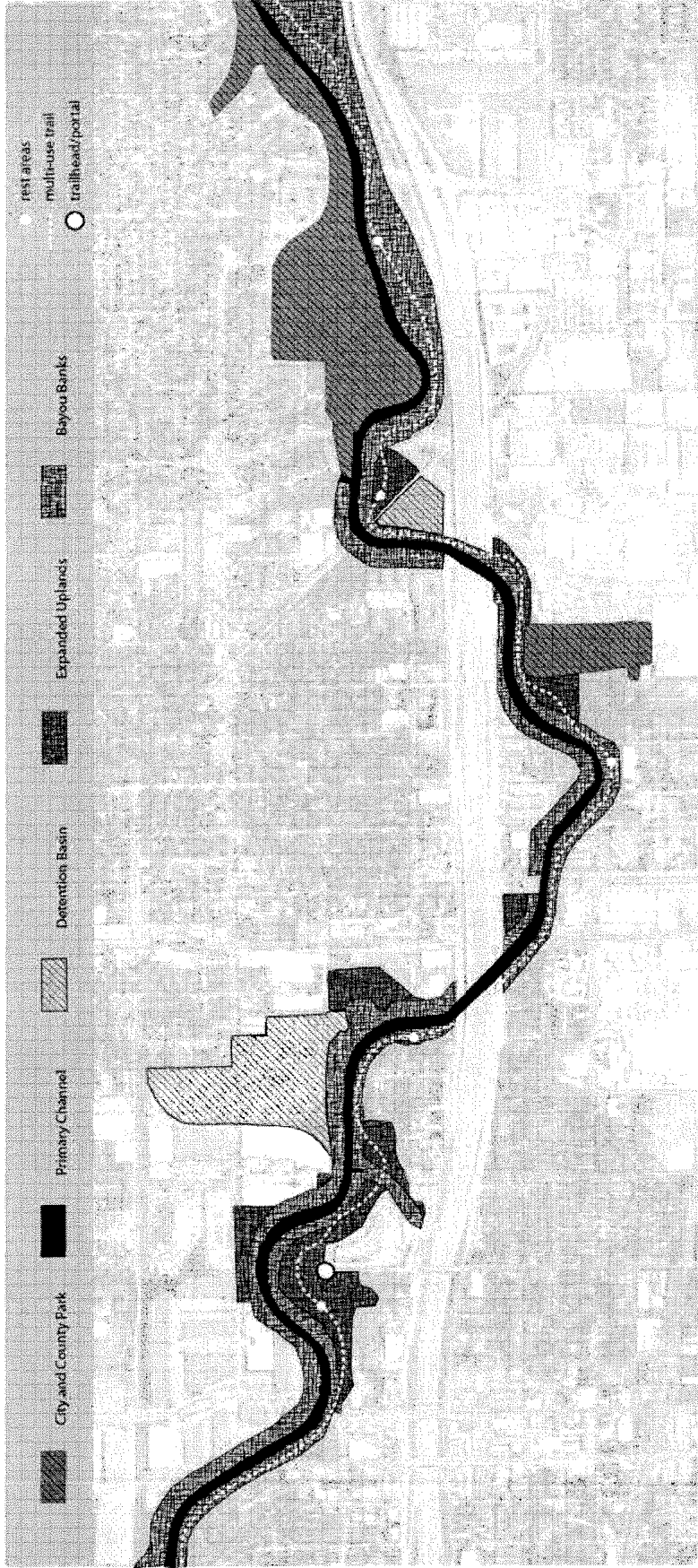


EXHIBIT D – LANDSCAPE CATEGORY TYPICAL SECTION

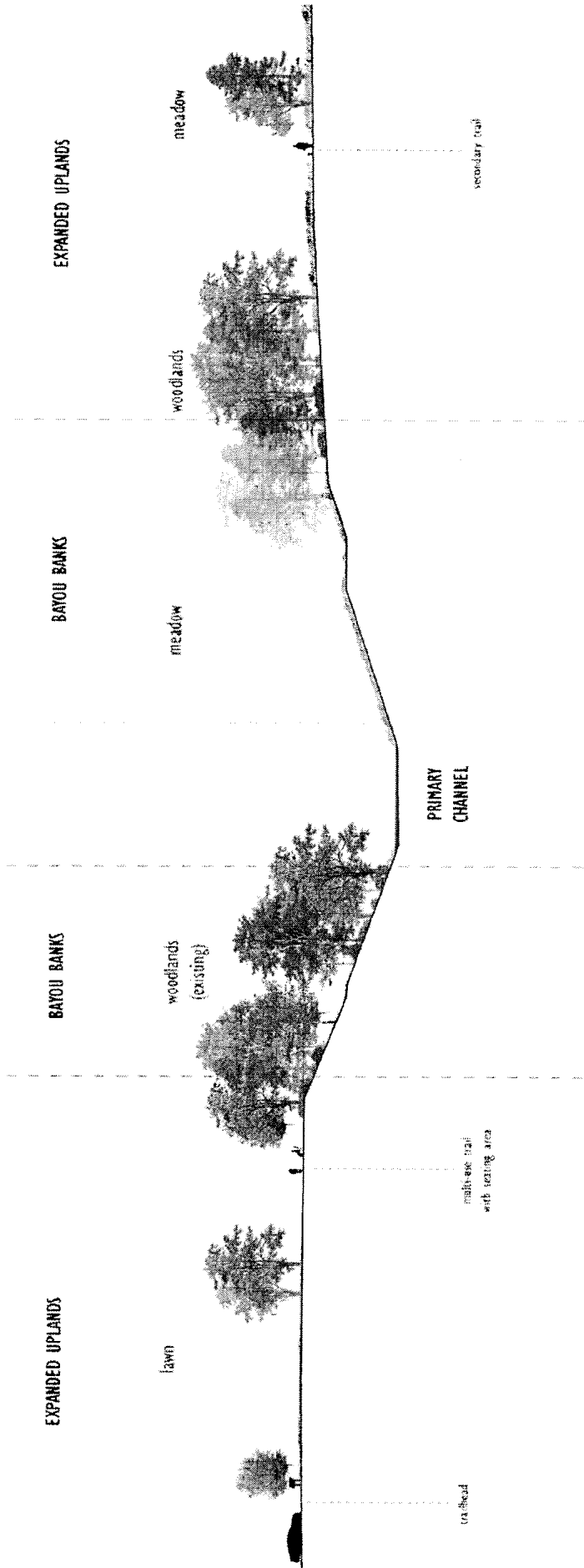


EXHIBIT D-1

PHASE IN SCHEDULE

FYE	2013 \$ BASE MAINTENANCE FEE \$ (HPB OPERATING ACCOUNT)
2015	4,570,000
2016	5,778,000
2017	6,985,000
2018	7,951,000
2019	8,434,000
2020	8,917,000
*2021	9,400,000

Note: The fiscal year dates reflected above are the end dates of such fiscal year. By way of example, fiscal year 2015 is the fiscal year commencing on July 1, 2014 and concluding on June 30, 2015.

**Per Section IV.D.1 of the Agreement, the Base Maintenance Fee for fiscal year end 2021 is estimated to be \$9,400,000 in fiscal year 2013 dollars.*

EXHIBIT D-2

CAPITAL REPLACEMENTS RESERVE

Capital Replacements Reserve Needs	
FYE Year	Cost
2015	\$ 524,000
2016	\$ 535,000
2017	\$ 545,000
2018	\$ 556,000
2019	\$ 567,000
2020	\$ 921,000
2021	\$ 940,000
2022	\$ 837,000
2023	\$ 490,000
2024	\$ 532,000
2025	\$ 543,000
2026	\$ 553,000
2027	\$ 574,000
2028	\$ 879,000
2029	\$ 897,000
2030	\$ 1,199,000
2031	\$ 1,223,000
2032	\$ 1,258,000
2033	\$ 1,283,000
2034	\$ 1,309,000
2035	\$ 1,652,000
2036	\$ 1,707,000
2037	\$ 1,741,000
2038	\$ 2,053,000
2039	\$ 2,030,000
2040	\$ 2,810,000
2041	\$ 2,984,000
2042	\$ 3,068,000
2043	\$ 3,130,000
2044	\$ 3,076,000
2045	\$ 3,137,000
2046	\$ 3,208,000
2047	\$ 3,347,000
2048	\$ 4,200,000
2049	\$ 4,285,000
2050	\$ 4,432,000
2051	\$ 4,545,000
2052	\$ 4,636,000
2053	\$ 4,791,000

Note: The fiscal year dates reflected above are the end dates of such fiscal year. By way of example, fiscal year 2015 is the fiscal year commencing on July 1, 2014 and concluding on June 30, 2015. In addition, the above reflects a 2% annual increase in the cost of materials and labor and reflect the numbers that are currently expected to calculate the Ten-Year CIP and the Maximum Capital Replacement Reserve Cap for the initial term of this Agreement only.