

CONSTRUCTION CONTRIBUTION AGREEMENT

Dated _____, 2023

By and between

**CITY OF HOUSTON, TEXAS,
a home-rule city organized under the laws of the State of Texas**

and

**BUFFALO BAYOU PARTNERSHIP,
a Texas non-profit partnership**

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TABLE OF CONTENTS

	Page
SECTION ONE BACKGROUND	1
SECTION TWO REPRESENTATIONS AND WARRANTIES.....	12
2.1. Ownership and Use of Land	12
2.2. Information Submitted True and Correct	13
2.3. Taxes and Assessments	13
2.4. Financial Capacity	13
2.5. Authorization	13
2.6. Liens	13
2.7. Preliminary Project Budget Contents	14
2.8. Expertise	14
2.9. Legal Existence	14
2.10. Insurance Claims	15
2.11. Access	15
2.12. Conflict of Interest	15
SECTION THREE CONDITIONS PRECEDENT FOR CLOSING THE CITY CONTRIBUTION.....	15
3.1. RESERVED	15
3.2. Execution and Approval of Engineer's Contract	16
3.3. Approval of Plans, Specifications, and Drawings	16
3.4. Approval of Construction Schedule and Drawdown Schedule	16
3.5. Funding Commitments	16
3.6. RESERVED.	17
3.7. RESERVED	17
3.8. RESERVED	17
3.9. Final Budgets	17
3.10. Construction Contract and Related Matters	18
3.11. Lobbying	20
3.12. RESERVED	20
3.13. Survey	21
3.14. Title Commitments; Insured Closing Service Letters	21
3.15. Environmental	21
3.16. RESERVED	22
3.17. RESERVED	23
3.18. RESERVED	23
3.19. RESERVED	23
3.20. RESERVED	23
3.21. UCC Search	23
3.22. RESERVED	23
3.23. Entity Documentation	23
3.24. 23	
3.24. RESERVED	23

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
3.25. Contracts.....	23
3.26. Execution and Approval of Agreement.....	23
SECTION FOUR CLOSING.....	24
4.1. Delivery and Execution of Documents	24
4.2. Waiver of Conditions; Additional Conditions.....	27
4.3. RESERVED	27
4.4. Closing of City's Contribution At Title Company	27
4.5. Closing Deadline	27
4.6. Expenses	28
SECTION FIVE CITY AND FEDERAL FUNDING LIMITATIONS	28
5.1. Dependency Upon Federal Funding.....	28
5.2. No Liability for Interruption of Funding	28
5.3. Original Allocation.....	29
5.4. Environmental Clearance and Release of Funds	29
5.5. City Council Approval Required.....	29
SECTION SIX COVENANTS OF BBP	29
6.1. Use of Proceeds; Order of Funding and Disbursement; Reimbursement of Funds	30
6.2. Construction Matters	30
6.3. RESERVED	34
6.4. RESERVED	34
6.5. RESERVED	34
6.6. Inspections; Corrective Action.....	34
6.7. Design Requirements	35
6.8. RESERVED	35
6.9. RESERVED	35
6.10. RESERVED	35
6.11. R	35
ESERVED.....	35
6.12. RESERVED	35
6.13. RESERVED	35
6.14. Use of Project	35
6.15. Maintenance of Records; Financial and Operating Reports; Monitoring	36
6.16. Notice of Claims or Suits	37
6.17. Minority, Women and Small Business Enterprises.....	37
6.18. Transactions with Affiliates	37
6.19. Taxes and Insurance	38
6.20. HUD Section 3 Requirements	38
6.21. Public Relations and Signage	38
6.22. Expertise	39

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
6.23. Compliance with Applicable Law	39
6.24. RESERVED	40
6.25. Compliance with City Insurance Requirements	40
6.26. RESERVED	40
6.27. Consulting and Developer's Fees	40
6.28. RESERVED	40
SECTION SEVEN RESERVED	40
SECTION EIGHT RESERVED	40
SECTION NINE DISBURSEMENT PROCEDURES	40
9.1. Disbursement Limitations	40
9.2. Retainage	41
9.3. Reallocation of Contribution Proceeds	41
9.4. Reallocation of Savings and Contingencies	41
9.5. Drawdown Procedure	41
SECTION TEN DEFAULT AND REMEDIES	43
10.1. Default	43
10.2. RESERVED	46
10.3. RESERVED	46
10.4. RESERVED	46
10.5. City's Remedies	46
10.6. RESERVED	46
SECTION ELEVEN ALLOCATION OF COST SAVINGS AND RECOVERY OF DAMAGES FROM CONTRACTOR	47
SECTION TWELVE RESERVED	47
SECTION THIRTEEN RESERVED	47
SECTION FOURTEEN RELEASE AND HOLD HARMLESS	47
14.1. RELEASE	47
14.2. HOLD HARMLESS AGREEMENT	48

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
SECTION FIFTEEN NOTICE	49
SECTION SIXTEEN RESERVED	50
SECTION SEVENTEEN TERMINATION.....	50
SECTION EIGHTEEN MISCELLANEOUS.....	50
18.1. Relationship of Parties.....	50
18.2. Parties in Interest	51
18.3. Exculpation.....	51
18.4. Non-waiver	51
18.5. Modification	51
18.6. Severability.....	51
18.7. Choice of Law	52
18.8. Integration	52
18.9. Assignability.....	52
18.10. Survival	52
18.11. Captions.....	52
18.12. Applicable Law	52
18.13. Multiple Counterparts; Effective Date	53
18.14. Approval by the City or the Director.....	53
18.15. Flood Insurance Requirements and Transfer of Property: Flood Insurance	53
18.16. Consents and Approvals.....	53
18.17. Choice of Venue.....	54
18.18. Mediation of Contractor Disputes	54
18.19. Force Majeure or COVID-19	54
18.20. Anti-Boycott Provisions.....	55
SECTION NINETEEN AUTHORITY OF THE DIRECTOR AND MAYOR.....	56
19.1. Authority of the Director to Extend Time of Performance	56
19.2. Authority of the Director to Execute Certain Amendments.....	57
19.3. Authority of the Mayor to Execute Other Documents	57
19.4. Schedules, Attachments, Appendices and Exhibits.....	57
19.5. Other Amendments; Council Approval Required	58
19.6. RESERVED	58

CONSTRUCTION CONTRIBUTION AGREEMENT (CDBG-MIT Transaction)

This Construction Contribution Agreement (this “Agreement”) is by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas (“City”), and **BUFFALO BAYOU PARTNERSHIP**, a Texas non-profit corporation (“BBP”), collectively referred to herein as the “Parties”.

Unless the context otherwise requires, the initial capitalized words shall have the meanings ascribed to them in Schedule A attached to this Agreement if they are not otherwise defined in the main body of this Agreement.

BBP and City hereby agree as follows:

SECTION ONE **BACKGROUND**

A. City, BBP and Harris County, a body corporate and public under the laws of the State of Texas (“County”) are parties to that certain Development, Construction, Operations, Maintenance and Concession Agreement (the “Tri-Party Agreement”) which is included as Exhibit B to this Agreement. The Tri-Party Agreement is dated October 18, 2022 and was approved by the City Council of the City of Houston, Texas (“Council”) under Ordinance No. 2022-716 on September 28, 2022. The Tri-Party Agreement details the performance, development, construction, operational and funding requirements as well as procedures that govern 20 individual projects spread over a 4-mile long distance along Buffalo Bayou (the “Buffalo Bayou Redevelopment”). Pursuant to the Tri-Party Agreement, City and BBP now enter into this Agreement for the purposes of completing the construction and development portion of the project identified in the Tri-Party Agreement on Exhibit A1 as Segment N and more commonly known as Marron Park Way (the “Project”). Pursuant to the Tri-Party Agreement, and Ordinance No. _____ dated _____, the City purchased approximately 146,068 sq. ft. of

real property which is more particularly described on Exhibit “A” attached hereto (the “Property”) from BBP. BBP shall utilize the City’s Contribution for reimbursement of the eligible costs expended to develop a new street and related improvements which will serve as a neighborhood collector street and lessen the risks and impacts of flooding in the community through the construction of underground storm drainage systems.

B. For and in consideration of the services performed under this Agreement, the City agrees to pay BBP a sum not to exceed \$5,453,853.00 (“City Contribution” or the “City’s Contribution”), in CDBG-MIT funds, solely for reimbursement of costs allowable under this Agreement and that certain Grant Agreement dated April 27, 2021 by and between the City and HUD (“Grant Agreement”). This Agreement outlines the details, terms, and conditions of City’s Contribution to BBP. The City shall not be liable for the reimbursement of any expenses which are not allowable under the terms of this Agreement or under the Grant Agreement.

C. The Project will Mitigate the risk and lesson the impacts of flooding by developing underground storm drainage and utilizing design engineering advancements to construct drainage systems that can sustain a 100-year storm flow. The new roadway will be approximately 1,600 linear feet and 22-feet-wide. It will be two concrete lanes, 11 feet wide each with six-inch curbs, gutters and storm infrastructure. The roadway will be graded at a 2% slope to assist water runoff and storm inlets will be placed on the northside curbs to maximize efficiency of the storm infrastructure. New public storm utilities will be developed and the area’s water runoff will be routed through the underground storm drainage system and outfall directly into Buffalo Bayou. The capacity of the new improvements will be able to control water in the amounts equal to levels associated with a 100-year storm event.

D. Funding for the City's Contribution is being provided to the City pursuant to Community Development Block Grant Mitigation ("CDBG-MIT") funds awarded by the United States Department of Housing and Urban Development ("HUD") under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-23, approved February 9, 2018), and the requirements published by HUD under 84 Fed. Reg. 45838. The City acting pursuant to Ordinance No. 2020-137, passed February 19, 2020 by the City Council of the City of Houston ("City Council"), entered into a grant agreement dated May 5, 2021 with the United States Department of Housing and Urban Development ("HUD") for a grant in the amount of \$61,84,000.00 awarded to the City under Unique Federal Award Identification Number ("FAIN") B18MP480001, a portion of which was allocated to this Project. Pursuant to the provisions of that certain City of Houston CBDG-MIT Action Plan ("Action Plan") passed and approved by City Council on February 19, 2020 under Ordinance No. 2020-137, the Federal regulations, as published in 24 C.F.R. Part 570 ("CDBG Regulations"), the State of Texas CDBG Housing Rules, as published in 10 Tex. Admin. Code Part 1; and other related administrative rules and regulations issued by the Federal Government or State of Texas that are applicable to local flood Mitigation funded under the CBDG-MIT Program ("Other Requirements") are hereby included or incorporated in this Agreement and sub-agreements, as applicable. Furthermore, BBP has been notified that the information related to the development, its operations and its residents are covered under Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists, and Chapter 2306 of the Texas Government Code.

E. Unless extended as provided for in this Agreement, the term of this Agreement shall commence on the Effective Date and shall end twenty-four (24) months from the date thereof (the

“Expiration Date”). The City Contribution shall not be repayable except as described in this Agreement or in the Tri-Party Agreement.

F. No repayment of the City Contribution shall be required except in the event of BBP’s Default of its obligations or representations and warranties under this Agreement provided, however, the Director, in his or her sole discretion, may waive in full or in part any requirement of this sentence. Upon the Expiration Date, if no Default has occurred which remains uncured, the full amount of the City’s Contribution shall be deemed paid. In the event the Director declares a Default under this Agreement, the balance of the City Contribution advanced prior to the date of such declaration of Default shall become immediately due and payable. If upon receipt of notice from the City of the Director’s election to demand the repayment of the City Contribution, Grantor repays all sums paid to date under this Agreement within ten (10) business days, this Agreement shall terminate with no further obligation of City to contribute.

G. BBP’s obligations to the City under this Agreement, including, but not limited to its performance of the Work in exchange for the City’s Contribution shall be secured by, an Assignment of Construction Contract, an Assignment of Engineer’s Contract, an Assignment of Professional Services Contract, Plans and Specifications, and Consent, an Assignment of Construction Project Management Agreement, an Assignment of Goodman Contract and Payment, Performance and Maintenance Bonds.

H. BBP shall use the proceeds of the City Contribution for reimbursement of eligible costs expended to develop underground storm drainage systems, design, engineer and construct a new street and other improvements which will be known as Marron Park Way located in Houston, Harris County, Texas. The Land on which the Project is located is described in Exhibit A attached to this Agreement. The purpose of the Project is to Mitigate and lessen the risk of flooding and the

impacts thereof through the development of public storm utilities and underground storm drainage in areas that will benefit Low-to-Moderate Income (“LMI”) communities in compliance with the CBDG-MIT Program.

I. RESERVED

J. RESERVED

K. As a grantee of CBDG-MIT funds under the Grant Agreement, the City must comply with certain requirements, including but not limited to those set forth in 2 CFR 200 made applicable by 24 CFR 570.502 and the provisions in 2 CFR 200.330-332. The City’s Contribution which is being made available for use by BBP under this Agreement constitutes a subaward of the City’s federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of the Grant Agreement. BBP acknowledges and agrees to comply with all Federal statutes, regulations and terms imposed by the Grant Agreement as if BBP were in the City’s place and shall submit all required reporting, monitoring and operating information to the Director on various aspects of the Project. BBP shall submit this information to the Director on the forms provided or the forms that may be required by the Director (“Monitoring Forms”), certain initial forms of which are attached as **APPENDIX 5** hereto. Upon completion of written reports, BBP shall provide the Director with copies of all back up documents or papers relating to or substantiating such reports. Failure to comply with the reporting requirements set forth in this Agreement shall be a material breach and compensation and expense reimbursement to BBP may be withheld until the Monitoring Forms, reports and back-up materials are submitted. BBP shall promptly provide any other reasonable reports requested in writing by the Director.

L. RESERVED.

M. BBP shall 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, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures which are attached at APPENDIX 8. In regard to the anticipated construction contract, BBP shall make good faith efforts to award subcontracts or supply agreements in at least **16.93%** of the value of the estimate contract amount to MBE's and **7.97%** TO WBE'S. In regard to the anticipated engineering design contract, BBP shall make good faith efforts to award subcontracts or supply agreements in at least **25.00%** of the value of the estimate contract amount to MWBEs. In regard to the anticipated professional services contract, BBP shall make good faith efforts to award subcontracts or supply agreements in at least **14%** of the value of the estimate contract amount to MWBEs (collectively the goals herein are referred to as the "Stated MWBE goal(s)"). BBP acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply, with them. For purposes of this paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and BBP's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year BBP must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy, and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision, and the OBO Director may impose sanctions or other

penalties on Contractor for said failures in accordance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy. The OBO Director, in consultation with the Director, may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:

1. After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:

- (a) Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;

- (b) Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or

- (c) Take any other appropriate remedy.

- (d) The determination of the OBO Director is final.

2. Make a recommendation to the Director and the Chief Procurement Officer, to:

- (a) Withhold payment or reimbursement under this Agreement;

- (b) Make a finding that Contractor is in default or has breached this Agreement;

- (c) Determine not to renew this Agreement;
- (d) Terminate for cause this Agreement; or
- (e) Take any other appropriate remedy.

Contractor shall maintain records showing:

- a. Subcontracts and supply agreements with Minority Business Enterprises;
- b. Subcontracts and supply agreements with Women Business Enterprises;
- c. Subcontracts and supply agreements with Small Business Enterprises (if any);
- d. Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
- e. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

BBP shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. Within five business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with

the street, mailing address, phone number, and email address of such agent. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

N. BBP agrees to abide by the conflict of interest provisions at 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. § 200.318 and furnish conflict of interest disclosure forms if so required by the Director.

O. If the Contribution Proceeds do not cover all of the costs of the Project, BBP shall have obtained at the time of Closing a firm commitment for the funding of the remaining acquisition costs and the construction costs to repair, renovate, construct and/or reconstruct the Project (collectively, the “Other Financings”), all of which combined with the Contribution Proceeds, total at least the amount required by the Approved Final Project Budget (“Final Project Budget”) in form and content approved by the Director and attached hereto as Exhibit C-1. In any case, BBP shall be responsible for funding or obtaining funding for any costs or expenses of the Work, other Project cost under the Final Project Budget or otherwise payable under this Agreement to the extent not covered by the Contribution Proceeds.

P. It is the policy of the City to ensure that construction work it finances protects workers on those projects by making sure they are safe, are compensated in accordance with Applicable Law, and have access to pathways for sustainable careers in the construction industry. All contractors who work on the Project are required to implement the workforce protection measures at **APPENDIX 15**.

Q. RESERVED

R. RESERVED

S. BBP has submitted to the Director a signed Certificate regarding lobbying ("Lobbying Certificate") in the form set forth in the Appendices to this Agreement (or in the form in effect at the time the Lobbying Certificate was submitted to the Director).

T. In addition to the provisions of the main text of this Agreement, this Agreement consists of "Schedules", "Appendices", "Exhibits" and "Attachments", as follows

1. Schedule ("Schedule") setting forth definitions.
2. Appendices ("Appendices"), setting forth the specifics of requirements described in this Agreement or other City standard forms, policies and requirements, which specifics and forms may be modified by the City from time to time or which may change as a result of change in or to Applicable Law, relating to applicable requirements which may include the following:
 - (a) the City's MWSBE programs to which BBP's contractors and subcontractors are subject;
 - (b) insurance to be maintained by BBP and also to be contained in the Approved Construction Contract and other Construction and Supply Contracts
 - (c) Release and Indemnity provisions to be contained in the Approved Construction Contract and other Construction and Supply Contracts;
 - (d) Construction Contract Requirements including bidding requirements;
 - (e) the Monitoring Forms;
 - (f) Applicable Law;

- (g) the Lobbying Certificate;
- (h) the Debarment Form;
- (i) the Survey Requirements;
- (j) City of Houston Workforce Protection Requirements.
- (k) Federal Regulations Compliance Packet and Forms (See Appendices 5 and 8)

3. Exhibits ("Exhibits"), setting forth:

- (a) the metes and bounds or legal description of the Land;
- (b) commitments evidencing "Other Financings", if any; and
- (c) the Preliminary Project Budget.
- (d) Scope of Work; and
- (e) Construction Schedule.
- (f) CDBG-DR Quarterly Progress Report Infrastructure Projects

4. Attachments ("Attachments"), as per the list of Attachments on the Attachments title page, describing and setting forth the information and the various specific documents and contents of specific documents particular to the City's Contribution to be provided by or on behalf of BBP as conditions precedent to the Closing of the City's Contribution or to be executed by BBP and the City at the Closing of the City's Contribution.

5. Notwithstanding the above, notice of any changes to any of the above documents or policies which become effective after Closing will be provided to BBP, and if BBP reasonably objects to same, the change will not be effective regarding the Project except in the case of changes required by HUD or changes in law that are retroactive.

U. The City Contribution is a community development activity undertaken by the City and authorized under Chapter 373 or Chapter 374 of the Texas Local Government Code.

V. The recitals and statements contained in this Section One shall be incorporated into this Agreement, and BBP confirms, agrees and acknowledges that the information contained in this Section One is true and correct in all material respects and, to the extent that any of the subsections contained in this Section One contain covenants or agreements of BBP, BBP hereby covenants and agrees to comply with the terms therewith. BBP further agrees to comply with all laws and other requirements contained in the Appendices.

SECTION TWO **REPRESENTATIONS AND WARRANTIES**

BBP hereby represents and warrants, and such representations and warranties shall be deemed to be continuing representations and warranties during the entire Term of this Agreement, and so long as the City shall have any commitment or obligation to make any disbursements of the Contribution Proceeds hereunder, and so long as all of or any part of the City's Contribution remains outstanding under any Contribution Document (but only to the extent the City Contribution has not been deemed repaid pursuant to the terms of this Agreement), as follows:

2.1. Ownership and Use of Land. City holds fee simple title in and to the Land located in Houston, Harris County, Texas more particularly described on EXHIBIT "A. In accordance with Section 5.12 of the Tri-Party Agreement, BBP shall transfer the improvements on the Land to the City within 30 days after (i) Final Completion as defined therein and (ii) acceptance by the City upon certification by BBP in accordance with Section 5.13 of the Tri-Party Agreement. Transfer of the improvements shall be completed by delivery of a fully executed Bill of Sale in substantially the form attached as ATTACHMENT G.

2.2. Information Submitted True and Correct. The information contained in or submitted by BBP to the City in connection with the Project set forth in this Agreement is true and correct.

2.3. Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Land or Project, or if there are any delinquent taxes, assessments, or other impositions on the Land or Project, same will be paid prior to or simultaneously with Closing of the City Contribution. The Land or Project has not been subject to any special (reduced) real estate appraisal, or abatement, exemption or deferral of ad valorem taxes in the five (5) years preceding the Effective Date of this Agreement, unless BBP has an effective agreement providing that another party is liable for all liability, accruing prior to BBP's acquisition of the Land or Project, for ad valorem taxes owing as a result of an change or revocation of such special (reduced) real estate appraisal, or abatement, exemption or deferral of ad valorem taxes.

2.4. Financial Capacity. The financial representations made to the City by BBP concerning BBP's financial condition are true and correct and, upon the Closing of the City's Contribution, BBP has the financial capacity to carry out its obligations hereunder. If any material negative change in BBP's financial condition occurs, BBP shall report such change to the City within five (5) business days.

2.5. Authorization. All action on the part of BBP necessary to authorize the transactions contemplated by this Agreement have been taken, and upon execution of this Agreement, this Agreement shall constitute the binding and enforceable obligation of BBP.

2.6. Liens. As of the Closing Date, there are no existing or threatened liens against the Project, and BBP does not know of any reason such liens may be filed or threatened against the Project. As of the Closing Date, all payables and liabilities to parties providing goods or services

to BBP have been paid and no payables or liabilities exist that are more than thirty (30) days outstanding.

2.7. Preliminary Project Budget Contents. The Preliminary Project Budget specifies (a) a listing of all costs necessary to complete the Project; (b) the sources of funding which will be used to complete the Work which will be enumerated on AIA documents if required by the City.

2.8. Expertise. BBP acknowledges that it has the capacity and capability to effectively administer the Work set forth in detail in the Scope of Services. BBP has engaged or will engage prior to Closing competent persons and firms for the purpose of constructing and managing the Project. BBP shall carry out the Work in accordance with all applicable laws, rules, regulations, ordinances, guidelines or requirements, including without limitation to those described at Subparts J and K of 24 CFR 570, and Federal Contract Requirements attached including 84 FR 45838 CBDG-MIT Main Notice (See APPENDIX 9) hereto. BBP is subject to the procurement requirements at 2 CFR 200.318 – 2 CFR 200.326. All contracts procured by BBP must include the applicable provisions described in Appendix II to 2 CFR 200 “Contract Provisions for non-Federal Entity Contracts Under Federal Awards”. BBP must also comply with the procurement related conflicts of interest requirements at 2 CFR 200.318(c)(1). BBP shall impose the requirements of 2 CFR 200.318-326 either expressly or by reference on any prime contractor or subcontractor and include the same in any contract, agreement, subcontract or other writing in which it enters into, such that the federal requirements in 2 CFR 200.318-326 shall be binding upon each party that engages in Work on the Project.

2.9. Legal Existence. BBP is a non-profit corporation, duly created and validly existing and in good standing under the laws of the State of Texas.

2.10. Insurance Claims. If BBP has made or intends to make insurance claims related to the Project. BBP has provided the Director with true and correct copies of all insurance claims made or which BBP plans to make (together with all supporting documentation) with respect to any damage to the Project within the last six (6) years. None of the Contribution Proceeds will be used to pay for damages covered by any insurance claim or any insurance policy including delayed or future payments anticipated under insurance policies. No portion of the Contribution Proceeds shall be utilized to satisfy any deductible under such insurance policies.

2.11. Access. Access by vehicles to the Land for the full utilization of the improvements for their intended purposes either (a) exists over paved roadways that have been completed, dedicated to the public use and accepted by the appropriate Governmental Authority, or (b) the necessary rights of way for such roadways have been acquired by the appropriate Governmental Authority and all necessary steps have been taken by BBP, and such Governmental Authority to assure the complete construction and installation of such roadways.

2.12. Conflict of Interest. BBP does not have a conflict of interest as prohibited by 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. § 200.318. If required by the Director, BBP shall furnish to the Director a conflict of interest disclosure form (in effect at the time the form is required to be submitted to the Director), on or before the execution of this Agreement.

SECTION THREE **CONDITIONS PRECEDENT FOR CLOSING THE CITY CONTRIBUTION**

Except as otherwise provided in this Section Three, all of the conditions listed in this Section must be satisfied by the Closing Date of the City's Contribution and the satisfaction of each of such conditions shall be a condition precedent to Closing of the City Contribution:

3.1. RESERVED.

3.2. Execution and Approval of Engineer's Contract. BBP and the Engineer shall have executed the Engineer's Contract which shall have been approved by the Director; the Engineer's Contract will be collaterally assigned to the City as additional security for BBP's performance under this Agreement pursuant to an "Assignment of Engineer's Contract, Plans and Specifications, and Consent" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney ("Assignment of Engineer's Contract, Plans and Specifications, and Consent").

3.3. Approval of Plans, Specifications, and Drawings. The Parties shall adhere to the procedures and requirements outlined in Section 5.02 of the Tri-Party Agreement for the approval of the scope of the Work, any site plans, floor plans, any Environmental Mitigation plans, structural, civil, mechanical, electrical, plumbing, and landscaping plans, and any other applicable drawings (collectively, the "Approved Plans, Specifications, and Drawings") required for the construction of the Project according to the Approved Construction Contract, which Approved Plans, Specifications, and Drawings will also be collaterally assigned to the City.

3.4. Approval of Construction Schedule and Drawdown Schedule. The Director shall have approved the construction schedule and drawdown schedule for the Project (collectively referred to as the "Approved Construction Schedule").

3.5. Funding Commitments. The sum of the City Contribution, commitments for the Other Financings (if any), deferred developer fee, , and any equity contributions for the Project shall be in at least the amount required to, reimburse eligible costs incurred by BBP for the construction of the Project and allow operation of the Project in accordance with the Approved Final Project Budget, according to the Approved Final Plans, Specifications and Drawings, the Approved Construction Contract and the Tri-Party Agreement. BBP shall disclose any changes in

the commitments for Other Financings and/or any changes in any equity contributions to the Project to the City as soon as practical, but in any event no later than five (5) business days after knowledge of such changes. The City's funding shall be subject to funding of all Other Financing in the order specified in the Approved Construction Schedule or in the Intercreditor Agreement.

3.6. RESERVED.

3.7. RESERVED..

3.8. RESERVED

3.9. Final Budgets.

3.9.1. Approved Final Project Budget and Approved Final Construction

Budget. Before construction begins, the Director shall have approved a detailed budget ("Approved Final Project Budget") for the Project which shall not vary from the Preliminary Project Budget unless such variance is approved in writing by the Director. The Approved Final Project Budget shall include, the engineering and design costs, the Approved Final Construction Budget which shall include all costs to construct the Work and any other construction costs for the Project ("Approved Final Construction Budget") and all other costs necessary to complete the Project per the Approved Plans, Specifications, and Drawings and Approved Construction Contract. Subject to the provisions at 24 CFR 570.200(h) and with the prior written consent of the Director, BBP may expend funds and be reimbursed for eligible pre-award costs incurred during 12 months prior to the Effective Date hereof. The Approved Final Project Budget and the Approved Final Construction Budget shall be in such forms as the Director may require, and shall be in sufficient detail to permit the City to effectively and adequately monitor the use of the Contribution Proceeds for the payment of costs pursuant to the Approved Construction Schedule to ensure that

Contribution Proceeds are expended only for costs eligible under applicable, CDBG-MIT and other applicable federal regulations. A hard cost contingency of 5% and a soft cost contingency of 5% of soft costs are required in the Approved Final Construction Budget, and the City reserves the right to require additional contingencies. Subsequent to the commencement of construction, any changes to the Approved Final Project Budget or the Approved Final Construction Budget must be approved in writing by the Director, such approval not to be unreasonably withheld. If required by the City, BBP, shall engage appropriate third party inspectors acceptable to the Director, in his or her sole discretion, or alternatively, the City, may utilize its own internal or external inspectors (collectively, "Approved Inspectors") to verify the budgets submitted to the Director for approval under this Section, to report to the Director on the adequacy and reasonableness of the amounts set forth in such budgets to complete the Project and the Work according to the Plans, Specifications and Drawings and to verify that all draws under the Approved Final Construction Budget conform with such budget, that all labor and material for which disbursement is requested have gone into the Project in accordance with the Plans, Specifications and Drawings and that the remaining undisbursed portion of the City Contribution and Other Financings (if any) are adequate to complete the Work and the Project BBP's agreement with any Approved Inspectors engaged by BBP shall provide that the City is entitled to rely on the Approved Inspector's Reports and that the reports shall be addressed to the City.

3.10. Construction Contract and Related Matters.

3.10.1. Approved Construction Contract. BBP and Contractor (and Contractor and its prime subcontractor, if any) shall have executed the Construction

Contract approved by the Director (“Approved Construction Contract”), which Approved Construction Contract will be collaterally assigned to the City as additional security pursuant to an “Assignment of Construction Contract” instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney (“Assignment of Construction Contract”). The Approved Construction Contract shall be a fixed price/stipulated sum or guaranteed maximum price contract which shall be consistent with the Approved Final Construction Budget. Fees, overhead and general conditions of the Contractor shall be indicated as a fixed dollar amount which shall be determined in a manner that does not exceed amounts that are commercially customary and reasonable for similar affordable multifamily development projects.

3.10.2. Bonds. BBP or Contractor shall furnish (a) a performance bond, with dual obligee rider naming the City as an additional beneficiary, for the full amount of the construction or rehabilitation price (“Performance Bond”); (b) a maintenance bond to secure the Defects Warranty (“Maintenance Bond”); and (c) a statutory payment bond (“Payment Bond”). The surety upon any required bond must be on the current list, published by the United States Treasury Department, of acceptable sureties for federal bonds and must have an AM best rating of “A” or better. The form of the Performance Bond, Maintenance Bond, and Payment Bond shall be as set forth in the Attachments or in other forms approved by the City Attorney. The Performance Bond, Maintenance Bonds and Payment Bond must be approved by the City attorney in its sole discretion.

3.10.3. “Defects Warranty”. BBP will cause Contractor to expressly and unconditionally agree to warrant and guarantee (“Defects Warranty”) for a period of one (1) year any and all work performed or materials supplied to be free of defects, omissions,

unsoundness or flaws, by executing the Maintenance Bond in the form set forth in the Attachments or in other form approved by the Director. The one (1) year period shall commence on the date of issuance of the Certificate of Completion. The Defects Warranty shall include any condition which may impair or tend to impair the safe and normal use, functioning or enjoyment of the Project and which results in any manner from any and all labor and/or materials used or supplied under the Approved Construction Contract whether or not the materials or equipment are guaranteed by the manufacturer or supplier. The Defects Warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any materials, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is required in the Approved Construction Contract. The Maintenance Bond shall provide that BBP, or Contractor for the benefit of BBP, shall obtain all manufacturers' and suppliers' written guarantees, warranties and operating instructions covering materials and equipment furnished under the Approved Construction Contract together with any documentation required for validation of such guarantees and warranties. BBP shall require that any and all warranties or guarantees from any contractor, manufacturer, supplier or any other subcontractor are transferable to the City in accordance with the Tri-Party Agreement.

3.11. Lobbying. On or before the Closing of the City's Contribution, BBP and Contractor shall each submit to the Director a signed Certificate Regarding Lobbying in the form set forth in the Attachments (or in the form in effect at the time the Certificate is required to be submitted to the Director).

3.12. RESERVED.

3.13. Survey. The Director shall have approved a survey or surveys (collectively the “Survey”) of the Land dated November 10, 2021 and March 29, 2022, which are acceptable without compliance with all (“Survey Requirements”) in the Appendices and showing, among other things the applicable zone or zones where the Property is located as identified by the Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map for Harris County, Texas which is identified in the Survey. The Director may waive any of the Survey Requirements in the Appendices in the Director’s sole discretion.

3.14. Title Commitments; Insured Closing Service Letters.

3.14.1. City’s Owner’s Title Policy. Except as waived by the Director in writing in accordance with Section 4.2 herein, the Title Company shall issue, in substance approved by the City Attorney, a Commitment to issue to the City an Owner’s Policy of Title Insurance (“City’s Owner’s Title Policy”) naming the City as Insured subject only to, Schedule B Exceptions which are only those exceptions which are acceptable to the Director, in his or her sole discretion. An initial Contribution funding at Closing will include payment of premium expenses and other title company closing expense for City’s Owner’s Title Policy.

3.14.2. RESERVED.

3.14.3. Deletion of the Arbitration Provisions. The arbitration provisions of the City’s Owner’s Title Policy (if applicable) shall be endorsed as deleted.

3.14.4. Insured Closing Service Letter. The Title Insurer (as defined in Section 4.4) shall have issued the City an “insured closing service letter” relating to the closing of the City’s Contribution and such insured closing service letter shall be in effect as of the time of the closing of the City’s Contribution.

3.15. Environmental.

3.15.1. Director's Approval. The Director shall have approved a "Phase I" (or "Phase II", if the Director has required) environmental site assessment (and any updates thereto) (the "Environmental Site Assessment") and the Environmental Review (as defined herein) in compliance with 24 CFR Part 58. The Environmental Site Assessment shall be performed by a qualified environmental services firm, furnished to the Director by BBP, at BBP's expense, in compliance with and prepared in accordance with standards adopted and promulgated by the American Society of Testing and Materials (ASTM), accompanied by a reliance letter submitted by the issuer of such Environmental Site Assessment for the benefit of the City. The required Environmental Site Assessment must show, among other things that the Project is not in a "Coastal Barrier Resource System unit," as such term is defined in the Coastal Barrier Resources Act (CBRA) of 1982, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501), as amended, or in a runway clear zone, any lead-based paint and asbestos containing materials within the Project and if applicable, identify any "Special Flood Hazard Area", as such term is defined and designated by the Federal Emergency Management Agency ("FEMA"). The Environmental Assessment must be dated within six (6) months of Closing or if this timeframe is exceeded, an assessment which is less than twelve (12) months old may be updated by the original issuer if the update report is issued within six (6) months prior to Closing and an update is acceptable to the City's in-house environmental risk manager.

3.15.2. Environmental Indemnity Agreement. BBP shall have executed and delivered an "Environmental Indemnity Agreement" in favor of the City (the "Environmental Indemnity Agreement") in the form set forth in the Attachments or on another form approved by the City Attorney.

3.16. RESERVED.

3.17. RESERVED.

3.18. RESERVED.

3.19. RESERVED

3.20. RESERVED

3.21. UCC Search. BBP shall provide the City with a UCC search dated no sooner than thirty (30) days prior to Closing indicating that the Project is free and clear from any security interests and other liens (or will be at Closing).

3.22. RESERVED

3.23. Entity Documentation. To the extent BBP uses a separate entity to develop, own, and/or operate the Project, BBP shall provide City with copies of (i) the single purpose entity's executed formation documents, together with all notes, guarantees and other instruments and agreements issued pursuant thereto; (ii) all corporate and company documents for BBP, BBP's general partner or managing member, as applicable; and (iii) evidence of BBP's general partner or managing member's due formation, organization, good standing, existence and authorization to enter into this Agreement and the related Contribution Documents (collectively, the "Entity Documentation").

3.24 RESERVED

3.25. Contracts. BBP shall provide the City with all operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project which the City, at its discretion, may require be collaterally assigned to the City together with an acknowledgement of the assignment by the counterparties thereto.

3.26. Execution and Approval of Agreements. If BBP retains the services of a Construction Project Manager, BBP and the Construction Project Manager shall have executed the

Construction Project Management Agreement which shall have been approved by the Director; the Construction Project Management Agreement will be collaterally assigned to the City as additional security for the repayment and performance of the City Contribution pursuant to an “Assignment of Construction Project Manager’s Agreement” instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney (“Assignment of Construction Project Management Agreement”).

BBP has retained the services of The Goodman Corporation (“Goodman”), and entered into a Contract (“Goodman Contract”), which as been approved by the Director, to provide professional administration services to assist with CDBG-MIT grant. The Goodman Contract will be collaterally assigned to the City as additional security for the repayment and performance of the City Contribution pursuant to an “Assignment of Contract Agreement” instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney (“Assignment of Goodman Contract”).

SECTION FOUR **CLOSING**

In addition to all of the conditions listed in Section Three being satisfied as conditions precedent to closing of the City Contribution, the City shall not be obligated to close the City Contribution unless the following requirements are satisfied or waived in writing by the City:

4.1. Delivery and Execution of Documents. BBP must concurrently with closing of the City’s Contribution, unless otherwise specified herein, execute or cause to be executed, and deliver to the City, together with any other documents, certificates, affidavits, policies and other deliverables required hereunder or under any of the Appendices hereto or otherwise reasonably required by the City including, but not limited to, the following:

1. the Assignment of Construction Contract (this item will be provided post closing);
2. the Assignment of Engineer's Contract, Plans and Specifications, and Consent (this item will be provided post closing);
3. the Assignment of Construction Project Management Agreement if required;
4. this Agreement;
5. the Assignment of Goodman Contract;
6. the Environmental Indemnity Agreement;
7. the Certification regarding Lobbying;
8. the Affidavit of Use of Funds on the form required by the Director stating that the Contribution Proceeds will be used by BBP only for the purposes set forth in the Construction Contribution Agreement;
9. the Affidavit of No Commissions on the form required by the Director stating that as of Closing no commissions, fees or other payments of any kind have been made to BBP, any general or limited partner of BBP, or employee of BBP, or any company or individual related to or affiliated with BBP, except as described in the Affidavit of No Commissions or as may be shown in the Approved Final Project Budget;
10. the Certification Regarding Debarment, Suspension and Other Responsibility Matters;
11. a copy of the fully executed Approved Construction Contract (this item will be provided post closing);
12. a copy of the fully executed Engineer's Contract (this item will be provided post closing);
13. a copy of fully executed Goodman Contract;
14. a copy of the fully executed Construction Project Management Agreement; (this item will be provided post closing);
15. a copy of the Approved Plans, Specifications and Drawings for the Project; (this item will be provided post closing);
16. a copy of the Approved Construction Schedule; (this item will be provided post closing);

17. a copy of the Approved Final Project Budget (including the Approved Final Construction Budget)
18. an Appraisal of the Project meeting the Appraisal Requirements;
19. a Survey of the Land acceptable to the Director; (acceptance of Purchase Surveys from BBP's acquisition from UPR)
20. certificates or policies of BBP's insurance required by this Agreement and under the Tri-Party Agreement;
21. the (i) Payment, (ii) Performance, and (iii) Maintenance Bonds; (this item will be provided post closing);
22. the Owner's Title Policy, a Proforma Owner's Title Policy, or a Commitment to issue the same, dated as of the Closing Date, in conformity with the requirements of this Agreement and the Insured Closing Letter;
23. evidence that all premiums in respect to such Title Insurance Policies have been paid;
24. Cost Reasonableness Analysis;
25. Resolutions of BBP authorizing the City Contribution or other evidence satisfactory to the Director that BBP has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney ("BBP's Resolutions");
26. legal opinion(s) of counsel for BBP addressing, without limitation the authority of the parties signing this agreement and the closing documents on behalf of BBP and as to the enforceability of such documents in a form acceptable to the City Attorney ("BBP's Counsel's Opinion");
27. the Entity Documentation;
28. such other information and documentation which may be required by the Director to evidence BBP's satisfaction of the conditions required by the City to close the City Contribution.

Items 1-19 and 23 listed above must be in form and substance acceptable to the Director and the City Attorney, in their sole discretion. Items 20-22, 24-26 must be in form and substance acceptable to the Director, in his or her sole discretion. All Items must be in form and substance acceptable to BBP. In addition, as a condition of Closing, the City must have obtained environmental clearance and authorization to release funds as further described in Section Five,

Paragraph 5.4 herein. City has the right to also require the collateral assignment of any contracts with respect to the operation of the Project and the acknowledgement of such assignment by the counterparties thereto.

4.2. Waiver of Conditions; Additional Conditions. The Director may, by written instrument, waive any of the conditions or requirements set forth in this Agreement as a condition precedent to or a requirement of closing of the City's Contribution except as otherwise may be required by the Tri-Party Agreement, provided that waiver of any condition or requirement shall not operate as a waiver of the City's right to enforce any other condition or requirement set forth in this Agreement. In addition, the written consent of the City Attorney shall be required for the waiver of any legal requirement of the Contribution Documents. The Director may impose such additional conditions to, or requirements of, Closing of the City Contribution as are necessary under the circumstances or are otherwise customary in connection with the CBDG-MIT Program or other Federal guidelines or regulations.

4.3. RESERVED

4.4. Closing of City's Contribution At Title Company. The closing of the City's Contribution shall occur at a title company approved by the Director ("Title Company"). In no event will the City's Contribution be closed by a "fee attorney" or escrow officer who is not a full-time employee of the Title Company or Title Insurer who will "close the transaction".

4.5. Closing Deadline. Notwithstanding anything contained in this Agreement to the contrary, BBP shall cause all conditions precedent to Closing to be satisfied thirty (30) days after the Effective Date of this Agreement (the "Outside Closing Date"). Unless Closing occurs on or before the Outside Closing Date (unless the Director, in his sole and absolute discretion, consents to an extension of the Outside Closing Date), the Director may terminate this agreement by written

notice to BBP, in which event the City's obligations hereunder shall automatically cease and be of no further effect.

4.6. Expenses. To the extent the expenses pertain to the Project, BBP shall pay all third party expenses designated as BBP's responsibility as outlined under the responsibilities of the Project Manager in the Tri Party Agreement whether or whether not the City Contribution closes.

SECTION FIVE **CITY AND FEDERAL FUNDING LIMITATIONS**

5.1. Dependency Upon Federal Funding. BBP understands that the availability of the Contribution Proceeds is dependent upon federal and state funding. Unless and until the City receives adequate funds from HUD, the City shall have no obligation to BBP under this Agreement. In the event that the funds received by the City under the CBDG-MIT Program are insufficient to meet the City's prior commitments, the Director may reallocate all or a portion of the funds that are budgeted for this Agreement.

5.2. No Liability for Interruption of Funding. In the event that HUD or other applicable governmental agency (for whatever reason) instructs the City to cease funding of the City Contribution, the City may do so without obligation to BBP and without being liable to BBP for any damages BBP may incur as a result of such cessation in funding under this Agreement, unless the instruction to cease funding is based on the gross negligence or intentional misconduct of the City. The City shall give BBP written notice of such instructions promptly upon receiving such instruction, at which time, any and all of the City's obligations under this Agreement or any of the Contribution Documents shall cease. In furtherance of the foregoing, in the event that the City provides BBP with notice of interruption as contemplated in this Section Five, BBP shall execute any releases or other documents or agreements that the City determines necessary to enable the City to reallocate all or a portion of funds that are available pursuant to this Agreement that

have not been funded to BBP. HUD's instruction to cease funding of the Contribution Agreement does not release the City from any contractual obligations it may have to BBP under the Tri-Party Agreement.

5.3. Original Allocation. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has (in addition to prior appropriations and allocations) appropriated and allocated the Contribution Amount to be used, in part or in whole, to discharge its duties, if any, to provide money under this Agreement.

5.4. Environmental Clearance and Release of Funds. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute the City's commitment of funds or site approval, and that such commitment of funds and site approval may occur only upon satisfactory completion of the Environmental Review, receipt by the City of a written "release of funds" authorization from HUD (Authority to Use Grant Funds, form HUD-7015.16 or successor form) in accordance with 24 C.F.R. Part 58 and Executive Order 11988 and any Environmental Mitigation required therein. The parties further agree that if the City is to provide any funds to BBP in connection with the Project, such disbursement is conditioned on the City's determination to proceed with, modify, or cancel the City's Contribution based on the results of a subsequent environmental review of the Land and the improvements thereon.

5.5. City Council Approval Required. This Agreement is subject to the approval of the City Council.

SECTION SIX **COVENANTS OF BBP**

BBP agrees as follows:

6.1. Use of Proceeds; Order of Funding and Disbursement; Reimbursement of Funds.

6.1.1. Use of Proceeds. BBP shall use the proceeds of the City Contribution and the Other Financing, if any, only for items included in the Approved Final Project Budget. Further, proceeds of the City Contribution shall only be used for reimbursement of hard construction or other allowable costs, , expenses and Work performed that is eligible for payment under the regulations applicable to the City Contribution. No portion of the City Contribution will be used to pay for damages to the extent covered and paid for by any FEMA reimbursement, SBA assistance, or any insurance policy including delayed or future payments anticipated under any insurance policy. BBP covenants that the City Contribution does not constitute a duplication of benefits to BBP within the meaning of Section 312 of the Stafford Act and the requirements of 76 Fed. Reg. 71060 as updated by 84 Fed. Reg. 28836 and 84 Fed. Reg. 28848.

6.1.2. Reimbursement to City. BBP agrees that it will reimburse the City in a sum equivalent to the amount of disallowed expenditures in the event that HUD or other applicable state or federal agency, through audit exception or other action, determines that BBP's expenditure of funds provided to it under this Agreement for the Project was not made in compliance with this Agreement (including without limitation, for the purposes set forth in Section Six, Paragraph 6.1.1 hereof) or Applicable Law. Notwithstanding anything to the contrary, this provision shall survive the end of the term of this Agreement. This section does not release the City from any obligation to that it may have to BBP under the Tri-Party Agreement.

6.2. Construction Matters.

6.2.1. Commencement and Completion of Work; Change Orders. No

Work shall commence on the Project prior to the Closing of the City's Contribution. BBP shall begin the Work within twelve (12) months after the Closing Date, but the City shall have no obligation to fund any portion of the Contribution Proceeds until the issuance of all City authorizations and required permits, including without limitation the Notice to Proceed to be issued by the City in accordance with Section 5.03 of the Tri-Party Agreement. BBP shall complete the Work in accordance with the Approved Construction Schedule but in no case later than twenty four (24) months after the Closing of the City's Contribution, time being of the essence (the "Approved Construction Period"), subject to the two 6 month extensions which may be granted at the Director's sole discretion. Any changes to the Approved Construction Schedule, Approved Construction Contract, Approved Construction Period, or the Approved Plans, Specifications, and Drawings must be submitted and approved in writing by the Director and in accordance with Section 5.02 of the Tri-Party Agreement. Subject to waiver by the Director, BBP shall not be entitled to receive any disbursements of the City Contribution after the expiration of the Approved Construction Period.

6.2.2. Good and Workmanlike Manner; Engagement of Experts. BBP

shall perform or cause to be performed, the Work in a good and workmanlike manner and in accordance with the Approved Plans, Specifications and Drawings, the Approved Construction Schedule (subject to delays caused by Force Majeure not to exceed one hundred eighty (180) days, the Approved Final Construction Budget and the Approved Construction Contract. BBP shall engage competent persons and firms for the purpose of constructing, leasing and managing the Project.

6.2.3. Compliance with Approved Construction Contract and Approved Construction Project Management Agreement. Time is of the essence. BBP shall fully and timely perform BBP's obligations under the Approved Construction Contract and/or the Approved Construction Project Management Agreement.

6.2.4. Written Agreements With Subcontractors. BBP shall cause Contractor to enter into written agreements with each Subcontractor who does work on or delivers materials to the Project. These subcontracts shall be subject to review and approval by the Director; to the extent that the Director requires, subcontractors shall be required to execute assignment and subordination of liens in favor of the City.

6.2.5. Construction Contract Requirements. The Approved Construction Contract shall contain the requirements set forth in Section 5.06 of the Tri-Party Agreement, including but not limited to the requirement that (i) the City is a third party beneficiary of all representations and warranties made by the contractor working on the Project; and (ii) contractor shall look solely to BBP for any payment due under the Approved Construction Contract. Additionally, the Approved Construction Contract and any other written agreements with contractors, subcontractors, or suppliers (collectively, for "Construction Contracts") shall contain the requirements set forth in the Appendices attached hereto under the title "Construction Contract Requirements" (collectively, the "Construction Contract Requirements") and BBP (if BBP acts as the "contractor" of the Work) shall comply with the Construction and Supply Contract Requirements. Each Construction and Supply Contract must comply with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act may be verified through on-site inspections by representatives of the City or at the City's option,

the Approved Inspectors. In addition, each Construction Contract must require compliance with labor standards under CDBG Regulations at 24 C.F.R. § 570.603 and Department of Labor regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

6.2.6. BBP's Insurance Requirements. BBP shall cause its contractors to maintain insurance with waiver of subrogation against the City, its predecessors, successors, assigns, legal representatives, and its former, present and future agents, employees and officers (the foregoing are collectively referred to herein as "City") and shall require its contractors to adhere to all insurance requirements set forth in Article IX of the Tri-Party Agreement. The amounts, types, and other specifications of such insurance are described in the "Insurance Requirements" pages of the Appendices (although the Appendices contain the Insurance Requirements as of the Effective Date of this Agreement, the version of Insurance Requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Contribution shall supersede the requirements set forth in the Appendices during the Approved Construction Period) and in Article IX of the Tri-Party Agreement. Notwithstanding the foregoing, during any period of time when construction is ongoing, BBP shall cause builder's risk insurance to be maintained by Contractor for those improvements at the Project undergoing construction in coverage amounts not less than the total respective amount of City provided funds that will be allocated to Work on those improvements. Should a conflict between the insurance requirements of the Tri-Party Agreement, the Insurance Requirements described in the Appendices or any other provision herein arise, the more restrictive insurance requirements shall control.

6.2.7. Debarment, etc. No contractor or subcontractor shall be employed who is debarred or suspended by the City's Housing and Community Development Department, HUD, or any other federal, state or local governmental agency or program. The Debarment form included in the Appendices (or the Debarment form in effect at the time the form is required to be submitted to the Director) shall be furnished to the Director on or before the execution of this Agreement.

6.3. RESERVED

6.4. RESERVED

6.5. RESERVED

6.6. Inspections; Corrective Action.

6.6.1. During construction, the Work shall be subject to inspection by the City or at the City's option, any Approved Inspectors. Until Project Completion, in connection with every requested draw on the City Contribution, BBP shall provide the Director with an inspection report in form and substance acceptable to Director from the Approved Inspectors meeting the requirements of Section Three, Paragraph 3.9.2.

6.6.2. BBP agrees to promptly make any corrections or modifications to the Work as requested by the Director to cause the Work to comply with the terms of this Agreement and/or the Tri-Party Agreement, the inspection reports from the Approved Inspectors, the Approved Plans, Specifications and Drawings, the Approved Construction Schedule, and any applicable requirements.

6.6.3. The Project shall be deemed to be complete in accordance with the procedures set forth in Section 5.09 of the Tri-Party Agreement.

6.6.4. As required by 2 CFR 200.331, BBP shall permit the City and its auditors and inspectors access to BBP's records and financial statements as necessary for the City to meet its audit requirements under the grant agreement with HUD. With respect to all of the City's inspection rights (1) the City, Approved Inspectors and the City's authorized agents and independent contractors, and others acting on its behalf, shall have access to the Project at reasonable times for purpose of monthly inspections; (2) the City shall not incur any liability to BBP as a result of such inspections; (4) the City does not guarantee the Work of the Contractor or any Subcontractor and the City shall not be liable in the event of the Contractor's or any Subcontractors' default, or for any damages caused by the Contractor, any Subcontractors, or their employees or agents.

6.7. Design Requirements.

The Project design shall be governed by the Standards Committee in accordance with Section 3.05(e)(3) of the Tri-Party Agreement. BBP shall follow all requirements and procedures for design and the approval thereof as set forth in Section 5.02 of the Tri-Party Agreement.

6.8. RESERVED.

6.9. RESERVED.

6.10. RESERVED

6.11. RESERVED

6.12. RESERVED

6.13. RESERVED

6.14. Use of Project. After Project completion, Marron Park Way shall be used as a collector street to provide new vehicular access and will connect Lockwood Drive and Drennan Street. The Marron Park Way improvements will Mitigate and lessen the impact of future flood

disasters and reduce the threat to safety and loss of life to the residents of the community, including the high concentration of LMI Persons residing in the surrounding area.

6.15. Maintenance of Records; Financial and Operating Reports; Monitoring.

6.15.1. BBP shall follow the recordkeeping requirements set forth in 24 CFR 570, this Agreement, the Tri-Party Agreement or as required by the City or the Director, including to establish and maintain such records as may be necessary to facilitate review and audit by City representatives (including without limitation the Director and City Controller) (collectively, the “City Representatives”) or HUD of the City Contribution and any documentation required in connection with the CDBG Regulations under 24 C.F.R. § 570.492 and 24 C.F.R. § 570.493. The City Representatives, and HUD or any of their authorized representatives shall have the right to audit BBP’s books and record and compliance with this Agreement upon reasonable notice to BBP. If such books and records are located outside of Harris County, Texas, BBP agrees to make them available in Harris County, Texas.

6.15.2. BBP shall provide to the Director quarterly balance sheets and operating statements for the Project not later than the 30th day of the month following the calendar quarter to which the statements relate. If the Director or City Controller requires, BBP shall provide such reports at different intervals. Project reporting shall include but is not limited to monthly project reports, MWBSE reports, Section 3 reports, and close out reports.

6.15.3. Using the Monitoring Forms or other forms from time to time established for use by the Director for monitoring purposes of the Contribution Proceeds or to document BBP’s compliance with the requirements of this Agreement, BBP shall provide the Director with all monthly, quarterly or annual compliance reports as the Director requests.

6.15.4. The City shall have ownership of all information, including reports and data, prepared or assembled by BBP for purposes of meeting CBDG-MIT Program requirements and the contractual requirements of this Agreement; provided, however, BBP may provide copies of such information to third parties.

6.15.5. BBP shall, upon the request of the Director, make available to the City at the location of the Project (or at another location in Houston, Texas) all records, reports and other information and data maintained by BBP relating to the Project, and shall cooperate with the City in connection with the City's review of such records and monitoring of the Project.

6.15.6. BBP shall maintain all records and other information relating to the Project for a period of not less than five (5) years following the completion of the Project.

6.16. Notice of Claims or Suits. BBP shall, give the Director prompt written notice of any causes of action, suits, or other proceedings filed or any claims made against the Project or BBP to the extent that it would have a material adverse effect on the Project, and BBP has notice thereof, any other persons involved in the implementation or administration of the transactions contemplated by this Agreement.

6.17. Minority, Women and Small Business Enterprises. For purposes of this Paragraph 6.17, the term "BBP" shall mean and include, collectively, BBP, its Construction Project Manager(s) and its general contractor(s). In order to monitor BBP's good faith efforts to adhere to the City's MWSBE's programs, BBP shall maintain or cause its contractors to maintain records and submit periodic reports of its good faith efforts to the Director in the form and at the times prescribed by the City's designated OBO official and the **APPENDIX 8** requirements.

6.18. Transactions with Affiliates. Except as otherwise provided in this Agreement and/or in any of the other Contribution Documents, during the Term of this Agreement or any of

the Contribution Documents, BBP shall not enter into any transaction in connection with this Agreement with any director, officer, employee, partner, or affiliate of BBP without the prior written approval of the Director. If the Land for the Project was acquired by BBP from any director, officer, employee, partner, or affiliate of BBP, the sales price for the Land may not have been any greater than most recent assessed value for ad valorem tax purposes, or the value set out in an independent appraisal report.

6.19. Taxes and Insurance. BBP shall pay all applicable taxes for the Project before delinquency and all insurance premiums for the Project at least 15 days before the due date to prevent any lapse in coverage. BBP shall provide the Director with written evidence acceptable to the Director that taxes and insurance premiums are paid prior to the date that such taxes and insurance premiums are due.

6.20. HUD Section 3 Requirements. BBP shall comply at all times with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) as set forth and supplemented in the City's Housing and Community Development Department's Section 3 Plan and associated documents. BBP shall report Section 3 compliance in accordance with 24 C.F.R. Part 75 and 83 Fed. Reg. 5844. Section 3 requirements are applicable to BBP if the assistance provided for in this Agreement exceeds \$200,000.00, and to contractors and subcontractors for contracts or subcontracts that exceed \$100,000.00.

6.21. Public Relations and Signage. All news releases and other public relations efforts, including advertising and signage, must be approved in advance by the Director, and must properly refer to the City's Contribution by the City and the City's Housing and Community Development Department.

6.22. Expertise. Upon request by the City, the City shall have the right to approve BBP's intention to retain any person or firm for the purpose of constructing, and managing the Project and BBP shall provide evidence of the expertise and competence of such persons and firms that BBP intends to engage for the purpose of constructing, and managing the Project.

6.23. Compliance with Applicable Law.

6.23.1. BBP shall acquire, construct, maintain and operate the Project, and conduct all activities under this Agreement in accordance with all applicable federal, state, and local laws, rules, regulations and ordinances including, without limitation, the those included in the Appendices and specifically set forth in this Agreement, as they may be from time to time amended (collectively, the "Applicable Law").

6.23.2. BBP will conduct all activities under this Agreement and the Contribution Documents in accordance with Applicable Law.

6.23.3. BBP acknowledges and agrees that it is required to comply with all Applicable Law with respect to lead-based paint (42 U.S.C. Sec. 4831(b)) and asbestos containing materials within the Project.

6.23.4. BBP shall cause the Project and the Work to comply with the requirements of the 2010 ADA Standards (as hereafter defined) under the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Architectural Barriers Act (42 U.S.C. §§ 4151-4157), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) ("Section 504"), and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time, the Texas Architectural Barriers Act, Tex. Gov't. Code Ann. § 469.001 et seq. (1994) and the regulations and guidelines promulgated thereunder, and Chapter 10, subsection 60 of the Texas Administrative Code and the regulations and guidelines

promulgated thereunder (“Chapter 10”) as all of the same may be amended and supplemented from time to time (collectively, “Accessibility Requirements”).

6.23.5. BBP shall comply with CDBG-MIT Regulations at 24 C.F.R. Part 570, the Uniform Relocation Assistance and Real Property Policies Act of 1970 (“URA”), as amended, at 49 C.F.R. § 24, and Section 104(d) of the Housing and Community Development Act of 1974, as amended, at 24 C.F.R. § 42.

6.24. RESERVED

6.25. Compliance with City Insurance Requirements. BBP shall comply with all insurance requirements set out in the Article IX of the Tri-Party Agreement and this Agreement.

6.26. RESERVED

6.27. Consulting and Developer’s Fees. During the Term, without the prior written approval of the Director, no consulting or developer’s fees shall be paid by BBP, directly or indirectly out of the proceeds of the City’s Contribution or out of the revenue of the Project (except as provided in the Approved Final Construction Budget).

6.28. RESERVED

SECTION SEVEN
RESERVED

SECTION EIGHT
RESERVED

SECTION NINE
DISBURSEMENT PROCEDURES

9.1. Disbursement Limitations. The proceeds of the City Contribution shall be disbursed only for eligible and approved costs of the Work, relocation costs or acquisition costs that (i) are included in the Approved Final Project Budget, (ii) have been approved by the Director, (iii) if for Work, are for Work that has been completed and which Work has been approved by the

Director, and (iv) if for materials, are for materials purchased and stored on site and approved by the Director.

9.2. Retainage. Disbursement for the Work or other expenses under the Approved Final Construction Budget shall be subject to a ten percent (10.0%) retainage under Section 53.101, et seq. of the Texas Property Code (as it may be amended from time to time), but notwithstanding the foregoing, in no case shall retainage be released prior to thirty (30) days following completion of the Work as certified by the Engineer or other person acceptable to the City. At the time of the release of the retainage, the Project is or will be as a result of the release of retainage free of all liens relating to the Project, other than liens that are bonded around. At the time of the release of the retainage, BBP shall provide the City with a down-date endorsement (T-3), final lien waivers and/or such other documentation as may be required by the Director.

9.3. Reallocation of Contribution Proceeds. Any Contribution Proceeds that are allocated for the Project but that are not expended for eligible costs under the Approved Final Project Budget pursuant to the terms of this Agreement shall be returned to the City for reallocation.

9.4. Reallocation of Savings and Contingencies. BBP may, with the Director's approval, reallocate savings from one category of the Approved Final Construction Budget or from the contingency category of the Approved Final Construction Budget to another category of the Approved Final Construction Budget for the Project.

9.5. Drawdown Procedure. BBP shall not request a disbursement of the Contribution Proceeds except in accordance with the Approved Construction Schedule and Approved Final Project Budget and in accordance with the provisions of this Paragraph 9.5. When a disbursement of Contribution Proceeds is requested, BBP shall provide to the Director (but in no event more

often than once a month and for an amount of not less than \$5,000) an application for the disbursement (in a form required by the Director) (the "Disbursement Request") together with supporting documentation required by the Director (which shall include but not be limited to invoices and draw requests submitted by Contractor, and monthly construction progress reports on for verification by a third party inspector or a representative of the City) and evidence of required permits. In addition to the other information required by the Director, the first disbursement request after the initial disbursement request shall include a copy of all required permits necessary to commence construction. If the Director objects to an item (or portion thereof) included in any Disbursement Request or if all required information has not been submitted, then the Director shall notify BBP within 10 business days of receipt of the applicable Disbursement Request of the Director's objection and shall thereupon be relieved of any obligation to make a disbursement for that item (or portion thereof) until such time as BBP cures the objection(s) to the satisfaction of the Director. If the Disbursement Request is otherwise complete (as determined by the Director) and provided no Default exists or event that with the passage of time or giving of notice would constitute a Default has occurred and is continuing, the City shall, within 30 calendar days following approval of BBP's request, fund the requested disbursement from the City Contribution less any amounts for items to which the Director has raised an objection and that have not been cured and less any retainage; provided, however, that the City shall not be required to make a disbursement (other than the last disbursement) in an amount less than \$5,000 nor shall the City be required to make more than one disbursement per month. With each draw, BBP shall provide a down-date endorsement (T-3) to the City's Title Policy together with partial lien releases from the Contractor and subcontractors for the Work performed through the date of the draw request.

SECTION TEN
DEFAULT AND REMEDIES

10.1. Default. The Director may declare a default (“Default”) under this Agreement or any one or more of the Contribution Documents upon the occurrence of any one or more of the following circumstances:

10.1.1. Breach of Other Covenants or Conditions. If in any material respect BBP fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition (including any condition prior to or subsequent to the issuance of the City Contribution) under this Agreement, the Tri-Party Agreement or under any other Contribution Document, and such failure continues for thirty (30) days after written notice from the City to BBP, or, if the failure is not susceptible to cure within said 30-day period, such greater period of time (not to exceed sixty (60) days) as is necessary to cure such failure provided BBP commences to cure such failure within said 30-day period and diligently works to cure such failure; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or (ii) any breach or failure of performance of a life safety requirement, such event shall be deemed a Default hereunder without any notice or opportunity to cure;

10.1.2. Breach of Representations or Warranties. If any representation or warranty made by BBP in any of the Contribution Documents, or this Agreement, or the Tri-Party Agreement is false or misleading in any material respect, provided, however, that solely with regard to non-financial misrepresentations or warranties, BBP shall have thirty (30) days after written notice to BBP from the City in which to take such action as may be necessary to cause the matter or thing represented to become true or not misleading; provided, however that in the event that any such cure periods would cause a violation to

occur under Applicable Law, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

10.1.3. Voluntary Actions. If BBP is voluntarily adjudicated bankrupt, seeks, consents or does not contest the appointment of a receiver or trustee for itself or for all or part of its property, makes a general assignment for the benefit of creditors, does not pay its debts as they become due, or files a petition seeking relief under United States Bankruptcy Law.

10.1.4. Involuntary Actions. If a petition is filed against BBP under United States Bankruptcy Law or if a court of competent jurisdiction enters an order appointing a receiver or trustee for BBP for all or any material part of such party's property, and the order or petition is not discharged, dismissed or stayed within a period of ninety (90) days.

10.1.5. Dissolution or Liquidation. If BBP is a partnership, limited liability company, corporation or other legal entity and dissolves, liquidates, or merges with or is consolidated into any other entity without the written approval of the Director.

10.1.6. Cessation of Work. If Work on the Project ceases for ninety (90) or more consecutive days unless such cessation of Work is caused by cessation of funding under the City Contribution.

10.1.7. Liens and Other Encumbrances. If any mechanics', materialman's or other similar lien or encumbrance is filed against the Project, or the fixtures, materials, machinery and equipment to be used in the Project or other collateral that secures the City Contribution, and the same is not discharged (by payment, bonding, which may include payment bond furnished by contractor, or otherwise) within twenty (20) business days following written notice thereof from the City to BBP.

10.1.8. Change of Ownership or Management.

(a) If all or any part of BBP's interest in the Project is transferred, sold or assigned, voluntarily or involuntarily, or there is a change of management of the Project, at any time prior to final completion, such transfer of interest or change of management must first be approved in writing by the Director, which approval may be granted or withheld by the Director. In the case of a transfer of BBP's interest in the Project, the Director's consent, if any, shall not be effective unless or until the purchaser or transferee assumes in writing all obligations and covenants of BBP under the Contribution Documents in a form acceptable to the Director and the City Attorney; or

(b) If there is otherwise a change in control of BBP in violation of this Agreement.

10.1.9. Failure to Complete. If BBP fails to complete the Work in accordance in all material respects with the Approved Plans, Specifications, and Drawings that are approved by the Director within the Approved Construction Period; provided, however, any such failure to complete will not cause BBP to be liable to the City for any damages as a result of such failure to complete.

10.1.10. IRS or other Audit Findings or Exceptions. If the Internal Revenue Service, or other federal or state agency makes an audit finding or exception that determines that BBP's expenditure of any funds provided to it under this Agreement, for the Project was not made in compliance with this Agreement, provided however, that if the audit finding or exception is curable, there shall be no Default unless the audit finding or exception is not cured within thirty (30) days after written notice to BBP of such finding or exception or for such greater period as shall be necessary to cure such finding or exception

so long as BBP commences to cure such finding or exception within thirty (30) days after written notice thereof to BBP and satisfactorily completes such cure.

10.2. RESERVED

10.3. RESERVED

10.4. RESERVED

10.5. City's Remedies. Upon the declaration of a Default by the Director and the failure by BBP to cure same within a time period specified herein (if any), the Director may in his or her sole discretion: (i) terminate this Agreement; (ii) declare that all sums paid by City to date under the City Contribution are immediately due and payable within ten (10) business days; (iii) exercise its rights under the Performance Bond; (iv) cease funding any disbursements under the City Contribution; (v) reserved; and/or (vi) take any other action authorized or available under this Agreement, any of the Contribution Documents or under Applicable Law or in equity. If the event a Default exists, if the Director so chooses this remedy, the outstanding balance of the City Contribution which has been disbursed shall be due and payable within ten (10) business days after demand by the City. Failure of BBP to adequately perform under this Agreement may result in penalties including the possibility of debarment from future City projects. In the event that the City elects to stop funding the City Contribution upon the occurrence and continuance of a Default, BBP shall be obligated to continue and complete the Work at BBP's expense, but BBP shall not be liable to the City for any damages as a result of a failure to complete the Work in a timely manner.

10.6. RESERVED.

SECTION ELEVEN
ALLOCATION OF COST SAVINGS AND RECOVERY
OF DAMAGES FROM CONTRACTOR

In the event that (i) cost savings are achieved in connection with the performance of the Work and not reallocated in accordance with Section Nine, Paragraph 9.4 or (ii) the Contractor or any Subcontractor selected to perform the Work on the Project makes a payment of damages to BBP for delays, defective workmanship or material, or for other items related to Work on the Project and such sums are not used by BBP to correct such defective workmanship or otherwise Mitigate any damages related to Work on the Project resulting from such default by the Contractor or any Subcontractor, BBP shall immediately pay to the City a portion of such cost savings or the sum received as payment of damages, to be applied against the amount of the City Contribution. The amount of such savings or damages to be paid to the City and applied to the City Contribution shall be equal to:

(i) (The total amount of the City Contribution disbursed for Work) X (amount of cost savings realized or damages received)

(The total Work cost)

(ii) less any portion of the cost savings realized or damages received that are used to pay Work costs approved by the Director in accordance with the Final Budget.

SECTION TWELVE
RESERVED

SECTION THIRTEEN
RESERVED

SECTION FOURTEEN
RELEASE AND HOLD HARMLESS

14.1. RELEASE. BBP, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS “BBP”)

HEREBY RELEASE, RELINQUISH AND DISCHARGE THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FROM ANY LIABILITY AS A RESULT OF THE JOINT NEGLIGENCE OF THE CITY (OTHER THAN GROSS NEGLIGENCE) WHICH RESULTS OF ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THIS AGREEMENT.

14.2. HOLD HARMLESS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BBP COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH BBP'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF BBP IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF FIVE (5) YEARS AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, BBP FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND BBP, WHETHER BBP IS

IMMUNE FROM LIABILITY OR NOT. THE FOREGOING INDEMNITY DOES NOT APPLY TO GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY.

NOTWITHSTANDING ANY PROVISION, EXHIBIT, OR ATTACHMENT TO THIS AGREEMENT TO THE CONTRARY, BBP'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS IS ONLY REQUIRED TO THE EXTENT PERMITTED BY APPLICABLE LAW AND, WHEN PERMITTED BY LAW, SHALL BE IMPLEMENTED TO THE FULLEST EXTENT SO PERMITTED.

SECTION FIFTEEN **NOTICE**

All notices, demands, certificates, or other communications hereunder shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered personally, by courier or via overnight delivery, when sent by certified or registered mail, postage prepaid, return receipt requested or by private courier service, in each case, with the proper address as indicated below; provided that any such notices, demands, certificates, or other communications shall be deemed delivered on the date delivered, or if mailed, three (3) days after deposit in the U.S. mail. Where an email address is indicated below, notice shall also be sent to the applicable party both by email as well as one of the other designated forms of notice, but notice by email shall not satisfy the notice delivery requirements of this Agreement. Each party may, by written notice given to the other parties, designate any other address or addresses to which notices, certificates or other communications to them shall be sent as contemplated by this Agreement. Until otherwise so provided by the respective parties, all notices, certificates and communications sent to each of them shall be addressed as follows:

TO THE CITY:

City of Houston
c/o Housing and Community Development Department
2100 Travis, 9th Floor
Houston, TX 77002

Attention: Director

With a copy to: City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Disaster Recovery

With a copy to: Housing and Community Development Department
2100 Travis, 9th Floor
Houston, TX 77002
Attention: Division Manager, Public Facilities

TO BBP: Buffalo Bayou Partnership
1019 Commerce Street, Suite 200
Houston, Texas 77002
Attention: President

With a copy to: Wilson Cribbs + Goren
1233 W Loop South, Suite 800
Houston, Texas 77027
Attention: Cynthia S. Olsen

SECTION SIXTEEN
RESERVED

SECTION SEVENTEEN
TERMINATION

SECTION EIGHTEEN
MISCELLANEOUS

18.1. Relationship of Parties. In performing the obligations under this Agreement, BBP shall act independently solely for its own account, using its own means and methods, and not as an agent, representative or employee of the City. The City has no control or supervisory powers over the manner or method of Subrecipient's performance under this Contract. All personnel BBP uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Subrecipient is solely responsible for the compensation of its personnel, including but not limited to the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

18.2. Parties in Interest. This Agreement shall not bestow any rights upon any third party, but, rather, shall bind and benefit the City and BBP. Neither the U.S. Government, HUD, any subcontractor or supplier, nor any other person or entity, is a party to or a third-party beneficiary of this Agreement.

18.3. Exculpation. The City shall not be liable to BBP or responsible in any manner to any third-party in connection with this Agreement.

18.4. Non-waiver. Failure or forbearance of any party hereto to insist on the strict performance of any obligation under this Agreement or to exercise any rights or remedies accruing upon default shall not be considered a waiver of the right to insist on and to enforce, by any appropriate remedy, strict compliance with any other obligation or to exercise any right or remedy occurring as a result of any future default or failure of performance.

18.5. Modification. Any alterations, additions, or deletions to terms which are required by changes in federal or state laws and regulations shall be automatically incorporated into this Agreement, if applicable, and shall take effect on the effective date of the laws or regulations. Any changes to the loan terms, financing parties, BBP's structure or ownership of the property that requires Director or City Council approval may require a fee of \$25,000.00, to be determined by the Director at the time of the request.

18.6. Severability. In the event that any covenant, condition or provision of this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of the invalid covenant, condition or provision shall in no way affect any other covenant, condition, or provision, provided that the respective rights and obligations of the parties contained in the valid covenants, conditions and provisions of this Agreement are not materially prejudiced.

18.7. Choice of Law. This Agreement shall be performable and enforced in Harris County, Texas, and shall be construed and interpreted in accordance with the laws of the City, the State of Texas and other Applicable Law. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

18.8. Integration. Except as may be otherwise provided in this Agreement, this Agreement, the Appendices, Attachments, and Exhibits, the Tri-Party Agreement or the other Contribution Documents and BBP's response to the City's request for proposal embody the entire Agreement between the City, and BBP, and there are no other effective agreements, representations or warranties between the City and BBP in connection with this Agreement and the other Contribution Documents.

18.9. Assignability. This Agreement shall not be assignable in whole or in part by BBP without the prior written consent of the City which consent shall be in the form of an ordinance passed by City Council.

18.10. Survival. All the terms of this Agreement (including without limitation, the conditions listed in Section Three) shall survive the execution of the Contribution Documents. The parties hereto expressly agree and acknowledge that the terms of this Agreement shall remain in full force and effect until the Expiration Date, notwithstanding whether the City Contribution is repaid in accordance with the Contribution Documents.

18.11. Captions. The use of captions in this Agreement is for convenience only and such captions shall not be used to define or limit the terms of this Agreement.

18.12. Applicable Law. The interpretation and application of this Agreement shall be in accordance with the laws of the City, the State of Texas and other Applicable Law.

18.13. Multiple Counterparts; Effective Date. The parties have executed this Agreement in multiple originals, each having full force and effect, as of the Effective Date.

18.14. Approval by the City or the Director. All references to “reasonable” with respect to the granting or denying of the City’s or the Director’s approval shall be deemed to be “reasonable” if the Director is acting in his or her official capacity in accordance with the City’s Charter and related ordinances.

18.15. Flood Insurance Requirements and Transfer of Property: Flood Insurance. During the term of this Agreement, BBP shall maintain flood insurance as required under the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 (42 U.S.C. § 4001 et seq. and 42 U.S.C. § 5154a), as amended, in accordance with **APPENDIX 2** hereto or as otherwise required by HUD, City ordinance or the Director.. BBP understands and acknowledges that failure to maintain the required flood insurance shall result in ineligibility for any further federal disaster relief of any kind, including but not limited to CDBG disaster recovery assistance..

18.16. Consents and Approvals. Any approval or consent required of the City or the Director under the Contribution Documents is for the purposes of administering the City Contribution for City’s benefit only and does not constitute any type of warranty or guaranty to BBP that the plans, specifications, contracts or items of a similar nature for which approval or consent is sought is free from error, in compliance with Applicable Law or fit for BBP’s purpose. BBP acknowledges that neither the City nor the Director is an engineer or an architect and that BBP is required to rely on its own architect, contractors and engineers in performance and monitoring of the Work hereunder. To the extent that any condition or provision of this Agreement or any other Contribution Document is subject to the approval or consent of the City or the Director

and such consent is not expressly required to be “reasonable”, such consent or approval may be granted or denied within the sole and absolute discretion of the City or the Director, as applicable. In all cases, any approval or consent required by the City or Director shall not be effective unless such consent or approval is in writing.

18.17. Choice of Venue. BBP agrees that proper and exclusive venue for any dispute with respect to this Agreement shall be in the United States District Court for the Southern District of Texas or the state circuit court sitting in Harris County, Texas, and BBP agrees to waive any claim that such court does not have personal jurisdiction over it or is an inconvenient forum.

18.18. Mediation of Contractor Disputes. In the event that a dispute arises between BBP and any contractor or subcontractor or between any contractor and subcontractor with respect to the Work or the Project, the Director shall have the right to require the disputing parties to conduct non-binding mediation to attempt to resolve such disputes to the extent that such mediation would not conflict with the requirements of the Payment, Performance or Maintenance Bonds. Such mediation shall occur within thirty (30) days of notice by the Director that a mediation is required. The Director may declare a default under the City Contribution if any dispute referred to mediation is not resolved within sixty (60) days after submission to non-binding mediation. Each contract and subcontract for the construction of the Project shall contain mandatory non-binding mediation requirements in case of a dispute if mediation is required by the Director as well as the other requirements of **APPENDIX 3** hereto. Nothing contained in this Agreement is intended to require the City to be a party to or participate in any mediation proceedings.

18.19. Force Majeure or COVID-19. In the event that any party shall be delayed in or prevented from the performance of any act required under this Agreement by reason of an event of Force Majeure or Covid-19, the time for performance shall be extended by the number of days

that performance was reasonably delayed by such event provided that such extension shall not be permitted if such extension results in the breach of the Tri-Party Agreement or this Agreement. The parties agree that the COVID-19 pandemic may have an impact on the timing of performance under this Agreement due to closures or reductions in staffing of government offices and private businesses, travel and contact restrictions and other issues beyond the control of the parties. The parties will work together in good faith to extend any such period in accordance with this Section.

18.20. Anti-Boycott Provisions

18.20.1 Anti-Boycott of Israel - BBP certifies that BBP is not currently engaged in and agrees for the duration of the Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

18.20.2 Anti-Boycott of Energy Companies - BBP certifies that BBP is not currently engaged in and agrees for the duration of the Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

18.20.3 Anti-Boycott of Firearm Entities or Firearm Trade Associations- that BBP does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of Texas Government Code.

18.20.1. Zero Tolerance Policy for Human Trafficking and Related Activities. The requirements and terms of the City's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. BBP has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are

set out at the time of this Agreement's effective date. BBP shall immediately notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by BBP or its subcontractors providing services or goods under this Agreement.

18.21.1 Drug-Free Workplace. BBP shall comply with drug-free workplace regulations in compliance with the requirements in Subpart B of 2 CFR 2429, which adopts the governmentwide implementation (2 CFR Part 182) of Sections 5152-5158 of the Drug-Free Workplace Act of 1988 (P.L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

18.21.2 Drug Provisions Detection and Deterrence. BBP represents that it is a subrecipient of a state created Public Housing Authority which pursuant to this agreement will provide services at no cost or reduced cost to the public and is therefore exempt from the requirements of executive order 1-31, as revised and effective March 1, 1995 titled "Mayors Drug Detection and Deterrence Procedures for Owners

18.22. Reversion of Assets. BBP agrees that upon the expiration of this Agreement, BBP shall transfer any funds on hand at the time of expiration and any accounts receivables attributable to the use of CDBG-MIT funds.

18.23. Program Income. BBP agrees to return any Program Income received to the City immediately upon receipt of any Program Income. No Program Income is anticipated at the time of this Agreement.

SECTION NINETEEN **AUTHORITY OF THE DIRECTOR AND MAYOR**

19.1. Authority of the Director to Extend Time of Performance. The Director may extend the time of performance for any of BBP's covenants or conditions set forth in this Agreement, including all exhibits and attachments, or the other Contribution Documents two (2)

times for up to six (6) months each by written notice to BBP. After these two six (6) months extensions, the next extension must be obtained by formal amendment to this Agreement, approved by City Council. After the extension approved by City Council, the Director may extend this Agreement (as amended) or any applicable time period for up to two (2) additional six (6) month periods by written notice to BBP, but any additional extensions thereafter must be approved by City Council.

19.2. Authority of the Director to Execute Certain Amendments. In the event that change orders, the application of delay damages, or other actions permitted by this Agreement, including all exhibits and attachments, cause the amount of the City Contribution to decrease, the Director shall have the authority to execute the appropriate amendments to the Contribution Documents reflecting such decrease.

19.3. Authority of the Mayor to Execute Other Documents. The Mayor shall have the authority, without further action by City Council, to execute all other documents contemplated by this Agreement, including all exhibits and attachments, or necessary or appropriate to effectuate this Agreement, or to protect the City's interests hereunder, including, without limitation, execution of the Intercreditor Agreement and Subordination Agreement. The Mayor shall have the authority, without further action by City Council and upon the recommendation of the Director and City Attorney, to make changes to clarify, but not materially change, any provisions of this Agreement, including all exhibits and attachments, or other documents contemplated by this Agreement.

19.4. Schedules, Attachments, Appendices and Exhibits. References in this Agreement to various Schedules, Attachments, Appendices, or Exhibits shall refer to substantially the same

form as those that are attached to this Agreement or such other form of Schedule, Attachment, Appendix or Exhibit as may be approved by the City Attorney and the other parties hereto.

19.5. Other Amendments; Council Approval Required. Except as otherwise provided in these Sections 19.1, 19.2, 19.3 and 19.4, any amendments to the Contribution Documents must be in writing and authorized by City Council.

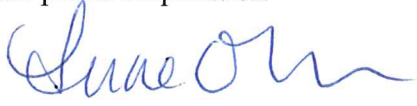
19.6. RESERVED.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties execute this Agreement in multiple counterparts
as of the date of countersignature by the City Controller as set out below.

BBP:

BUFFALO BAYOU PARTNERSHIP,
a Texas non-profit corporation

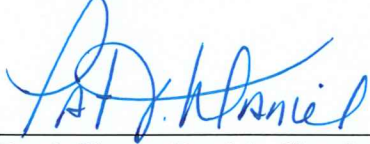
By: _____

Name: Anne Olson

Title: President

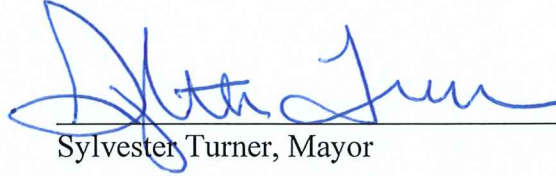
Construction Contribution Agreement Signature Pages

SEAL/ATTEST:



Pat Jefferson Daniel, City Secretary

CITY OF HOUSTON, TEXAS



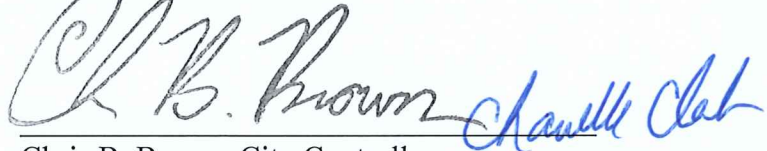
Sylvester Turner, Mayor

APPROVED:



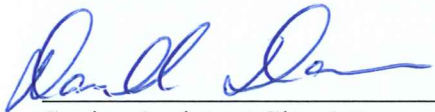
Keith W. Bynam, Director
Housing and Community Development
Department

COUNTERSIGNED:



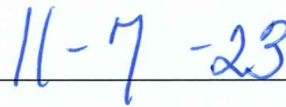
Chris B. Brown, City Controller

APPROVED AS TO FORM:



Senior Assistant City Attorney
LD# 0000001600

COUNTERSIGNATURE DATE:



SCHEDULE A

DEFINITIONS

Accessibility Requirements are defined in Section Six, Paragraph 6.23.4.

Applicable Law is defined in Section Six, Paragraph 6.23.1.

Approved Construction Schedule is defined in Section Three, Paragraph 3.4 hereof.

Approved Construction Contract is defined in Section Three, Paragraph 3.10.1 hereof.

Approved Final Construction Budget is defined in Section Three, Paragraph 3.9.2 of this Agreement.

Approved Final Project Budget is defined in Section Three, Paragraph 3.9.2 of this Agreement.

Approved Plans, Specifications and Drawings is defined in Section Three, Paragraph 3.3 hereof.

Assignment of Construction Contract shall mean that certain Assignment and Subordination of Construction Contract (with Consent) in form attached hereto as an Attachment or otherwise approved by the City Attorney.

C.F.R. shall mean the Code of Federal Regulations.

Certificate of Completion shall mean the certificate that is executed by the Director that states that Project Completion has occurred in accordance with the requirements of this Agreement.

Certificate of Compliance/Occupancy shall mean the certificate that is issued by the City acknowledging that construction has been completed and/or that the structure is ready for occupancy. Note: for rehabilitation Projects, this certificate may be termed a Certificate of Compliance.

City is defined in the preamble to this Agreement.

City Attorney shall mean the City Attorney of the City of Houston or any Assistant City Attorney that the City Attorney may designate to perform the various functions assigned to the City Attorney under this Agreement.

City Controller shall mean the Controller of the City of Houston or any other person the Controller may designate to perform the various functions assigned to the Controller under this Agreement.

City Contribution or **City's Contribution** shall mean the performance-based grant contemplated by this Agreement, in the maximum amount of \$6,922,182.00 made by the City to BBP for the purpose of financing eligible costs to construct the Project.

City Representatives shall have the meaning set forth in Paragraph 6, Section 6.15.1.

Closing or **Closing Date** shall mean the date on which the Contribution Documents are executed and all of the other conditions set forth in Section Four of this Agreement have been satisfied.

Construction Contract shall mean the contract between BBP and the Contractor to perform the Work (in form approved by the Director).

Construction Project Manager shall mean an individual or corporation which must be an architect or an engineer and must be registered and in good standing in his or her profession under the laws of the State of Texas or must have a duly licensed architect or engineer on its staff or such other person or entity approved by the Director. BBP may not serve as the Construction Project Manager. The Construction Project Manager will oversee all phases of design, planning, and submission of the plans, specifications, drawings and other construction documents for the Project. The Construction Project Manager shall also be responsible for overseeing the Work and the performance of the Contractor, including without limitation, conducting on-site inspections appropriate to the state of construction so as to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Document.

Construction Project Management Agreement shall mean the agreement between BBP and the Construction Project Manager, in form acceptable to the Director, outlining the services to be performed by the Construction Project Manager in relation to the Project which Construction Project Management Agreement shall be collaterally assigned to the City pursuant to that certain Assignment of Construction Project Management Agreement in form attached hereto as an Attachment or other form approved by the City Attorney.

Contractor shall mean a contractor as approved by the Director selected by BBP to perform the Work. The Contractor must be registered and in good standing in his or her profession under the laws of the State of Texas and must be acceptable to the Director.

Contribution Documents shall mean all of the documents executed by or on behalf of BBP that govern, secure and/or evidence the City Contribution, including without limitation, this Agreement, the Assignment of Construction Contract, the Assignment of Engineer's Contract, Plans and Specifications, the Environmental Indemnity Agreement, the Assignment of Construction Project Management Agreement.

Contribution Proceeds means amounts disbursed by the City to BBP pursuant the terms of this Agreement.

Cost Reasonableness Analysis shall mean an evaluation of the separate elements (e.g., labor, materials, etc.) that make up the Approved Final Construction Budget to determine if they are allowable, directed related to the Work and ultimately, reasonable.

Default shall mean the occurrence of any event set forth under Section Ten of this Agreement.

Director shall mean the Director of the City's Housing and Community Development Department or any other person that the Director may designate to perform the various functions assigned to the Director under this Agreement.

Effective Date shall mean the Closing Date.

Environmental Mitigation shall mean any environmental mitigation measures and conditions.

Environmental Review shall mean the environmental review conducted pursuant to 24 C.F.R. Part 58.

Expiration Date shall mean 24 months from the Effective Date.

Final Budget shall mean the Approved Final Project Budget and the Approved Final Construction Budget.

Force Majeure. An event of storm, flood, fire, earthquake, hurricane, pandemic or other acts of god, war, terrorism, sabotage, riot, insurrection or other civil disturbance, strikes, lockouts or other labor disturbances, orders of any governmental authority, including without limitation any civil or military authority, declarations of regional, state, or national emergencies or disaster areas, which renders a party temporarily incapable of performance. The term "**Force Majeure**" specifically excludes events related to COVID-19 existing as of the date of Closing.

Governmental Authority shall mean the United States, each state, each county, each city, and each other political subdivision in which all or any portion of the Land is located, and each other political subdivision, agency, or instrumentality exercising jurisdiction over the City, County, and/or the Land.

HUD shall mean the United States Department of Housing and Urban Development.

Income and/or Family Income or any similar term, including without limitation, annual income, adjusted income, monthly income, and monthly adjusted income shall have the meanings assigned to such terms in 24 C.F.R. Part 5.

Land shall mean the real property included within the Project, as described in **Section Two, Paragraph 2.1** of this Agreement.

LMI Persons shall mean low- or moderate-income households whose annual incomes do not exceed eighty (80%) percent of the AMI, as determined by HUD with adjustments for family size.

Mayor shall mean the Mayor of the City of Houston, or any person that the Mayor may designate to perform the various functions assigned to the Mayor under this Agreement.

Mitigate or Mitigation shall mean those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, damage to and loss of property and suffering and hardship, by lessening the impact of future disasters.

Other Financing is defined in Section One, Paragraph M of this Agreement.

Permitted Encumbrances shall be those encumbrances at Exhibit F to this Agreement.

Preliminary Project Budget shall mean the budget for the Project attached as an Exhibit to this Agreement, which has been submitted by BBP and approved by the Director prior to execution of this Agreement.

Project shall mean the Land described in Section Two, Paragraph 2.1 of this Agreement, together with all improvements located or to be located on the Land. Project shall also include all real and personal property interests of BBP and the City located on, incorporated into, or used in connection with the Land and improvements.

Project Completion shall mean the date on which all of the following conditions have been satisfied and which:

- (i) fee title to the Land is in City and BBP has executed the Bill of Sale transferring the improvements on the land to the City;
- (ii) the Work has been completed to the satisfaction of the Director, and BBP has delivered to the City an AIA Affidavit of Completion signed by BBP, Contractor and Architect for the Project in form and substance acceptable to the Director;
- (iii) the City or the Approved Inspectors have conducted a Uniform Physical Conditions Standards inspection and all deficiencies have been remedied.
- (iv) the Project in the Director's judgment complies with CBDG-MIT Program Requirements, the requirements of HUD, including but not limited to those set forth in the written "release of funds" authorization from HUD as further described in Section Five, Paragraph 5.4;
- (v) the final draw request has been made and the draw on the City Contribution has been disbursed for the Project including retainage;
- (vi) delivery to the City evidence satisfactory to the City, reflecting the full payment of, and executed final, unconditional lien waivers from (or the liens have been bonded around) all contractors, subcontractors and others with respect to the construction of the Project;
- (vii) delivery of any applicable approvals issued by all appropriate Governmental Authorities for all portions of the improvements located at the Project;
- (viii) the information necessary for the City to complete the Final Wage Compliance Report has been submitted by BBP and the City has completed the report; and
- (ix) A letter from the Engineer or other qualified professional indicating that the Project is in compliance with all requirements.

All conditions set forth in Section 5.09 of the Tri-Party Agreement have been met

The Project has registered in HUDs DRGR system as complete.

Property shall mean all of the property described in Section One of this Agreement.

State shall mean the State of Texas.

Subcontractor shall mean any person, firm, or corporation who has a direct contract with the Contractor to perform any portion of the Work at the Project.

Tri Party Agreement shall mean that certain Development, Construction, Operations, Maintenance and Concession Agreement by and between the City, County and BBP executed on or about October 18, 2022.

UFAS shall mean the Uniform Federal Accessibility Standards as set forth under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.) and the regulations promulgated in connection therewith.

Work as used in this Agreement shall mean all labor necessary to complete the construction, engineering design and any Environmental Mitigation on the Project required by this Agreement, the Tri-Party Agreement, the Construction Contract and HUD, and all the materials and equipment incorporated or to be incorporated into the Project during the course of such construction, replacement and repair work.

APPENDICES TO CONSTRUCTION CONTRIBUTION AGREEMENT

APPENDIX 1	Applicable Law
APPENDIX 2	Insurance Requirements and Release and Indemnity Provisions for the Approved Construction Contract and the Other Construction and Supply Contracts
APPENDIX 3	Construction Contract Requirements, including bidding procedures
APPENDIX 4	Survey Requirements
APPENDIX 5	Compliance Forms
APPENDIX 6	Lobbying Certificate (to be delivered on or before the execution of this Agreement)
APPENDIX 7	“Debarment Form”-- Certification regarding Debarment, Suspension, and Other Responsibility Matters (to be delivered on or before the execution of this Agreement)
APPENDIX 8	City’s MWSBE, Section 3 and Labor Standards Requirements
APPENDIX 9	CBDG-MIT MAIN NOTICE – 84 FR 45838
APPENDIX 10	RESERVED
APPENDIX 11	RESERVED
APPENDIX 12	RESERVED
APPENDIX 13	RESERVED
APPENDIX 14	Assurance of Compliance with Civil Rights Form
APPENDIX 15	City Workforce Protection Measures

EXHIBITS TO CONSTRUCTION CONTRIBUTION AGREEMENT

EXHIBIT A	Legal Description of the “Land”
EXHIBIT B	Tri-Party Agreement
EXHIBIT C	Preliminary Construction Budget
EXHIBIT C-1	Approved Final Project Budget (to include Approved Final Construction Budget)
EXHIBIT D	Scope of Work
EXHIBIT E	Approved Construction Schedule
EXHIBIT F	CBDG-MIT Infrastructure Quarterly Performance Projection Template

EXHIBIT A
LEGAL DESCRIPTION

ATTACHMENTS TO CONSTRUCTION CONTRIBUTION AGREEMENT

ATTACHMENT A -	Collateral Assignment of Project Construction Management Agreement
ATTACHMENT B	Assignment of Engineer's Contract, Plans and Specifications, and Consent
ATTACHMENT C	Assignments of Construction, Professional Services and Design Contract
ATTACHMENT D	Environmental Indemnity Agreement
ATTACHMENT E	Performance Bond, Maintenance Bond, and Payment Bond
ATTACHMENT F	RESERVED
ATTACHMENT G	Bill of Sale
ATTACHMENT H	Notice to Proceed
ATTACHMENT I	Affidavit of Use of Funds
ATTACHMENT J	Affidavit of No Commissions

Exhibit A
THE PROPERTY - LEGAL DESCRIPTION

Tract One:

Being a tract or parcel containing 0.7491 acre (32,631 square feet) of land situated in the S.M. Williams Survey, Abstract No. 87, Harris County, Texas; being all of that certain called 0.76 acre tract conveyed to the San Antonio and Aransas Pass Railway Company as recorded in Volume 825, Page 641, of the Harris County Deed Records (H.C.D.R.), that lies between the east right-of-way (R.O.W.) line of North Milby Street and the west R.O.W. line of North Drennan Street; said 0.7491 acre tract being more particularly described as follows (Bearings described herein are referenced to the Texas Coordinate System, South Central Zone No. 4204 (NAD83)):

BEGINNING at a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the easterly R.O.W. line of North Milby Street (called 40-feet wide) as delineated on Merkels 2nd Addition recorded in Volume 3, Page 257, of the Minutes of the 55th District Court of Harris County, Texas, and shown on the City of Houston Drawing No. 133A, said iron rod marking the northwesterly corner of that certain called 2.557 acre tract as recorded under Harris County Clerk's File (H.C.C.F.) No(s). 20110372702 and X707983, said iron rod also marking the southwesterly corner of said called 0.76 acre tract and the herein described tract, from which a found 1/2-inch iron rod bears South 64°56'55" East, 0.63 feet;

THENCE North 31°32'00" East, along said easterly R.O.W. Line of North Milby Street and along the westerly line of said called 0.76 acre tract, a distance of 50.03 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the southerly line of that certain called 19.069 acre tract conveyed to the City of Houston for Tony Marron Park as recorded under H.C.C.F. No. K919723, said iron rod marking the intersection of said easterly R.O.W. line of North Milby Street with the northerly R.O.W. line of Foley Street as delineated on said Merkels 2nd Addition and marking the northwesterly corner of said called 0.76 acre tract and the herein described tract;

THENCE South 58°05'33" East, along the southerly line of said called 19.069 acre tract and along the northerly line of said called 0.76 acre tract, a distance of 426.31 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the left;

THENCE Easterly, continuing along the southerly line of said called 19.069 acre tract and along the northerly line of said called 0.76 acre tract, a distance of 224.27 feet along the arc of said curve to the left, having a radius of 1,707.20 feet, a central angle of 07°31'29", and a chord which bears South 61°51'16" East, 224.11 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the westerly R.O.W. line of North Drennan Street (called 40-feet wide as shown on the City of Houston Drawing No. 29591-001 and by the plat of Seven Hundred Twenty Three North Drennan recorded at Film Code No. 567045 Harris County Map Records), the portion of Drennan Street located further to the south of this location having been dedicated as a 45-foot wide Street by the Drennan Street Addition recorded in Volume 520, Page 250, H.C.D.R. and marked by Centerline Reference rods to the south of Crites Street. (no such rods were found), said 5/8-inch iron rod marking the southeast corner of said called 19.069 acre tract and marking the northeasterly corner of said called 0.76 acre tract and the herein described tract;

THENCE South 32°29'09" West, along the westerly R.O.W. line of North Drennan Street and along the easterly line of said called 0.76 acre tract, a distance of 51.45 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northeasterly corner of a called 2.562 acre tract of land as recorded under H.C.C.F. No. 20100100285 and marking the southeasterly corner of said called 0.76 acre tract and the herein described tract;

THENCE Westerly, along the northerly line of said called 2.562 acre tract and along the southerly line of said called 0.76 acre tract, a distance of 227.00 feet along the arc of a curve to the right, having a radius of 1,757.70 feet, a central angle of 07°23'58", and a chord which bears North 61°26'56" West, 226.84 feet to a nail in concrete found marking the northwesterly corner of said called 2.562 acre tract and marking the northeasterly corner of the aforesaid called 2.557 acre tract and marking the end of said curve;

THENCE North 58°05'33" West, along the northerly line of said called 2.562 acre tract and along the southerly line of said called 0.76 acre tract, a distance of 422.65 feet to the POINT OF BEGINNING and containing 0.7491 acre (32,631 square feet) of land.

Tract Two:

Being a tract or parcel containing 0.9289 acre (40,465 square feet) of land situated in the S.M. Williams Survey, Abstract No. 87, Harris County, Texas; being out of and a portion of the remainder of that certain called 2.13 acre tract conveyed to the San Antonio and Aransas Pass Railway Company as recorded in Volume 863, Page 680, of the Harris County Deed Records (H.C.D.R.); and being the remainder of that certain called 0.552 acre tract conveyed to the San Antonio and Aransas Pass Railway Company as recorded in Volume 864, Page 531 and Volume 868, Page 61, H.C.D.R.; said 0.9289 acre tract being more particularly described as follows (Bearings described herein are referenced to the Texas Coordinate System, South Central Zone No. 4204 (NAD83)):

BEGINNING at a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the easterly right-of-way (R.O.W.) line of North Drennan Street (called 40-feet wide as shown on the City of Houston Drawing No. 29591-001 and by the plat of Seven Hundred Twenty Three North Drennan recorded at Film Code No. 567045, Harris County Map Records), the portion of Drennan Street located further to the south of this location having been dedicated as a 45-foot wide Street by the Drennan Street Addition recorded in Volume 520, Page 250, H.C.D.R. and marked by Centerline Reference rods to the south of Crites Street. (no such rods were found), said iron rod being 25-feet northerly of the centerline of the existing tracks and marking the southwesterly corner of that certain called 1.7172 acre tract as recorded under Harris County Clerk's File (H.C.C.F.) No(s). 20070524821 and 20091143611 and marking the northwesterly corner of the remainder of said called 2.13 acre tract and the herein described tract, from which the intersection of said easterly R.O.W. line of Drennan Street with the southerly R.O.W. line of Drennan Street bears North 32°29'09" East, 105.47 feet;

THENCE, South 71°08'38" East, along the southerly line of said called 1.7172 acre tract and the northerly line of the remainder of said called 2.13 acre tract, a distance of 567.77 feet (called 565.86 feet under H.C.C.F. No. 20090043611) to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the

beginning of a curve to the left;

THENCE, Easterly, continuing along the southerly line of said called 1.7172 acre tract and the northerly line of the remainder of said called 2.13 acre tract and the northerly line of the remainder of the aforesaid called 0.552 acre tract, a distance of 239.25 feet along the arc of said curve to the left, having a radius of 701.76 feet, a central angle of $19^{\circ}32'00''$, and a chord which bears South $82^{\circ}33'47''$ East, 238.09 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the southerly line of an 11.396 acres surveyed out of a called 13.3774 acre tract recorded under H.C.C.F. No. S265443 and marking an angle point of the herein described tract, from which a 5/8-inch iron rod with "Prejean" cap found marking the southwesterly corner of said called 13.3774 acre tract bears North $57^{\circ}22'15''$ West, 209.05 feet;

THENCE South $57^{\circ}22'15''$ East, along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract, a distance of 3.39 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the southerly line of said called 13.3774 acre tract;

THENCE South $33^{\circ}08'58''$ West, continuing along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract and along the easterly line of said 0.552 acre tract, a distance of 58.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwesterly corner of said 11.396 acres and said called 13.3774 acre tract and marking the southeasterly corner of the remainder of said called 0.552 acre tract and the herein described tract;

THENCE Westerly, along the southerly line of said called 0.552 acre tract and the southerly line of the remainder of said called 2.13 acre tract, a distance of 236.00 feet along the arc of a curve to the right, having a radius of 741.78 feet, a central angle of $18^{\circ}13'44''$, and a chord which bears North $80^{\circ}50'19''$ West, 235.01 feet to a cut "X" in concrete set marking the end of said curve;

THENCE, North $71^{\circ}08'38''$ West, continuing along the southerly line of the remainder of said called 2.13 acre tract, a distance of 570.45 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the aforesaid easterly R.O.W. line of Drennan Street and marking the southwesterly corner of the herein described tract;

THENCE North $32^{\circ}29'09''$ East, along the easterly R.O.W. line of Drennan Street, a distance of 51.45 feet to the POINT OF BEGINNING and containing 0.9289 acre (40,465 square feet) of land.

Tract Three:

Being a tract or parcel containing 0.8540 acre (37,199 square feet) of land situated in the S.M. Williams Survey, Abstract No. 87, Harris County, Texas; being out of and a portion of that certain 11.396 acres surveyed out of a called 13.3774 acre tract conveyed to CG 233, Inc. by deed recorded under Harris County Clerk's File (H.C.C.F.) No. S265443; being all of that certain called nine-tenths (9/10) of an acre conveyed to The San Antonio and Aransas Pass Railway Company as recorded in Volume 825, Page 642, of the Harris County Deed Records (H.C.D.R.); and being all of that certain called 875 square foot tract conveyed to Texas & New Orleans Railroad Company

as recorded in Volume 979, Page 720, H.C.D.R.; said 0.8540 acre tract being more particularly described as follows (Bearings described herein are referenced to the Texas Coordinate System, South Central Zone No. 4204 (NAD83)):

BEGINNING at a point for the northeasterly corner of Lot 6, Block 1, Navigation Addition, a plat of subdivision recorded in Volume 1163, Page 99, of the Harris County Deed Records (H.C.D.R.) and being the southeasterly corner of said 11.396 acres out of said called 13.3774 acre tract and the herein described tract, from which a 1/2-inch iron rod with "Precision" cap bears North 43°54'40" East, 2.84 feet as called under H.C.C.F. No. 20070433434, being the southeasterly corner of said called 875 square foot Railroad tract and the herein described tract;

THENCE North 50°22'11" West, along the southwesterly line of said called 875 square foot tract, a distance of 66.45 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the southerly line of said called nine-tenths (9/10) acre Railway tract for an angle point of the herein described tract;

THENCE North 72°28'07" West, parallel with and 25-feet northerly of the northerly line of said Navigation Addition and along the southerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 255.04 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the left;

THENCE Westerly, along the southerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 155.74 feet along the arc of a curve to the left, having a radius of 611.62 feet, a central angle of 14°35'23", and a chord which bears North 80°03'01" West, 155.32 feet to a point for an angle point in the southerly line of said 11.396 acres and of said called 13.3774 acre tract and marking the northeasterly corner of the remainder portion of Tract 2, a called 18.57 acre tract recorded under H.C.C.F. No. B592887 (Volume 4919, Page 424 H.C.D.R.), from which a 1/2-inch iron rod with "Precision" cap bears South 23°01'17" East, 0.44 feet;

THENCE Westerly, continuing along the southerly line of said called nine-tenths (9/10) acre Railway tract, along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract and along the northerly line of said remainder portion of Tract 2, a called 18.57 acre tract, a distance of 116.36 feet along the arc of a curve to the left, having a radius of 611.62 feet, a central angle of 10°54'02", and a chord which bears South 87°51'54" West, 116.19 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE South 82°24'53" West, continuing along the southerly line of said called nine-tenths (9/10) acre Railway tract, along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract and along the northerly line of said remainder portion of Tract 2, a called 18.57 acre tract, a distance of 84.36 feet to a 5/8-inch iron rod with "Prejean" cap found marking the beginning of a curve to the right;

THENCE Westerly, continuing along the southerly line of said called nine-tenths (9/10) acre Railway tract, along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract and along the northerly line of said remainder portion of Tract 2, a called 18.57 acre tract, a distance of 92.32 feet along the arc of a curve to the right, having a radius of 741.20 feet, a central angle of $07^{\circ}08'11''$, and a chord which bears South $85^{\circ}58'58''$ West, 92.26 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of the remainder of that certain called 0.552 acre tract a 50-foot wide San Antonio-Aransas Pass Railway as recorded in Volume 864, Page 531 and Volume 868, Page 61, H.C.D.R and marking the southwest corner of the herein described tract;

THENCE North $33^{\circ}08'58''$ East, continuing along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract and along the easterly line of said 0.552 acre tract, a distance of 58.57 feet (called 58.22 feet) to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point;

THENCE North $57^{\circ}22'15''$ West, continuing along the southerly line of said 11.396 acres and the southerly line of said called 13.3774 acre tract, a distance of 3.39 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the curved northerly line of said called nine-tenths (9/10) acre Railway tract and marking the northwest corner of the herein described tract, from which a 5/8-inch iron rod with "Prejean" cap found marking the southwesterly corner of said called 13.3774 acre tract bears North $57^{\circ}22'15''$ West, 209.05 feet;

THENCE Easterly, along the northerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 56.51 feet along the arc of a curve to the left, having a radius of 691.20 feet, a central angle of $04^{\circ}41'03''$, and a chord which bears North $84^{\circ}45'25''$ East, 56.49 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE North $82^{\circ}24'53''$ East, continuing along the northerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 88.51 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE Easterly, continuing along the northerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 290.03 feet along the arc of said curve to the right, having a radius of 661.62 feet, a central angle of $25^{\circ}07'00''$, and a chord which bears South $85^{\circ}01'37''$ East, 287.72 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE South $72^{\circ}28'07''$ East, continuing along the northerly line of said called nine-tenths (9/10) acre Railway tract, a distance of 248.68 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the west corner of a called 0.7869 acre tract as described in deed to CG233, Inc. under Harris County Clerk's File No.

T897334 and marking an angle point in the northerly line of the herein described tract;

THENCE South $37^{\circ}45'37''$ East, along the southwesterly line of said called 0.7869 acre tract, a distance of 90.25 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northeast corner of the herein described tract;

THENCE, South $32^{\circ}22'53''$ West, along the easterly line of said called 13.3774 acre tract, a

distance of 24.43 feet to the POINT OF BEGINNING and containing 0.8540 acre (37,199 square feet) of land.

Tract Four:

Being a tract or parcel containing 0.7864 acre (34,254 square feet) of land situated in the S.M. Williams Survey, Abstract Number 87, Harris County, Texas; being all of that certain called 0.7869 acre tract conveyed to CG 233, Inc. by deed recorded under Harris County Clerk's File (H.C.C.F.) Number T897334, Harris County, Texas; said 0.7864 acre tract being more particularly described as follows (Bearings described herein are referenced to the Texas Coordinate System, South Central Zone No. 4204 (NAD83)):

COMMENCING for reference at a point for the northeasterly corner of Lot 6, Block 1, Navigation Addition, a plat of subdivision recorded in Volume 1163, Page 99 of the Harris County Deed Records (H.C.D.R.) and being the southeasterly corner a called 13.3774 acre tract as recorded under H.C.C.F. Number S265443, from which a 1/2-inch iron rod with "Precision" cap bears North 4354'40" East, 2.84 feet as called under H.C.C.F. Number 20070433434;

THENCE, North 32°22'53" East, along the easterly line of said called 13.3774 acre tract, a distance of 77.59 feet to a 3/4-inch iron pipe with "Brown & Gay" cap found marking the southwesterly corner of a called 10.079 acre tract as recorded under H.C.C.F. Number 20070433434 and marking the northeasterly corner of said called 0.7869 acre tract and marking the northeasterly corner and POINT OF BEGINNING of the herein described tract;

THENCE, South 37°45'37" East, along the northeasterly line of said called 0.7869 acre tract and along the southwesterly line of said called 10.079 acre tract, at a distance of 633.06 feet passing through a 3/4-inch iron pipe with "Brown & Gay" cap found marking the southeasterly corner of said called 10.079 acre tract, continuing along the northeasterly line of said called 0.7869 acre tract, in all, a distance of 639.76 feet to a 5/8-inch iron rod found in the westerly right-of-way (R.O.W.) line of Lockwood Drive (R.O.W. Width Varies) as recorded in Volume 719, Page 456 H.C.D.R. and under H.C.C.F. Numbers G991376 and G366436 and shown on City of Houston Drawing Number 26023, said iron rod marking the northeasterly corner of the herein described tract'

THENCE, South 32°00'16" West, along said westerly R.O.W. line of Lockwood Drive and along the easterly line of said called 0.7869 acre tract, a distance of 53.29 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northeasterly corner of that certain called 3.2893 acre tract (Tract A) as recorded under H.C.C.F. Number L990339 and marking the southeasterly corner of said called 0.7869 acre tract and the herein described tract;

THENCE, North 37°45'37" West, along the northeasterly line of said called 3.2893 acre tract (Tract A) and along the southwesterly line of said called 0.7869 acre tract, a distance of 730.38 feet (called 731.32 feet) to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the northerly line of that certain called nine-tenths (9/10) of an acre conveyed to The San Antonio and Aransas Pass Railway Company as recorded in Volume 825, Page 642 H.C.D.R. and in the northerly line of a 0.9058 acre tract, marking the northwesterly corner of said called 0.7869 acre tract and the herein

described tract;

THENCE, South 72°28'07" East, along the northerly line of that certain called nine-tenths (9/10) of an acre conveyed to The San Antonio and Aransas Pass Railway Company and along the northerly line of said 0.9058 acre tract and along the northerly line of said called 0.7869 acre tract, a distance of 87.81 feet (called 88.59 feet) to the POINT OF BEGINNING and containing 0.7864 acre (34,254 square feet) of land, more or less.



SALE AREA = 146,068 SF

LEGEND:

- SALE AREA
- EASEMENT INTEREST
- YARD LEAD TRACK
- UPPERCO. R/W OUTLINED

CADD FILENAME	0265290.DGN
SCAN FILENAME	021995.TW151A2.TIF 021990.TW152A.TIF 021995.TW151A3.TIF 021990.T101D3E.TIF

NOTE: BEFORE YOU BEGIN ANY WORK, SEE
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

HOUSTON, HARRIS COUNTY, TX
M.P. 0.0 TO 2.42 - NAVIGATION IND. LEAD
MAP SAAP TX VI / S-1A2 & 1A2A
IGN TX V-2 / S-36E
SCALE: 1" = 400'

OFFICE OF REAL ESTATE
DWAHA, NEBRASKA DATE: 3/2/2022
RRM FILE: 02652-90

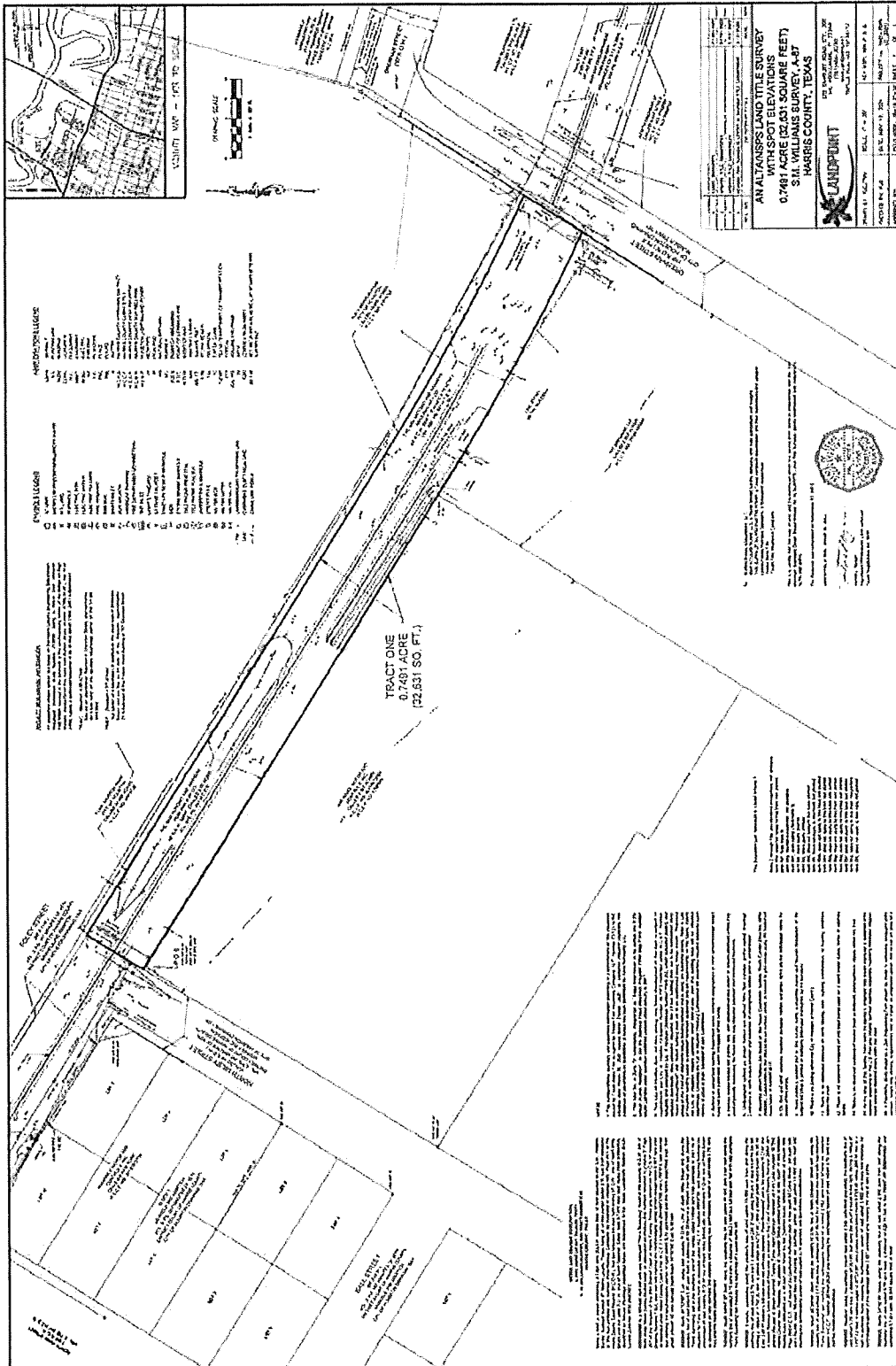


Exhibit A - v

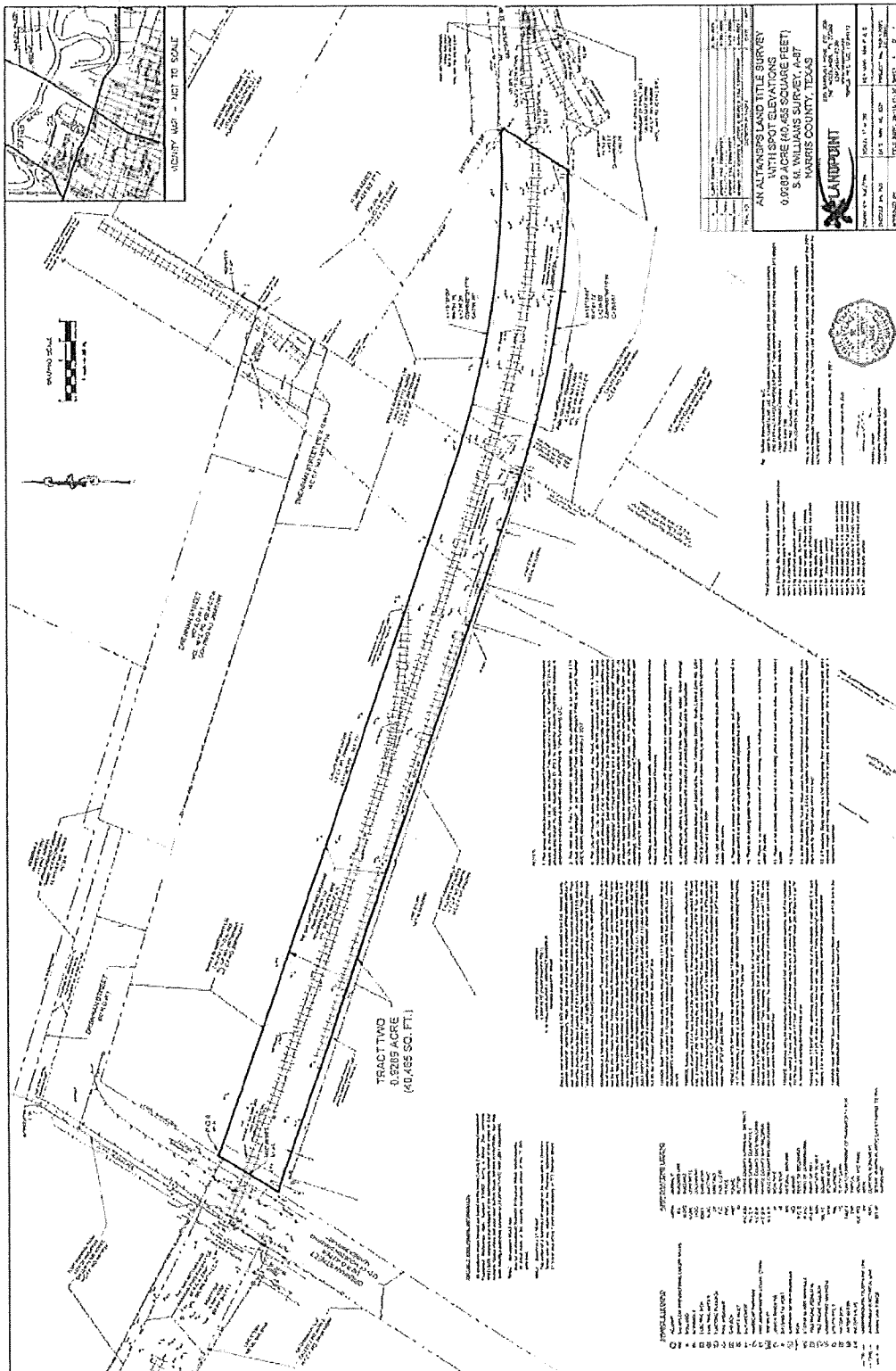


Exhibit A - vi

EXHIBIT B

**DEVELOPMENT, CONSTRUCTION, OPERATIONS, MAINTENANCE AND
CONCESSION AGREEMENT
("Tri-Party Agreement")**

**DEVELOPMENT, CONSTRUCTION, OPERATIONS,
MAINTENANCE AND CONCESSION AGREEMENT**

By and Among

CITY OF HOUSTON, TEXAS,

and

HARRIS COUNTY

and

BUFFALO BAYOU PARTNERSHIP

**RELATING TO BUFFALO BAYOU REDEVELOPMENT
FROM THE UNION PACIFIC RAILROAD BRIDGE IMMEDIATELY EAST OF
U.S. 59/1-69 TO MACK STREET
("BUFFALO BAYOU EAST")**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I RECITALS	1
ARTICLE II DEFINITIONS.....	3
Section 2.01 Certain Terms.....	3
Section 2.02 Recitals.....	10
ARTICLE III PERFORMANCE OF SERVICES	10
Section 3.01 Master Plan Approval	10
Section 3.02 Right of Entry	10
Section 3.03 Development Rights.....	11
Section 3.04 Grant of Naming Rights in the Park	12
Section 3.05 Standards Committee	13
ARTICLE IV CAPITAL IMPROVEMENTS	17
Section 4.01 Implementation of the Ten-Year Plan.....	17
Section 4.02 Projects.....	19
Section 4.03 Park Projects	20
Section 4.04 Allowable Project Costs.....	21
Section 4.05 Ownership	21
Section 4.06 Regulations, Permits and Fees	21
Section 4.07 Turkey Bend Parking	23
ARTICLE V ADDITIONAL REQUIREMENTS FOR PARK PROJECTS AND THE PARK.....	23
Section 5.01 Park	23
Section 5.02 Design Phase: Plans and Specifications.....	23
Section 5.03 Notice to Proceed.....	25
Section 5.04 Construction.....	25
Section 5.05 Regulations, Permits and Fees – Park Projects	26
Section 5.06 Construction Contracts.....	26
Section 5.07 City and County Inspection	27
Section 5.08 Substantial Completion.....	28
Section 5.09 Final Completion	28
Section 5.10 Park Dedication.....	28
Section 5.11 MWBE	29
Section 5.12 Transfer of Title	29
Section 5.13 Project Manager Certification.....	30
Section 5.14 Land Acquisition for Park Projects.....	31
Section 5.15 Reverter of Certain Donated Properties.....	34
Section 5.16 Consideration	34

ARTICLE VI	MAINTENANCE AND OPERATIONS.....	34
Section 6.01	BBP's Maintenance and Operations Obligations	34
Section 6.02	City's Maintenance and Operations Obligations	35
Section 6.03	County's Maintenance and Operations Obligations	37
Section 6.04	Law Enforcement, Park Rules and Regulations	37
Section 6.05	Programs; City Events; Fees in the Park.....	38
Section 6.06	Utilities.....	39
Section 6.07	Concessions.....	40
Section 6.08	Parking.....	41
ARTICLE VII	FUNDING.....	42
Section 7.01	General.....	42
Section 7.02	BBP Funding.....	45
Section 7.03	Elements of BBP Funding	46
Section 7.04	Elements of City Funding	48
Section 7.05	Elements of County Funding	49
Section 7.06	Annual Greenspace Maintenance Funding	50
Section 7.07	Limit of Appropriation by City Council	51
Section 7.08	Limit of Appropriation by Commissioners Court.....	51
Section 7.09	Tax Increment Financing	52
ARTICLE VIII	INDEMNIFICATION.....	52
Section 8.01	Indemnification	52
Section 8.02	INDEMNIFICATION – PROCEDURES.....	53
ARTICLE IX	CASUALTY AND INSURANCE.....	54
Section 9.01	City Obligations	54
Section 9.02	County Obligations	54
Section 9.03	Insurance Requirements for BBP and Contractors	54
Section 9.04	Additional Insurance Requirements.....	55
Section 9.05	WAIVER OF SUBROGATION AND RIGHT OF RECOVERY	57
Section 9.06	Restoration following Casualty.....	57
ARTICLE X	GENERAL PROVISIONS	58
Section 10.01	Term of Agreement.....	58
Section 10.02	Severability	59
Section 10.03	Events of Default	59
Section 10.04	Termination; Assignment	59
Section 10.05	Remedies Cumulative	61
Section 10.06	Representations of BBP	61
Section 10.07	Representations of the City.....	61
Section 10.08	Representations of County	62
Section 10.09	Notice.....	62

Section 10.10	Merger and Amendments.....	63
Section 10.11	Captions	63
Section 10.12	Choice of Law.....	63
Section 10.13	Equal Employment Opportunity	63
Section 10.14	Enforcement.....	63
Section 10.15	Force Majeure	64
Section 10.16	Federally Declared Disaster.....	64
Section 10.17	Pay or Play	64
Section 10.18	Compliance with Equal Opportunity Ordinance.....	65
Section 10.19	Environmental Compliance	65
Section 10.20	BBP Debt	65
Section 10.21	Major Donor as Third-Party Beneficiary	65
Section 10.22	Restrictive Covenants	65
Section 10.23	No Waiver of Immunity	67
Section 10.24	Form 1295	68
Section 10.25	Agreement Controls	68

Exhibits:

EXHIBIT A: Ten-Year Plan, Scope, Budget, Schedule and Cash Flow	A-1
Exhibit A1: Ten-Year Plan Scope	
Exhibit A2: Ten-Year Plan Budget	
Exhibit A3: Ten-Year Plan Schedule	
Exhibit A4: Land Transaction Site Plan	
Exhibit A5: Project Descriptions	
EXHIBIT B: Annual Greenspace Maintenance Target	B-1
EXHIBIT C: Operations and Maintenance Manual.....	C-1
EXHIBIT D: The Park.....	D-1
EXHIBIT E: Parking Map	E-1
EXHIBIT F: Deed.....	F-1
Exhibit F1: Special Warranty Deed with Right of Reverter	
Exhibit F2: Special Warranty Deed	
Exhibit F3: Bill of Sale	
EXHIBIT G: Equal Employment Opportunity	G-1
EXHIBIT H: Memorandum of Restrictive Covenants	H-1
EXHIBIT I: HPW Memo	I-1
EXHIBIT J: Additional City Actions and Additional County Actions	J-1
EXHIBIT K: Permitted Assignees.....	K-1
EXHIBIT L: Form of Notice to Proceed	L-1
EXHIBIT M: Form of Indemnification Language.....	M-1

**DEVELOPMENT, CONSTRUCTION, OPERATIONS,
MAINTENANCE AND CONCESSION AGREEMENT**

RELATING TO BUFFALO BAYOU EAST

THIS DEVELOPMENT, CONSTRUCTION, OPERATIONS, MAINTENANCE AND CONCESSION AGREEMENT (“**Agreement**”) is made in Harris County, Texas, as of the Countersignature Date, by and among **THE BUFFALO BAYOU PARTNERSHIP**, a Texas nonprofit corporation (“**BBP**”), **HARRIS COUNTY** (“**County**”) a body corporate and politic under the laws of the State of Texas, and the **CITY OF HOUSTON, TEXAS** (“**City**”), a home-rule city located in Harris, Montgomery and Fort Bend Counties, Texas, acting by and through its governing body, the City Council (each, individually a “**Party**,” and collectively called the “**Parties**,” as further defined in Section 2.01).

ARTICLE I

RECITALS

A. BBP is a nonprofit corporation created pursuant to Chapter 22, Texas Business Organizations Code, and qualified under Section 501(c)(3) of the Internal Revenue Code, as amended, established for charitable and educational purposes dedicated to transforming and revitalizing Buffalo Bayou, as well as to promote the economic and social well-being of surrounding waterfront neighborhoods, including the creation of parks and trails, acquisition of green space, development of mixed-income affordable housing, and restoration of historic sites.

B. BBP prepared a master plan for “Buffalo Bayou East,” an approximately 4-mile distance along Buffalo Bayou from U.S. 59/I-69 North to Hidalgo Park and extending into the greater East End and Fifth Ward communities (“**Master Plan**”) which includes certain projects described in **Exhibit A5** of this Agreement. Furthermore, BBP has raised approximately \$37,220,585 to-date and has begun implementation of certain components of the Master Plan, including the following:

1. BBP anticipates entering into agreements with the Harris County Flood Control District to co-fund a boat ramp west of North York Street and the “Downtown Gateway Trail” west of Jensen Drive, which agreements will be executed substantially concurrently with this Agreement.
2. Schematic Design of Tony Marron Park, South Bank and the Downtown Gateway trails are under way.
3. Schematic Design of the Navigation Building at Turkey Bend is under way, and BBP has executed a letter of intent with the City to locate the Houston Public Library’s Hispanic History Research Center and Archives (as more specifically defined in Section 2.01, “**HHRC**”) there.
4. At the Master Plan’s Lockwood South Housing Development Site, Phase 1 of the affordable housing development is expected to commence Construction before the end of October 2022, and BBP Affiliates have agreements to manage the development upon

its completion; the new Marron Park Way is in preliminary engineering; and Schematic Design of Lockwood Park's greenspaces is under way.

C. The City has commenced work related to the Master Plan components, including the following:

1. The City has provided to BBP the location, scope of work and operating concept for its planned wet weather facility north of Buffalo Bayou and west of Lockwood Drive, and BBP conditionally supports the wet weather facility so long as sufficient consideration is given to mitigate impacts on the adjacent park amenities and surrounding community.
2. The City has acquired a trail easement and has a preliminary plan to fund, design, build and maintain the East River Trail on the north bank of Buffalo Bayou from Jensen to Hirsch Road to BBP Standards in the immediate future. The City is making a good faith effort to secure appropriate final approvals or actions from City Council, certain local government corporations and management districts, and private property owners to facilitate the execution of the plan.
3. The City housing grant with BBP's Affiliate for Phase I of the Lockwood South Housing Development has been awarded.
4. The City has completed and approved engineering for the Lockwood Drive Capital Improvements Project ("**Lockwood Drive CIP Project**"), and the project is funded. The project includes improved sidewalks and a high-comfort bikeway from Crites Street to Harrisburg Blvd., which includes scope required to coordinate the intersection with the new Marron Park Way. The City is working with BBP and the County to complete the connection of the improved sidewalk and high-comfort bikeway north along Lockwood Drive in the segment beginning at Crites Street (North end of City's Lockwood Drive CIP Project) to the intersection with the new Marron Park Way/Lockwood Trailhead Project.
5. The City has executed the letter of intent regarding the HHRC with BBP.
6. The City will concurrently change the name of "Foley Street" to "Marron Park Way."

D. Additionally, the County has commenced work related to the Master Plan components, including the following:

1. As part of the Master Plan but outside the Ten-Year Plan, the County is overseeing development of a trail connection between Yolanda Black Navarro Buffalo Bend Nature Park and Hidalgo Park with funding from BBP, Texas Parks and Wildlife Department, and the City.
2. Engineering is complete for the Marron Park Way/Lockwood Trailhead Project, a segment of Marron Park Way immediately west of Lockwood Drive, and connector street (Lockwood Park Lane); the related agreement with BBP is approved.
3. The County has begun preliminary engineering on a greenway bike route and trail in the median of Navigation Blvd. east of Lockwood Drive to Mack Street with BBP co-funding the work. The County and BBP also will work on a co-application to Houston-Galveston Area Council for a federal grant for construction.

E. The Parties are entering into this Agreement in order to implement the Ten-Year Plan, which consists of a portion of the Master Plan located within the Project Area, including specifically (i) Park Projects within the Park and (ii) Non-Park Projects within the Project Area, all as defined herein.

F. This Agreement will provide benefits to the residents of the City and County through the implementation of the Ten-Year Plan and throughout the Term of the Agreement.

G. It is the Parties' desire to undertake and complete the Projects in an expeditious manner subject to the availability of adequate funding for the capital costs of such Projects and the costs for related operations and maintenance thereof.

H. The Parties commit to provide certain private and public funds to pay for the acquisition, Construction and installation of the Projects constituting the Ten-Year Plan and funds to support and carry out the operations and maintenance of the Park, including the Excluded Area (as defined herein).

I. The Parties acknowledge that certain private funds will be provided through that certain Funding Agreement between BBP and the Major Donor (as defined herein) (the "**Funding Agreement**"). The Parties understand that the Major Donor shall have certain rights under this Agreement relating to the Ten-Year Plan and the enforcement of certain rights and duties of the Parties.

J. The Parties have identified the Projects to be included in the Ten-Year Plan and wish to proceed with the planning, design and Construction of such Projects in accordance with the Ten-Year Plan and this Agreement.

For and in consideration of the mutual promises, covenants, benefits and obligations described herein, **THE PARTIES HEREBY AGREE** to the terms and conditions of this Agreement, as follows:

ARTICLE II

DEFINITIONS

Section 2.01 Certain Terms. As used in this Agreement, in addition to those terms defined in the introductory paragraph and recitals of Article I of this Agreement, the following words and phrases shall have the meanings set out below unless a different meaning clearly appears from the context in which the term appears:

"**Affiliate(s)**" means, with respect to Park Projects, an organization affiliated with BBP and under BBP's common control and, with respect to Non-Park Projects, an organization affiliated with BBP, including joint venture partners.

"**Agreement Year**" means a particular twelve (12) month period of the Term. Agreement Years are numbered One through Thirty, and if Renewal Terms are approved, through Sixty or Ninety. Agreement Year One begins on the Effective Date, which is the commencement of the Term, and each succeeding Agreement Year begins on the same date in the following year.

“Applicable Laws” means all federal, state and local laws, regulations, ordinances, codes, governmental orders, rules or administrative procedures and judicial orders, as may change from time to time, applicable to the entity, activity or matter indicated in the context such term is used.

“BBP Endowment Fund” means a separate, segregated endowment or similar trust fund created under Section 7.01 and held in the depository of BBP for the benefit of the Park to provide long-term sustainable revenues to fund Greenspace Maintenance and Operations of the Park.

“BBP Greenspace Maintenance Contribution” has the meaning set forth in Section 7.03(c).

“BBP Lockwood South Budget” has the meaning set forth in Section 7.02(e).

“BBP Non-Park Project” means a Non-Park Project for which BBP is the Project Manager that may in some cases also be partially funded by the City, County or federal grant funds.

“BBP Non-Park Project Fund” means a separate, segregated fund created under Section 7.01 held in the depository of BBP exclusively to fund the Construction of BBP Non-Park Projects, including those funded jointly with other Parties, as further defined in Section 7.01(a)(1).

“BBP Park Project” means a Park Project for which BBP is the Project Manager that may in some cases also be partially funded by the City, County or federal grant funds.

“BBP Park Project Fund” means a separate, segregated fund created under Section 7.01 held in the depository of BBP exclusively to fund the Construction of BBP Park Projects, including those funded jointly with other Parties.

“BBP Standards” means the minimum conditions of a trail or pathway that is intended for use by both pedestrians and cyclists and its associated width, height, and site furnishings (BBP trail lights, benches, trash receptacles, guardrails, signage, and other standard amenities) as described in more detail in **Exhibit C**, the Operations and Maintenance Manual. Such improvements shall be designed, constructed, maintained, and operated in accordance with the Operations and Maintenance Manual to create a user experience consistent with that of Buffalo Bayou Park.

“Buffalo Bayou Park” means the publicly dedicated park adjacent to Buffalo Bayou and generally located between Memorial Drive and Glenwood Cemetery on the north, Sabine Street on the east, Allen Parkway on the south, and Shepherd Drive on the west, as described in the Construction, Operating and Maintenance Agreement dated January 20, 2012, as amended.

“Capital Expenditure Project” means work specifically related to a Project of the Ten-Year Plan following final completion of any such Project that requires a capital expenditure to repair or replace such Project or elements thereof based on the standard set forth in the Capital Expenditure Requirements.

“Capital Expenditure Requirement(s)” means (i) all maintenance costs that are not ordinary or routine maintenance as defined in the Maintenance and Operations Standard, and/or (ii) major capital repairs or capital replacements as necessary of a feature or facility, which, as reasonably determined in accordance with generally accepted accounting principles for local governments as

prescribed by the Governmental Accounting Standards Board, is (a) no longer economically feasible to continue to repair or (b) near the end of, or has exceeded, its useful life.

“Capital Expenditure Reserve Fund” means a separate, segregated fund in the depository of BBP, for BBP’s use during the Term solely to fund its Capital Expenditure Requirement and the deductible portion of BBP’s property insurance claims under this Agreement for the benefit of the Park.

“Casualty” means circumstances which are beyond the reasonable control of a Party and resulting in property damage including, but not limited to, acts of God, fire, storm, flood, severe natural disturbance, adverse weather conditions (such as, by way of illustration and not limitation, severe rain, wind, below freezing temperatures, or tornadoes).

“City Code” means the City’s Code of Ordinances, as amended from time to time.

“City Funds” means any and all funds appropriated by the City to fund Projects and Greenspace Maintenance and Operations pursuant to this Agreement.

“County Funds” means any and all funds appropriated by the County to fund Projects and Greenspace Maintenance and Operations pursuant to this Agreement.

“Concession(s)” means any commercial/retail or other activity equivalent to those contemplated in Section 32-8 of the City Code, conducted in the Park except for the Excluded Area and within public rights-of-way, including but not limited to park food service establishments covered by Article IX, Chapter 32 of the City Code (including mobile food units, food trucks, concession stands and other units), canoe, kayak or bike rental operations, or other concessions for the sale or exhibition of beverages, novelty items, art work and retail goods. Concessions within licensed Special Events and permitted Special Use venues, during such licensed Special Events and Special Uses, are excluded.

“Concession Revenue” means the revenue, fees, charges or other compensation paid to BBP by the vendor, licensee or contractor of any Concession.

“Construct” means, with reference to a Party, the undertaking, causing or entering into agreement undertaking or causing the construction, reconstruction, restoration, installation and related management of a Project under the Ten-Year Plan. The term Construct includes all other forms of the word, including but not limited to Construction, Constructs and Constructed.

“Countersignature Date” means the date of the final countersignature of this Agreement by a Party.

“Definitive Agreements” means this Agreement, the Operations and Maintenance Manual, the Restrictive Covenants and any other agreement described in the Recitals and/or entered into by the Parties for the purposes of or related to the Project.

“Department” means the City of Houston Parks and Recreation Department.

“Director(s)” means the following:

- a. When referencing City-owned property, the Director of the Department and any person named by the Mayor to serve that function, or his or her designee.
- b. When referencing County-owned property, the assigned position (e.g., the Director of Development and Infrastructure or Park Superintendent) of the Harris County Precinct within which the majority of the square footage of such property lies.
- c. When referencing BBP, the President.

“East River Trail” means the trail being shown as “D,” “E,” “F,” and “G” in **Exhibit A1**.

“Effective Date” means the Countersignature Date.

“Escalator Index” means the 12-month Employment Cost Index (“ECI”) for total compensation for private industry workers for the Houston-The Woodlands, 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 BBP’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 amounts subject to adjustment for such fiscal year shall serve as the base for future calculations of the Escalator Index for purposes of Article VII of this Agreement. When language herein provides that an amount shall be adjusted or increased annually “by application of the Escalator Index” such amount shall be increased each calendar year as of June 1 by the same percentage increase as that of the Escalator Index from the prior calendar year.

“Excluded Area” means the area identified as such in **Exhibit D** and more generally described as the East River Trail from Jensen Drive to Japhet Creek on the north bank and within the City’s easement rights, the temporary trail along the north and east boundaries of the East River golf course, and Gregg Street Bridge.

“Final Completion” shall mean, with respect to a Park Project, the satisfaction of the conditions set forth in Section 5.09, or, with respect to a Non-Park Project, the meaning ascribed thereto in the Construction contract entered into by and between the applicable Project Manager and a general contractor for the Construction of such Non-Park Project.

“Force Majeure” has the meaning set forth in Section 10.15.

“Funding Agreement” has the meaning set forth in the Recitals to this Agreement.

“Greenspace Maintenance” means all necessary and required activities, services and actions required to maintain the Park at the Maintenance and Operations Standard after substantial completion of a Park Project, excluding Capital Expenditure Projects. Greenspace Maintenance specifically includes routine maintenance of any bridges inside the Park for which BBP is responsible, and administration and related costs of BBP for such routine maintenance.

“Greenspace Maintenance Annual Target” has the meaning set forth in Section 7.06.

“Greenspace Maintenance Fund” means a separate, segregated fund created under Section 7.01 and held in the depository of BBP for the benefit of the Park during the Term and to be used exclusively to fund Greenspace Maintenance and Operations.

“HHRC” means HPL’s Hispanic History Research Center and Archives, including an HPL Express.

“HPL” means the City’s Houston Public Library System.

“Lockwood South Housing Development” or **“Lockwood South”** means a phased affordable housing development and related green space developed by BBP and/or its Affiliates on a 13-acre site bounded by Buffalo Bayou, Lockwood Drive, BBP property to be dedicated as Marron Park Way, and private property at 727 N. Drennan Street. BBP may change the name of the property, its phased affordable housing developments and green space to another name without affecting its obligations and rights under the Agreement.

“Maintenance and Operations Standard” means the standard of maintenance and operations for the Park as contemplated in the Operations and Maintenance Manual and as may be amended in accordance with Section 3.05(e)(6) by its Standards Committee, which in the Excluded Area only applies to areas where the City has easement rights and the Gregg Street Bridge.

“Major Change” means a proposed change to a Project that would cause (i) the elimination of a feature separately illustrated in the Ten-Year Plan, (ii) the material modification of such a feature’s component parts, or (iii) an impact on the Ten-Year Plan Schedule or the Ten-Year Plan Budget.

“Major Donor” means the Kinder Foundation, a Texas non-profit corporation, the entity that is party to the Funding Agreement with BBP to fund, in part, the Ten-Year Plan.

“Master Plan” means the Master Plan referred to in the Recitals hereof and further described in **Exhibit A5**.

“METRO” means the Metropolitan Transit Authority of Harris County.

“MWBE” has the meaning set forth in Section 5.11.

“Non-Park Project” means the housing, cultural, and other facilities located in the Project Area as specifically enumerated in Section 4.02 hereof and **Exhibit A** hereto, as amended from time to time pursuant to this Agreement.

“Notice to Proceed” means a written communication from the Director in the form of **Exhibit L** that authorizes one or more of the Parties to begin performance of work on a Project on property owned by the Party the Director represents, containing a declaration of approval and acceptance of the plans for the Project.

“Operations” means BBP’s obligations to manage the Park in accordance with the Maintenance and Operations Standards, including monitoring the Park and notifying the police of suspicious

activity, vandalism and other crimes; general administration; financial accounting; and communications with the general public and Programs. "Operations" does not include Greenspace Maintenance.

"Operations and Maintenance Manual" means the Operations and Maintenance Manual attached hereto as **Exhibit C**, as amended from time to time pursuant to Section 3.05(e)(6). The Operations and Maintenance Manual shall include the Maintenance and Operations Standard and other matters, including an operating plan for planned or existing Concessions and Programs, reservation systems, venue rental rates, user fees, employee/volunteer performance standards, and any other matter the Standards Committee deems desirable or necessary to (i) preserving the integrity of the Park, and (ii) transforming it into a premier park system.

"Parking Revenue" has the meaning set forth in Section 6.08(a).

"Park" means the park complex as depicted in **Exhibit D**.

"Park Event" means a use, activity or event defined as a Park Event in Section 32-60 of the City Code, or any similar event under County regulations.

"Park Fee Fund" means a separate, segregated fund in the depository of BBP, for BBP's use during the Term in connection with visitor services, Programs and related administrative matters for the benefit of the Park.

"Park Projects" means the projects located in the Park related to the greenspace, trails and bridges, Lockwood Trailhead and sidewalk areas of Marron Park Way from Lockwood Drive to North York Street, as specifically enumerated in Section 4.03 hereof and **Exhibit A** hereto, as amended from time to time pursuant to this Agreement.

"Party" and **"Parties"** means individually or collectively, BBP and its Affiliates, the County, the City, and any of their assignees under this Agreement.

"Permitted Assignees" means those certain entities listed in **Exhibit K** or their successors.

"Policy" has the meaning set forth in Section 3.04.

"Program" has the meaning set forth in Section 6.05(a).

"Project(s)" means all or any of the improvements designated in the Ten-Year Plan located within the Project Area, including Park Projects and Non-Park Projects. Each individual "Project" is defined and described in further detail as set forth in Sections 4.02 and 4.03, as amended from time to time pursuant to this Agreement.

"Project Area" means the approximately 2-mile distance along Buffalo Bayou from the Union Pacific Railroad Bridge immediately east of U.S. 59/I-69 North to Mack Street on the south bank and from U.S. 59/I-69 North to Japhet Creek on the north bank.

"Project Manager" means the Party identified for a Project described in Sections 4.02(d) and 4.03(b) unless determined otherwise by the Standards Committee.

“Resilience Fund” means a separate, segregated fund created under Section 7.01 held in the depository of BBP for the benefit of the Park, and to be used exclusively to fund any restoration, remediation and recovery needs of the Park following a Casualty event.

“Restrictive Covenants” means collectively, (i) Ten-Year Plan, (ii) the Maintenance and Operations Standard, and (iii) all other terms, provisions, covenants, conditions and restrictions set forth in this Agreement and the Operations and Maintenance Manual, all of which are covenants running with those areas of the land constituting the Park as described in Section 10.22, excluding the Excluded Area and public rights-of-way, and binding upon the Parties and their respective assignees, Affiliates, employees, agents, contractors and subcontractors during the Term.

“Schematic Design” means the phase of a project that follows the conceptual design phase, culminating in the preparation of preliminary drawings and other documents including (i) site plan, sections and elevations, (ii) material, and alternative material selections, (iii) the proposed schedule, and (iv) the proposed budget in conformance with Standards Committee requirements intended to provide sufficient information for its approval.

“Secured Funds” means funds available to a Party for use pursuant to this Agreement, including without limitation funds in hand or that have been appropriated, allocated, budgeted, or otherwise designated for the applicable use(s), including, as applicable, through the agreements described in **Exhibit J** hereto, as well as funds to be obtained through a line of credit or the issuance of debt obligations that have been sold to an underwriter or other purchaser or from binding written pledges, provided that the issuance or future designation of such funds not currently in hand can be reasonably documented in accordance with budgeting procedures typical of city or county government, if applicable.

“Sims Metal Property” means an approximately 2.8-acre easement or fee simple ownership along Japhet Creek to be acquired from Sims Metal for the Japhet Creek Park Phase 2 Project.

“Special Event(s)” means any special event as defined in Section 25-2 of the City Code that are held in the Park.

“Special Use(s)” means permitted additional, extra, special and/or exclusive privileges to use an area of the Park for an event or activity that is not advertised or open to the public.

“Standards Committee” has the meaning set forth in Section 3.05(a).

“Ten-Year Plan” means the Ten-Year Plan referred to in the Recitals hereof consisting of the comprehensive plans, funding, schedule and scope reflected in the Ten-Year Plan Budget, the Ten-Year Plan Schedule and the Ten-Year Plan Scope as further described in **Exhibit A**, as may be revised or amended pursuant to this Agreement.

“Ten-Year Plan Budget” means the budget for the Ten-Year Plan and the capital cash flow summary, as shown in **Exhibit A2**.

“Ten-Year Plan Schedule” means the schedule for the Ten-Year Plan, as shown in **Exhibit A3**.

“**Ten-Year Plan Scope**” means the portion of the Master Plan shown in **Exhibit A1** and described in more detail in **Exhibit A5** to be substantially accomplished by the Parties within ten (10) years of the Effective Date.

“**Term**” means the initial term or any renewal term of this Agreement as contemplated in Section 10.01.

“**Turkey Bend Easement**” means the easement dedicated to, and accepted by the City, from BBP for recreational or public park use of the common areas at Turkey Bend (Item V, **Exhibit A1**).

Section 2.02 Recitals. The Parties hereby acknowledge and agree that the recitals to this Agreement are true and correct and such recitals are hereby approved and incorporated into this Agreement. Notwithstanding anything to the contrary set forth herein, the Recitals to this Agreement cannot be waived or modified without the express written agreement of all Parties hereto and the Major Donor.

ARTICLE III

PERFORMANCE OF SERVICES

Section 3.01 Master Plan Approval. The City and County hereby approve the components of the Master Plan for Buffalo Bayou East that are to be implemented as part of the Ten-Year Plan and as described in more detail in **Exhibit A5**; provided, however, that such approval is meant only as approval of master plan level designs for each Project and not as a waiver of permitting or generally applicable City Code provisions or County rules or regulations or final approval of any resulting designs, plants, elevations, or other documents prepared for each Project in the Ten-Year Plan in accordance with this Agreement.

Section 3.02 Right of Entry.

(a) The City hereby grants to BBP, and its respective employees, engineers, architects and consultants, contractors, and other representatives, a right of entry into those portions of the Park owned by the City (whether owned as of the Effective Date or hereafter) to perform all of their respective rights and obligations under this Agreement and all other activities as are reasonably necessary or appropriate in connection with the performance of their respective rights and obligations permitted or required hereunder and all other lawful acts incidental thereto. In connection with any work to be performed by their contractors under this Agreement, prior to entry on the Park by said contractors, BBP shall comply, and contractually require its respective contractors to comply, with the insurance and indemnification requirements set forth in this Agreement, and, for said contractors having a contract of \$50,000 or more, BBP shall provide 3 business days' prior notice to the Director before commencing work. Similarly, the City, for public works or repairs to facilities in the Park for which the cost is \$50,000 or more (whether self-performed or undertaken by third-party contractors), shall provide 3 business days' prior notice to BBP before commencing work, provided, however, that in the event of an emergency, the City may commence such repairs immediately, but shall provide BBP with notice as soon as reasonably practicable.

(b) The County hereby grants to BPP, and its respective employees, engineers, architects and consultants, contractors, and other representatives, right-of-entry to the Sims Metal Property (upon acquisition of the Sims Metal Property by the County) and property it owns in Tony Marron Park (whether owned as of the Effective Date or hereafter) to perform all of their respective rights and obligations under this Agreement and all other activities as are reasonably necessary or appropriate in connection with the performance of their respective rights and obligations permitted or required hereunder and all other lawful acts incidental thereto. In connection with any work to be performed by their contractors under this Agreement, prior to entry on the Park by said contractors, BBP shall comply, and contractually require its respective contractors to comply, with the insurance and indemnification requirements set forth in this Agreement, and for said contractors having a contract of \$50,000 or more, BBP shall provide 3 business days' prior notice to the Director. Similarly, the County, for public works or repairs to facilities in the Park for which the cost is \$50,000 or more (whether self-performed or undertaken by third-party contractors), shall provide 3 business days' prior notice to BBP before commencing the work, provided, however, that in the event of an emergency, the County may commence such repairs immediately, but shall provide BBP with notice as soon as reasonably practicable.

(c) The Parties agree, understand and confirm that, unless expressly provided herein, this Agreement grants no real property interest in the Park and adjacent property whatsoever and is intended merely as a convenience for the Parties to expedite work on the Park Projects and in the Park.

Section 3.03 Development Rights.

(a) Except for the Excluded Area, the City hereby grants BBP the exclusive right during implementation of the Projects and as contemplated in the Ten-Year Plan to develop (a) BBP Park Projects, including in public rights-of-way, on any City property where such Project is designated to be located pursuant to the Ten-Year Plan and (b) to conduct other work on City property within the Park pursuant to Section 3.05(e)(4), subject to all the terms and conditions of this Agreement. However, BBP shall use commercially reasonable efforts to avoid negative impact to any public roadways, utilities, or related infrastructure during the implementation of any Project.

(b) The County hereby grants BBP the exclusive right during implementation of and as contemplated in the Ten-Year Plan to develop (a) BBP Park Projects on any County property where such Project is designated to be located pursuant to the Ten-Year Plan and (b) other work on County property within the Park pursuant to Section 3.05(e)(4), subject to all the terms and conditions of this Agreement.

(c) Excluding rights-of-way and the Excluded Area, no person or entity shall have the right to develop capital improvements in the Park during the Term except as contemplated in the Ten-Year Plan and/or as approved by the Standards Committee as set forth in Section 3.05 of this Agreement, and subject to all the terms and conditions of this Agreement. However, the City and County shall retain the right to repair existing public underground utility infrastructure in the Park as reasonably necessary, provided, however, that the City or County, as applicable, shall provide 3 business days' prior notice to BBP before commencing any such work that does not require preparation of engineering plans, and shall be obligated to restore the impacted areas to the same or better condition in which such areas existed prior to the commencement of such work. If existing

public underground utility infrastructure must be replaced or repairs require engineering plans for such work, Section 3.03(d) shall apply.

(d) Excluding rights-of-way and the Excluded Area, the City and County shall have the right to replace or install new underground public utilities that, upon project completion, will not visibly or negatively impact a Park Project or related enhancements, improvements, or facilities in the Park, provided, however, that prior to contracting for design, engineering, and/or installation of such utilities, the City or County, as applicable, will: 1) notify the Standards Committee of the proposed utilities during the project planning phase; 2) use commercially reasonable efforts to incorporate Standards Committee recommendations during the project planning phase; 3) consider Standards Committee requests for alternative routes and options to address any concerns raised by the Standards Committee; 4) use mitigation strategies to reduce temporary, and eliminate permanent, impacts of construction on Park Programs and usage, including the emittance of foul odors; and 5) in any event be obligated to restore the impacted area(s) (adjacent, above-ground, and the area's underground Park infrastructure) to the same or better condition in which such areas existed prior to the commencement of such work. Additionally, whether or not Standards Committee approval is required, the City or County shall be required to ensure that its contractors and subcontractors performing work comply with the requirements of Section 9.03(b) and Section 9.04(1), below, if applicable. For the avoidance of doubt, the City shall have the right to install new underground public utilities in the Excluded Area and within public rights-of-way without Standards Committee approval.

(e) BBP, with the participation of the Standards Committee and the Directors concerning the Park, shall conduct periodic review of the Ten-Year Plan in accordance with Section 3.05(e). BBP shall report to the Standards Committee and the Director its findings and make recommendations as to additional projects not currently in the Ten-Year Plan to meet the Park's needs, as well as plans for supplemental Greenspace Maintenance, Operations and Programs. BBP shall identify in the report the available sources of additional non-City and non-County funds to pay for such projects and costs of such Greenspace Maintenance, Operations and Programs. BBP, with the participation of the Standards Committee and the Director, shall share the proposed project with the public to receive public comments on any substantial changes, as determined by the Standards Committee, to be proposed as formal amendments to the Ten-Year Plan. Implementation of such projects shall comply with Articles IV and V.

(f) BBP may pursue implementation of other projects and parks included in the Master Plan outside of the Park but not in the Ten-Year Plan; however, for the avoidance of doubt, none of the rights and responsibilities of the Parties established by this Agreement will be applicable to such other projects and parks outside of the Park and outside of the Ten-Year Plan, unless agreed to by the Parties in separate agreement(s).

Section 3.04 Grant of Naming Rights in the Park. BBP has prepared a "Names and Sponsorship Policy" (the "**Policy**") governing the naming of any feature or Project on City or County property in the Park, excluding rights-of-ways. For avoidance of doubt, the Parties hereby agree, consent to and approve the Policy attached hereto as incorporated in the Operations and Maintenance Manual attached hereto as **Exhibit C**. The approval by the City of the Policy shall serve as approval of an exception to the Department's Parks and Recreation Departmental Policy Number 1010.4 for Naming Park Property without the need for any further approvals that might

otherwise be required under such policy. Based on such approval, the City and County hereby approve the following criteria set forth in subsections (a)-(c) below and contained in the Policy. The Policy may be amended or modified from time to time with the approval of the Standards Committee, provided that the criteria set forth in subsections (a)-(c) below shall be maintained in the Policy, as amended. Notwithstanding the above, the naming of any feature or Project on County property requires the approval of Commissioners Court, other than those listed below and approved hereby.

(a) Names shall become effective only upon the substantial completion of Construction.

(b) BBP shall not rename any area or feature at the Park that was previously named by (i) the City, except with the prior approval of the Director or (ii) the County, except with the prior approval of Commissioners Court, nor shall BBP have the right to name rights-of-way.

(c) In no event shall any area or feature of the Park be named for a commercially available product unless the name of the product is also the name of the corporation selling the product.

(d) Names shall not be lewd, offensive, vulgar, obscene, discriminatory, derogatory, or suggestive of criminal activity.

(e) For City or County-owned land, names shall not be political in nature, nor be the name of a local, state, or national political figure (living or dead) without (i) prior approval of the City as it pertains to City-owned land or (ii) prior approval of Commissioners Court as it pertains to County-owned land.

(f) Upon completion of these Park Projects, the name for the Park (including County-owned property) is approved by all Parties to be Tony Marron Park, the name for the main trail throughout the Park, including along the south bank, north bank and Japhet Creek, is approved by all Parties to be the Kinder Trail, and the name for the Japhet Creek Bridge is approved by all Parties to be the Kinder Bridge.

Notwithstanding the foregoing, all Parties agree and understand that the Policy and any amendments to the Policy in the future, may not authorize any action that would rename any area of the Park or that would contravene or conflict with the original deeds by which the property constituting the Park was conveyed to the City or County, if applicable.

Section 3.05 Standards Committee.

(a) Composition. The Parties shall each appoint respective representatives and such representatives shall jointly select a neutral chair pursuant to subsection (b) below to form a 9 member Standards Committee with certain rights and responsibilities regarding the Park (the "**Standards Committee**"). The Standards Committee shall consist of the Chair (to be selected in accordance with subsection (b), below), 2 representatives of BBP, 2 representatives of the County, 2 representatives of Major Donor, and 2 representatives of the City (each a "**Member**"). The Parties agree to use good faith efforts to ensure that at least 2 of the 9 Members at any time shall be a resident or business operator within the communities abutting one or more of the Park

Projects, specifically within the 77003, 77011, 77020, 77023, and 77026 zip codes of the greater East End and Fifth Ward communities, or an appointed official of an organization active within the communities who is affiliated with the City or County, as may be applicable. Future Members representing the City will be appointed by the Mayor, with the initial Members for the City being designated by the Mayor by the end of December 2022. The initial Members are set forth in Exhibit IX of the Operations and Maintenance Manual in **Exhibit C**.

(b) Chair. Following the appointment of Members by the Parties and Major Donor in subsection (a) above, the appointed Members shall by a vote of at least 6 Members select an initial chairperson (the “**Chair**”) for a term of 3 years and a maximum of 3 terms, and shall use best efforts to select a Chair within 60 days of the Effective Date. Successive selections of a Chair may be accomplished by a vote of 6 or more Members. The Chair shall be an individual who, among other qualifications, (i) has knowledge about the efficient and cost-effective operation and maintenance of green space, (ii) is an independent, neutral party with respect to all Parties, the Major Donor, and the other Members (*i.e.*, one who has no contractual, financial, fiduciary or other business or family relationship to any of such entities or individuals), (iii) either through business or their personal life is familiar to and involved with the abutting communities and (iv) has the capacity to build consensus among the Parties. For the avoidance of doubt, selection of a Chair by the Members in accordance with this section shall create a conclusive determination that such individual meets the qualifications set forth herein. Notwithstanding the foregoing, the Standards Committee may meet and conduct business as provided herein prior to the date a Chair is appointed.

(c) Work Protocols.

(1) Decisions. All decisions of the Standards Committee shall be decided by a majority vote, and a written record of all decisions shall be kept by BBP and shared with the Parties upon request;

(2) Each Party and the Major Donor shall appoint a staff member who will collaborate on a team with the other Parties’ and the Major Donor’s staff to advise the Chair about items to be included on each meeting’s agenda in a manner that allows for timely decisions by the Standards Committee; and

(3) BBP will retain and file all submittals to the Standards Committee and make this information available upon request of the Standards Committee and the Parties.

(d) Committee Functions. The Standards Committee shall meet virtually or at a location in the City at least quarterly each calendar year until implementation of the Ten-Year Plan is completed, and at least semi-annually thereafter. The Standards Committee shall be maintained through the Term (as same may be renewed or extended pursuant to Section 10.01), with each Party appointing or re-appointing its representatives at least 30 days prior to the end of the then-current 3-year term. Members shall serve a maximum of 3, 3-year terms (whether the same be consecutive or otherwise). A Party may replace its appointed Member at any time by appointing a new Member for the remainder of the predecessor’s term. Members will hold such position for the entirety of the term or until such Member’s successor is appointed and qualified, or until such Member’s earlier death, resignation, or removal.

(e) Powers. Subject to the rights of Major Donor as provided herein, the Standards Committee shall have the following powers with regard to the Ten-Year Plan, Projects and Greenspace Maintenance and Operations of the Park:

(1) In accordance with Section 4.01(b), approve any proposed Major Change to the Ten-Year Plan, though approval of the Project Manager(s) and the Party or Parties funding such Projects affected by the Major Change is also required. If the proposed Major Change applies to the Park, the proposing Party and the Standards Committee may share the proposed Major Change with the general public for public comment before final approval by the Standards Committee and the Director with oversight of the affected property. A Project Manager may permit a variance of its Project's budget up or down by up to 5% (cumulatively for all changes) without prior approval of the Standards Committee; however, no such variance may change the Project's funding from another Party without that Party's approval and shall not reduce any Party's total funding commitment for all Projects.

(2) Review all Projects on a quarterly basis during implementation of the Ten-Year Plan to confirm that the Projects are proceeding in accordance with the Ten-Year Plan Scope, Ten-Year Plan Budget and Ten-Year Plan Schedule as may be modified by the Standards Committee in accordance with Section 4.01(b). The Standards Committee may appoint a different Project Manager for a Project if such appointment is supported by the Party originally designated to be Project Manager in Sections 4.02 and 4.03.

(3) Approve the design of Park Projects, consistent with the Ten-Year Plan and **Exhibit A5**, as further described in Section 5.02. Approval shall include a reasonable determination that the Greenspace Maintenance and Operations of such Park Projects are feasible in light of the availability of ongoing funding thereof.

(4) Except for the Excluded Area, public rights-of-way, and Capital Expenditure Projects, approve a Party's proposed additional enhancements, improvements and facilities involving capital expenditures in the Park but that are not included in the Ten-Year Plan. The Standards Committee shall also determine the ultimate owner of the completed work. No future enhancements, improvements or other facilities within the Park, with exception to the Excluded Area and public rights-of-way, that are not contemplated in the Ten-Year Plan shall be approved unless the Standards Committee reasonably determines that the proposed enhancements, improvements or other facilities (a) are compatible with the Ten-Year Plan, (b) have no material adverse impact on Programs, Park Projects or facilities existing in the Park as of the date of such proposal, and (c) that adequate and secure funding sources for the future operation and maintenance thereof shall be provided. For avoidance of doubt, any Party that either owns the affected property or will be funding or performing the construction of such project also must approve any enhancements, improvements or other facilities not currently in the Ten-Year Plan.

(5) Receive and comment on capital reports and review and approve capital budgets, both for the Ten-Year Plan and in accordance with Section 7.01(c).

(6) Approve any changes to the Operations and Maintenance Manual, including oversight of the Maintenance and Operations Standard as set forth therein, which Maintenance and Operations Standard shall be no less rigorous than (i) the Maintenance Standard for Buffalo Bayou Park as defined in its Construction, Operating and Maintenance Agreement dated January 20, 2012, and amended by its Standards Committee and (ii) the Maintenance and Operations Standard in effect as of the Countersignature Date; provided, however, that the Maintenance and Operations Standard may be temporarily waived in accordance with Section 7.02(c) hereof.

(7) Review and comment on Park operating budgets, prior to final adoption by BBP, and the reports described in Section 7.01(c). On or before October 15 of each Agreement Year, BBP shall present to the Standards Committee, for its review and comment thereon, with approval also required as described in Section 7.02(c), its proposed budgets for the following fiscal year to show revenues and expenses related to its obligations under this Agreement. The BBP Park Budget, as defined in Section 7.02, shall include (i) a report on the current maintenance conditions of the Park, (ii) any recommended changes to the Operations and Maintenance Manual, (iii) an updated schedule of BBP's Capital Expenditure Requirements, and (iv) funding for repairs and restoration following a Casualty that occurred during the prior fiscal year. The City or its assignee, on or before April 15 of each Agreement Year, has the same obligations concerning its easements located in the Excluded Area. If the City or the County is unable to fund a Capital Expenditure Project or repairs and restoration for a Project for which the County is otherwise responsible following a Casualty event within the fiscal year when the need arises, it will annually submit a budget report to the Standards Committee until such work is funded and completed. In addition, BBP shall submit its operating budgets for non-Park areas of Lockwood South and Turkey Bend for review but not comment nor approval.

(8) Conduct an annual reconciliation process regarding projected and actual Greenspace Maintenance and Operations funding and expenses (each, an "**Annual Reconciliation**") in accordance with Section 7.06. Each Annual Reconciliation shall take place after BBP's annual audit has been delivered pursuant to Section 7.01(c).

(9) Approve any changes, amendments or revisions to the Park Fee Schedule, as set forth in **Exhibit C**, as contemplated and prescribed by Section 6.05 hereof.

(10) Approve the rates and charges of all metered parking in the Park, including Lockwood Trailhead, except for parking within the Excluded Area and public rights-of-way, as contemplated and prescribed by Section 6.08 hereof.

(11) Approve adjustments to the park rules outlined in the Operations and Maintenance Manual as administered by BBP within the Park limited to providing a consistent user experience within and between City, County and BBP-owned areas of the Park, such adjustments to be documented as amendments to the Operations and Maintenance Manual in accordance with Section 6.04 hereof.

(12) Approve changes to the dollar values of insurance coverage requirements in Article IX hereof as may be needed from time to time based on the insurance coverage

reasonably required for nonprofits and contractors in similar circumstances. Such changes require the affirmative vote of at least 6 Members, including at least 1 representative appointed by the Major Donor.

(13) Resolve disagreements among the Parties, or between the majority of the Standards Committee and the Director(s) as to any matter arising under the Ten-Year Plan or this Agreement. Should the Standards Committee be unable to resolve such disagreement and the disagreement, if not resolved, could materially adversely affect the Ten-Year Plan, the Ten-Year Plan Schedule, or the Ten-Year Plan Budget, such disagreement shall be presented to the City's Mayor, Harris County Commissioner for the Precinct within which a majority of square footage of the Project lies, and the Major Donor, or the designated representative of each, for resolution, and their unanimous decision, subject to governing body ratification if necessary, shall be binding and final if reached within 60 days of the presentation of such disagreement. If such unanimous decision is not reached within 60 days, this provision shall not apply. Notwithstanding anything herein to the contrary, if the unanimous decision reached by the City's Mayor, Commissioner, and Major Donor will or is likely to result in an extension of the Term, an acceleration in the schedule for any City or County Project, or an increase in the financial or other obligations of the City or the County, the City may, within its sole discretion, require such decision to be ratified by the City Council, and the County may, within its sole discretion, require such decision to be ratified or approved by Commissioner's Court, in each case, prior to being deemed effective.

(14) Perform all functions assigned to the Standards Committee in this Agreement.

(15) Approve new underground public utilities that the City or County desire to install pursuant to Section 3.03(d) and that have visible or permanent impacts on the Park, such approval not to be unreasonably withheld.

(16) Review the Memoranda of Restrictive Covenants in accordance with Section 10.22(e).

ARTICLE IV CAPITAL IMPROVEMENTS

Section 4.01 Implementation of the Ten-Year Plan.

(a) Ten-Year Plan. The Parties understand and agree to take all necessary steps for implementation and Construction of the Ten-Year Plan. The Parties agree to fund, Construct and complete the Ten-Year Plan substantially in accordance with the Ten-Year Plan Scope and the Ten-Year Plan Schedule, and to fund the Ten-Year Plan at the amounts and on the approximate dates specified in the Ten-Year Plan Budget, all set forth in **Exhibit A**, subject to any Major Changes for Park Projects. The scope of Projects specifically identified in **Exhibit A2** as to be partially or wholly funded with federal grant funds are subject to receipt of those grant funds; however this exception does not apply to Projects listed in **Exhibit A2** that are not currently shown to be wholly or partially funded by a federal grant as of the execution date of the Agreement.

Pursuant to Section 10.10 hereof, the Parties hereby agree and acknowledge that, without an amendment to this Agreement, (i) Projects listed in Section 4.02 and Section 4.03 cannot be added to or deleted from the Ten-Year Plan nor can additional Projects be added except in accordance with Section 4.01(b), (ii) the overall commitment of each Party to fund the Ten-Year Plan described in Article VII cannot be modified without the approval of that Party and the Standards Committee and under no circumstances can any overall commitment be reduced by more than 5%, and (iii) the overall schedule for completion of all Projects in the Ten-Year plan cannot be extended later than September 30, 2032.

(b) Ten-Year Plan Schedule, Budget and Scope. To ensure the implementation of the Ten-Year Plan, the Ten-Year Plan Schedule shall incorporate certain milestone dates describing the latest dates by which certain work associated with the Ten-Year Plan must begin or be complete as further set forth in **Exhibit A3**. As long as all Projects are completed by September 30, 2032, the dates listed in **Exhibit A3** may be modified (which shall constitute a Major Change in the case of Park Projects) subject to approval of the Standards Committee and the applicable Project Manager(s) as it deems commercially reasonable and appropriate based on causes beyond the control of the Project Manager that is subject to such milestone dates. Additionally, if a Party encounters a delay due to changes in the Applicable Laws (other than changes in Applicable Laws caused by the Party so delayed) or caused by another entity needed to complete an obligation under this Agreement, and said delay jeopardizes the Party's ability to meet a milestone date, as soon as the delay can reasonably be predicted, the delayed Party will provide notice to the Standards Committee identifying the delay, reason(s) for the delay, and the projected completion date. Such delay shall not be considered a Major Change and the Standards Committee shall adjust the milestone dates accordingly. The Ten-Year Plan Budget listed in **Exhibit A2** may be varied or adjusted to reallocate funding among Projects (which shall constitute a Major Change in the case of Park Projects) subject to approval of the applicable Project Manager(s), the Party(ies) funding the applicable Projects, and the Standards Committee if the variance(s) are greater than 5% cumulatively. The Ten-Year Plan Scope listed in **Exhibits A1** and **A5** may be modified (which shall constitute a Major Change in the case of Park Projects) subject to approval of the Standards Committee, Project Manager(s), and Project funder(s), if (i) costs incurred in implementing the Ten-Year Plan have increased to the degree that the scope of work cannot be fully implemented within the Ten-Year Budget, (ii) BBP secures private funding that is restricted to a Project that Major Donor is to fund or partially fund, in which case, additional Projects funded by Major Donor may be added to the Ten-Year Plan, or (iii) a Party proposes to add additional scope without negatively impacting its other obligations hereunder, generally by securing additional funds. Added work in the Park shall be subject to Standards Committee approval, pursuant to Section 3.05(e)(4), and the requirements of Article V. Notwithstanding anything stated to the contrary in any Definitive Agreement, any Major Changes related to Park Projects shall be subject to approval by Major Donor during implementation of the Ten-Year Plan, which shall be provided promptly and not unreasonably withheld.

(c) Project Manager. The Party with primary responsibility for a Project as provided in Section 4.02 and Section 4.03 shall be named Project Manager for that Project unless the Standards Committee approves another Project Manager in accordance with Section 3.05(e)(2). If a Party and non-party person or entity are both providing the funding for a project not listed in **Exhibit A2**, the Party shall be the Project Manager. If one or more non-party persons or entities

are providing the funding for a project not listed in **Exhibit A2**, the Standards Committee shall designate the Project Manager.

During the Term and as deemed appropriate by the Standards Committee until substantial completion of a Project, the Project Manager shall review with the Standards Committee its plans and designs for the Project it is obligated to implement in accordance with the Ten-Year Plan. Its reviews shall include information about the Project's general conformance to the Ten-Year Plan Scope, Ten-Year Plan Schedule and Ten-Year Plan Budget.

(d) CIP Information. Upon request of the City or County, BBP shall promptly provide information necessary for inclusion in the City's or County's capital improvement plan.

Section 4.02 Projects. The Projects are listed in this section and in Section 4.03, and are further defined and described in **Exhibit A**. Each Project's development must conform to the Ten-Year Plan Scope, Ten-Year Plan Schedule and Ten-Year Plan Budget described in **Exhibit A**; however, the following specific conditions also apply:

(a) BBP shall include art in Tony Marron Park and make best effort to include art in other Projects according to Project context;

(b) The City will be a good faith partner in the design review and approval of the Navigation Greenway, meaning the City shall review and approve the implementation of the Navigation Greenway Project efficiently, and pursuant to the City's standard operating procedures and policies, and shall not unreasonably delay or withhold approval; BBP and County funding for the Navigation Greenway Project will require grant funding that has not yet been secured and is also subject to change;

(c) The County shall make a good faith effort to provide a minimum of 20 off-street automobile parking spaces within 500 feet of the HHRC property line (8 spaces for HPL staff and 12 spaces for HPL visitors); and

(d) The Project Managers for Non-Park Projects are as follows:

Non-Park Project	Project Manager
Lockwood South Phase 1 Housing	BBP
Lockwood Drive CIP Project	City
Navigation Greenway	County
Navigation Building at Turkey Bend	BBP
HHRC at Turkey Bend	City
All Other Turkey Bend Projects	BBP

(e) The Parties acknowledge the City is coordinating with METRO on the design, timeline, and construction of the University Corridor Bus Rapid Transit Segment 4 project ("METRO BRT Project") and it is currently unclear how METRO's project may impact the City's Lockwood Drive CIP Project. The Parties agree it is contrary to sound public policy for the City to spend substantial public funds on a major roadway project only to have METRO use public funds a few years later to remove the City's roadway improvements and fund a new major

construction project. As such, the Parties agree to be flexible with the City's Lockwood Drive CIP Project requirements under this Agreement and the City, in turn, agrees to:

(1) construct the full Lockwood Drive CIP Project as currently designed and budgeted;

(2) in place of the full Lockwood Drive CIP Project, implement a "temporary" Non-Park Project along Lockwood Drive that includes:

(i) the installation of, and trail connected to, the intersection for Lockwood Drive to connect to Marron Park Way as designed by the County-led Marron Park Way/Lockwood Trailhead Project (Item S, **Exhibit A1**). This Project element will be scheduled to be completed in conjunction Marron Park Way/Lockwood Trailhead Project; and

(ii) the modification of the existing roadway of Lockwood Drive to install a high-comfort bicycle facility connecting the Marron Park Way/Lockwood Trailhead Project to Harrisburg Boulevard. The City agrees to make good faith efforts to complete this Project element in conjunction with the Navigation Greenway; however, the project schedule may be delayed to coordinate with the schedule of the METRO BRT Project; or

(3) construct the Lockwood Drive CIP Project with a design and budget modified to incorporate the METRO BRT Project.

(f) Regarding Section 4.02(e), the City will advise the Standards Committee of the option(s) the City chooses regarding the Lockwood Drive CIP Project, however, such decision shall not be considered a Major Change and, thus, the Standards Committee will not have the power to approve or disapprove the City's decision. The Parties understand the City's decision regarding the Lockwood Drive CIP Project will potentially affect the Ten-Year Plan Budget, however, any such change shall not be considered a Major Change, and the City will use best efforts to complete the "temporary" option, as outlined in 4.02(e)(2), should it be necessary, by the time the Navigation Greenway Project is completed by the County in order to facilitate the safe, multi-modal connection to the Park.

Section 4.03 Park Projects. The Park Projects are listed in this section and are further defined and described in **Exhibit A**. Each Park Project is governed by the requirements for Projects except as specifically described in this Agreement and are also subject to the additional requirements of Article V. Each Park Project's development must conform to the Ten-Year Plan Scope, Ten-Year Plan Schedule and Ten-Year Plan Budget described in **Exhibit A**, subject to approval by the Standards Committee and Major Donor as described in Article V; however, the following specific conditions also apply:

(a) Upon redevelopment of the temporary "East River 9" golf course, the City will ensure Segment F of the East River Trail, as depicted on **Exhibit A1**, is constructed within the City's trail easement, thereby completing the trail along the Buffalo Bayou between Jensen Drive and Hirsch Road and automatically removing Segment E of **Exhibit A1** from the scope of this Agreement.

- (b) The Project Managers for Park Projects are as follows:

Park Project	Project Manager
Downtown Gateway Trails	BBP
South Bank Trail	BBP
Gregg Street Bridge	City
East River Trails (Segments D-G)	City
Tony Marron Park Phase 1	BBP
Tony Marron Park Phase 2	BBP
Japhet Creek Phase 1	BBP
Japhet Creek Phase 2	BBP
Japhet Creek Bridge	BBP
Lockwood Park Greenfinger	BBP
Lockwood Park Greenspace	BBP
Marron Park Way at Tony Marron Park	BBP
Marron Park Way at Lockwood South	BBP
Marron Park Way/Lockwood Trailhead	County

Section 4.04 Allowable Project Costs. Subject to restrictions included in separate agreements for certain Projects, all of a Project Manager's activities required to implement a Project are allowable, including internal and external project management, and may be funded by a Project's budget as described in **Exhibit A2**; however, the Project Manager must comply with the Ten-Year Plan in all cases, subject to the provisions of Section 4.01(b). Projects listed in **Exhibit A2** include a contingency to fund unexpected costs. If multiple Parties are funding a Project, after Final Completion, the Project Manager shall return any unused funds on a pro rata basis to each Party for reallocation to such Party's funding commitments to all Projects within the Ten-Year Plan, such reallocation subject to Section 4.01(b) and in accordance with Section 3.05(e)(1).

Section 4.05 Ownership. Unless otherwise set forth in this Agreement, ownership of the improvements will be retained by the applicable Project Manager, its Affiliate, or its assignee. However, (a) ownership of Park Projects is governed by Section 5.12, (b) County shall transfer title to improvements associated with the Navigation Greenway Project and "Marron Park Way/Lockwood Trailhead" Park Project to City, following the procedures described in Section 5.12, (c) BBP and County shall transfer ownership of Marron Park Way and the future street identified as Lockwood Park Lane, as both are shown on **Exhibit A5**, to City, and (d) City may assign ownership of certain assets as described in Section 10.04.

Section 4.06 Regulations, Permits and Fees. The Project Manager or its designated contractors shall obtain all necessary City permits, building permits, licenses and approvals required by all governmental authorities including the City and County, for any Construction or Project and be responsible for the payment of all permit fees required for the Projects. Furthermore:

- (a) The City and County shall use their best efforts not to unreasonably delay the issuance of such permits, licenses and approvals as are required by the City or County, as applicable.

(b) The Construction plans and specifications for each Project must comply with all Applicable Laws having jurisdiction over the applicable Project, subject to the following:

(1) Including the Navigation Building at Turkey Bend Project for which BBP is the Project Manager, to the extent that any Project undertaken pursuant to this Agreement is determined to be an “Eligible Project,” as that term is defined in City Ordinance No. 2006-731, passed and adopted on June 28, 2006 (as same may be amended from time to time, the “**Civic Art Program Ordinance**”), the City acknowledges that (i) pursuant to Section 2(e) of Exhibit A of the Civic Art Program Ordinance, any portion of an Eligible Project that is financed with grants or contributions from private persons is subject to the Civic Art Program Ordinance unless expressly provided otherwise in the conditions of the granting or contributing person; and (ii) the Funding Agreement expressly provides that Civic Art Program purposes are not allowed as an authorized purpose of the BBP’s contributions to Eligible Projects inclusive of Major Donor’s contributions. For the purposes of this Agreement, it is hereby determined that this Agreement expressly provides that Civic Art Program purposes are not allowed as an authorized purpose of BBP’s contributions to Eligible Projects. Notwithstanding the foregoing, the Parties will use good faith efforts to collaborate on civic art projects to be completed as part of the Ten-Year Plan, but the Major Donor and BBP are under no duty or obligation to contribute to same unless they elect to do so.

(2) If environmental conditions that require remedial action are discovered during Construction of a Project for which the City or County is not indemnified by affiliates, agents, or subcontractors of the Project Manager (*i.e.* a pre-existing condition that is not subject to Article VIII), the Project Manager shall accommodate the City’s or County’s environmental work to remediate the condition. If environmental conditions that require remedial action are discovered during Construction of a Project for which the City or County is indemnified by affiliates, agents, or subcontractors of the Project Manager pursuant to Article VIII, the Project Manager shall promptly notify the City or County and remediate such conditions. All such remediation work shall be done expediently, and the Party facilitating the remediation shall exercise good faith efforts to fund and complete such remediation within the applicable approved schedule and to the satisfaction of Applicable Laws.

(3) BBP, through its Affiliate BBP Velasco North LLC, has entered into an agreement with the Texas Commission on Environmental Quality to address underground environmental conditions at its 1.654-acre BBP Velasco North Site at 0 North Velasco Street (VCP No. 3193), as identified on **Exhibit A5**. BBP shall fully comply with this agreement, which requires “residential” as the future land use to be achieved and the Response Action Completion Report to be submitted by December 31, 2023, unless a later date is approved by the Standards Committee.

(4) Ten-Year Plan Projects are subject to compliance with that certain Houston Public Works (“**HPW**”) “Lower Buffalo Bayou Memo” dated September 13, 2021, attached hereto as **Exhibit I**, to not provide detention.

Section 4.07 Turkey Bend Parking. BBP shall provide a minimum of 70 off-street automobile parking spaces and 20 bicycle parking spaces, as such term is used in Chapter 26 of the City Code, to provide access to Turkey Bend generally, and it shall obtain the land necessary to meet this requirement for a minimum duration of 20 years in accordance with **Exhibit A3**. Acquisition of the ground lease from Cemex for a parking lot with the minimum number of parking spaces for the minimum duration (Item V(3), **Exhibit A1**) is deemed approved to meet this requirement. In addition, BBP shall provide rights to 20 automobile parking spaces pursuant to its letter of intent with the City for the HHRC.

ARTICLE V

ADDITIONAL REQUIREMENTS FOR PARK PROJECTS AND THE PARK

Section 5.01 Park. In addition to requirements in Article IV that apply to all Projects, the provisions of this Article V apply to Park Projects and more generally to the Park, and not to the Non-Park Projects.

(a) Trail or Pathway Design Standards. Any Party with responsibility, pursuant to the terms of this Agreement, for a trail or pathway intended for use by both pedestrians and cyclists within the Park and the Excluded Area must design, construct, maintain, and operate such trail or pathway, and its associated dimensions and site furnishings to BBP Standards, unless otherwise approved by the Standards Committee.

(b) Project Manager. The Project Manager as determined in Section 4.01(c), shall have the right and responsibility to develop plans and specifications and funding plans for Park Projects and enhancements, improvements or other facilities in the Park not currently in the Ten-Year Plan as set forth in this Article V.

(c) Other Needs and Improvements. In accordance with Sections 3.05(e)(4) and 4.01(b), BBP may identify and make recommendations to the Standards Committee regarding other needs and issues in the Park that are not identified in the Ten-Year Plan but which may be required by changing times or needs, and BBP may propose changes to landscapes, plant types, facility designs or facility materials in the Park in order to reduce maintenance costs and to improve performance, functionality, environmental qualities and aesthetics.

Section 5.02 Design Phase: Plans and Specifications.

(a) Subject to the other terms and provisions of this Agreement, the Project Managers shall Construct Park Projects as described in the Ten-Year Plan and other improvements or features. Without limiting the generality of the foregoing, the Project Manager shall have responsibility for the selection, engagement and payment of design professionals, and all Construction contractors, subcontractors and consultants, and all others that may at any time and from time to time be engaged in the Construction of Park Projects, improvements or features.

(b) Subject to Section 5.01(a) above, the Project Manager shall comply with the following plan review process, which shall be without expense to the City or County except when each is the Project Manager for the Park Project:

(1) The Project Manager shall prepare and present plans for conceptual design to the Standards Committee, in conformance with its requirements for conceptual design, for determination that the design is consistent with the Ten-Year Plan and **Exhibit A5**. After each Member reviews the conceptual design of a Project, the Standards Committee shall determine, by a majority vote, whether the Project design is consistent with the Ten-Year Plan and **Exhibit A5**; however, for designs of Park Projects for which BBP is acting as Project Manager, additional approval by the Major Donor is required. Once the design is determined to be consistent with the Ten-Year Plan and **Exhibit A5**, the Project Manager shall prepare and present plans for the Schematic Design and the proposed Construction schedule and budget to the Standards Committee for confirmation that the design remains consistent with the Ten-Year Plan and **Exhibit A5**.

(2) Once the Schematic Design is determined to be consistent with the Ten-Year Plan and **Exhibit A5**, the Project Manager shall prepare plans and specifications for Construction of the Park Project and other related improvements or features, which shall be consistent with the Schematic Design presented to and confirmed by the Standards Committee in Section 5.02(b)(1). The Project Manager shall submit copies of the Construction plans and specifications, together with an updated Construction schedule, to the Director at intervals of 50% and 95% completion for review and approval solely to confirm that the Park Project and other related improvement or feature, as so planned, conforms to the Schematic Design plans and schedule as confirmed by the Standards Committee as set forth in Section 5.02(b)(2) and the Director's standards for Construction plans and specifications. The County shall have the same rights as the Director if Section 5.14 calls for title to be transferred to the County upon completion of the Project. In addition, as further set forth in the Funding Agreement, Major Donor shall have the same rights of review and approval of plans and specifications as the Director related to any Park Project for which BBP is acting as Project Manager.

(3) At each stage of review under Section 5.02(b)(1) or Section 5.02(b)(2), the Standards Committee, after allowing each Member and/or the applicable Director(s) to review the plans and specifications, as the case may be, shall provide comments or approval within 14 business days of receipt of the submittals of plans as set forth in Section 5.02(b); provided, however, if no response is given within the 14-business day review period, the plans so submitted shall be deemed to have been confirmed by the Standards Committee or approved by such Director, as the case may be. For each plan drawing that does not change (unless a comment applies more generally to an issue included in many drawings), comments shall be limited to conformance with the approved Schematic Design and the applicable Director's standards for Construction plans and specifications, and once initial comments have been returned, the reviewing parties may not initiate new comments. Upon completion of all such approved Construction plans and specifications, the Project Manager shall file a complete copy of same with the Standards Committee and the Director of the Party that owns the Project upon completion.

(c) All designs shall include drawings, plans and technical specifications in a form that would be reasonably acceptable for a project bid, awarded and constructed by the City on City-owned property or the County on County-owned property under Applicable Laws.

Section 5.03 Notice to Proceed. No Construction by any Party or any other person or entity of any Park Project or other capital enhancements, improvements or facilities in the Park shall commence until: (a) the Standards Committee has given its approval under Section 3.05(e)(3) or Section 3.05(e)(4); (b) Restrictive Covenants have been recorded against the properties within the applicable Park Project in accordance with Section 10.22, below, and (c) the Director of the Party that owns the applicable land has given a Notice to Proceed in substantially the form attached hereto as **Exhibit L**. Within 14 business days of receiving a request to proceed, the Director of the Party that owns the applicable land shall give a Notice to Proceed on a Park Project after review and approval of the project funding and schedule or shall provide written comments with regard to the project funding and schedule in the event of denial of approval; provided, however, if (a) in the case of denial, the applicable Director shall coordinate with the Project Manager within 14 business days to resolve any issues necessary for approval; or (b) no response is given within such 14-business day review period, the plans so submitted shall be deemed to have been approved by the Director and Notice to Proceed shall be deemed to have been provided to the requesting Party.

(a) Project Funding. Prior to commencing Construction on any Park Project, the Project Manager of the Park Project shall provide the Director of the Party that owns the applicable land with evidence satisfactory to such Director that the Project Manager has 100% of the Secured Funds necessary for the Park Project during the Project Manager's current fiscal year. Upon good cause, the Director of the Party that owns the applicable land may direct that the Park Project proceed in phases as appropriate to match the amount of Secured Funds available.

(b) Project Schedule. The Project Manager of any Park Project shall provide the applicable Director(s) with the schedule for start and completion of any such Construction along with a description of any limitation on public use of the Park during the period of Construction.

Section 5.04 Construction.

(a) Construction shall be done substantially in accordance with approved plans and Construction schedule, in compliance with all Applicable Laws, and in a good and workmanlike manner. The Project Manager shall pay, or cause to be paid, all bills for labor, materials and supplies in connection with such Construction, and shall obtain releases of liens from the parties performing such labor or furnishing such materials and supplies. This Section 5.04(a) does not authorize any lien to be placed upon public property for any reason. The Project Manager shall, to the extent required by Applicable Laws, obtain payment and performance bonds for the work. The Project Manager shall pay, or cause to be paid, all fees for engineering, architectural, legal and other professional services incurred by the Project Manager and its contractors in connection with such Construction.

(b) The Project Manager shall provide the Standards Committee with a status report covering progress to date of the Construction of a Park Project no less frequently than at its quarterly meetings. Upon request of the City or County, the Project Manager shall provide the

same with a status report covering the progress to date of the Construction of a Park Project on City or County property, as the case may be.

(c) During any Construction, the Project Manager shall invite the Director of the Party that owns the applicable land and the other Parties' designated representatives to attend periodic project meetings with the Project Manager and any general contractor. During Construction the Project Manager shall have the right to approve change orders and field changes, but proposed changes that are materially inconsistent with the approved plans shall be submitted to the Standards Committee and the Director for approval unless the change is required by a City code inspector or an accessibility consultant working on behalf of the State of Texas. The Standards Committee and Director shall provide such review within 10 business days of receipt of the proposed change; provided, however, if no response is given by a reviewing party within each 10-day review period, the proposed change so submitted shall be deemed to have been approved by that reviewing party. If the Director's comments are not acceptable to the Project Manager, the matter shall be referred to the Standards Committee for final resolution.

(d) Upon completion of the Park Project, the Project Manager shall make all efforts to remediate any damage or disruption to adjacent Park property that may have occurred during Construction.

(e) The Project Manager shall arrange any utility coordination, connection and usage fees, consistent with Section 6.06.

Section 5.05 Regulations, Permits and Fees – Park Projects. The Construction plans and specifications for Park Projects must meet all Applicable Laws required by governmental bodies or agencies having jurisdiction over the Park Projects, subject to the following:

(a) The City hereby acknowledges that Articles V and VI, Chapter 33 of the City Code relating to tree mitigation do not apply to actions undertaken by BBP for a Park Project in furtherance of the Ten-Year Plan approved by the City.

Section 5.06 Construction Contracts. The Project Manager may enter into Construction contracts with contractors to Construct any Park Project based on the plans approved by the Director as set forth in Section 5.02(b).

(a) Each Construction contract for a Park Project or new capital improvement in the Park shall provide that: (i) the City is a third-party beneficiary of all representations and warranties made by the contractor working on City-owned property or property to be transferred to the City pursuant to this Agreement; (ii) the County is a third-party beneficiary of all representations and warranties made by the contractor working on County-owned property or property to be transferred to the County pursuant to this Agreement, and (iii) the contractor shall look solely to the Project Manager for any payment due under the Construction contract.

(b) The Project Manager for a Park Project on City-owned property shall require each contractor in such Construction contracts to furnish payment and performance bonds, naming the City as co-obligee or co-beneficiary, in the full amount of the contract sum for each Construction contract, and in form and substance reasonably satisfactory to the City, based on such bonds as are then commercially available for major Construction projects in the City. Likewise, the Project

Manager for a Park Project on County-owned property, if any, shall require each contractor in such Construction contracts to furnish payment and performance bonds, naming the County as co-obligee or co-beneficiary, in the full amount of the contract sum for each Construction contract, and in form and substance reasonably satisfactory to the County, based on such bonds as are then commercially available for major Construction projects in the County.

(c) The Project Manager for a Park Project on City-owned property (or property to be transferred to the City pursuant to this Agreement) shall require that any and all warranties or guarantees from any contractor, manufacturer, supplier or any other subcontractor required by the specifications, or otherwise provided by such contractor, manufacturer, supplier or other subcontractor are transferable to the City as a condition of the Construction contract to enable the transfer of same to the City in accordance with this Agreement. Likewise, the Project Manager for a Park Project on County-owned property (or property to be transferred to the County pursuant to this Agreement) shall require that any and all warranties or guarantees from any contractor, manufacturer, supplier or any other subcontractor required by the specifications, or otherwise provided by such contractor, manufacturer, supplier or other subcontractor are transferable to the County as a condition of the Construction contract to enable the transfer of same to the County in accordance with this Agreement.

(d) With respect to any contracts for Construction of Park or Non-Park Projects for which more than \$50,000 of the contract funds will be supplied by the City, County and/or a tax increment reinvestment zone/redevelopment authority ("TIRZ"), the applicable Project Manager shall comply with the competitive bidding requirements that would apply if the contract were being awarded by the City, County or TIRZ, as applicable. If both the City, County and/or TIRZ contribute funds therefor, and the bidding requirements applicable to each cannot be reconciled, the Project Manager will apply the bidding requirements that apply to the one supplying the larger amount to that contract. The requirements of this subsection refer only to bidding requirements generally applicable to counties, local government corporations and home-rule municipalities under Texas law, and not to requirements adopted by the City or the County that are more strict than Texas law generally. Additionally the applicable Project Manager may procure a general contractor for a construction manager at risk contract by (i) publicly advertising a request for proposals, (ii) awarding contract on a Best Value basis, scored by an Evaluation Committee based on pre-determined scoring for the following: qualifications, oral presentations and pricing proposals for each general contractor's fee and general conditions, and (iii) a requirement that all bidding for subcontractors under the resulting construction manager at risk contract be publicly advertised and competitively bid with an intermediate step limiting the bidding to qualified subcontractors allowed.

Section 5.07 City and County Inspection. The City shall have the continuing right to inspect, at any time, the progress of Construction of Park Projects on City-owned property to confirm conformance of the Park Project being Constructed with in accordance with the building code and the approved drawings, plans and technical specifications. The Director shall further have the right, but not the duty, to perform a final inspection of each such Park Project prior to the transfer of the Park Project to the City as described in Section 5.12. Likewise, the County shall have the continuing right to inspect, at any time, the progress of Construction of Park Projects on County-owned property or property to be transferred to the County to confirm conformance of the Park Project being Constructed with the approved drawings, plans and technical specifications.

The Director shall further have the right, but not the duty, to perform a final inspection of each such Park Project prior to the transfer of the Park Project to the County as described in Section 5.12.

Section 5.08 Substantial Completion. When the work to be performed under a Construction contract has been completed substantially in accordance with the approved plans, the Project Manager shall deliver to BBP, the City or County a certificate from the architect or engineer or landscape architect certifying that, as of the date specified therein, the work to be performed under such Construction contract has been substantially completed in a good and workmanlike manner and in accordance with the approved plans and specifications and any change orders or field changes authorized under this Agreement subject only to items specified in such certificate as minor punch list items or as requiring corrective work. The Project Manager, the Director's designated representatives, and the City or County, as applicable, when title to the Project is to be transferred to the City or County, shall have the right to review and comment on the final punch-list items developed prior to substantial completion. Subject to any warranty obligations of the general contractor, Greenspace Maintenance and Operations for the area improved by the Park Project shall commence upon substantial completion (unless the applicable construction contract provides for a landscape maintenance or similar period following substantial completion, in which case, Greenspace Maintenance and Operations shall commence upon the expiration of such period).

Section 5.09 Final Completion. A Park Project or improvement shall be deemed to be finally completed as of: (a) the date of the Texas Department of Licensing and Regulation Certificate of Final Completion to be issued by the Project Manager's architect for all Construction contracts for such Park Project; (b) the architect's certification that all punch-list items identified in any certificates of substantial completion have been completed except for any on-going work covered by contractors or manufacturers' warranties; (c) a certificate signed by the contractor for each Construction contract, certifying that all matters required to be performed under such Construction contract have been completed and all labor and materials for which payment is due under the Construction contract have been fully paid, and that all building materials, supplies and equipment physically incorporated into the improvements are free and clear of all liens and encumbrances; and (d) all permits, approvals and certificates required by Applicable Laws for occupancy of structural improvements, including but not limited to any applicable certificate of occupancy. Upon completion of all Construction, the Project Manager shall file final as-built Construction plans and drawings with the Standards Committee and the Directors.

Section 5.10 Park Dedication. With the exception of bridges over Buffalo Bayou, easements and rights-of-way, the City shall dedicate those areas of the Park it owns, subject to all dedications and non-park utility uses in effect on the execution date of this Agreement, as a public park within 30 days after transfer of title to the City of all Park Projects to be owned by the City, unless said Park area is already designated for park use or otherwise dedicated as a park.

With the exception of bridges over Buffalo Bayou and easements, County shall dedicate those areas of the Park it owns, subject to all dedications and non-park utility uses in effect on the execution date of this Agreement, as a public park within 30 days after transfer of title to the County of all Park Projects to be owned by the County.

Section 5.11 MWBE. When acting as the Project Manager for publicly funded phases of Projects, BBP shall comply, and require its contractors to comply, with the City's Small Business Minority and Women Business Enterprise ("MWBE") program for Construction of Park improvements or features as set forth in Chapter 15 of the City Code. To this end, the Project Manager's contractors shall maintain records showing: (i) subcontracts with MWBEs, and (ii) specific efforts to identify and award subcontracts and supply agreements to MWBEs for publicly-funded Projects.

Section 5.12 Transfer of Title.

(a) City. Except as otherwise provided for in this section or as determined by the Standards Committee, each Park Project shall be transferred to the City within 30 days after: (i) Final Completion, and (ii) acceptance by the City upon certification by the Project Manager in accordance with Section 5.13, in each case, of the applicable Park Project. Transfer shall be completed by delivery of a fully executed copy of a Deed or Bill of Sale, as applicable, substantially in the forms attached hereto and made a part hereof as **Exhibit F**, all warranties or guarantees related to each Park Project, as-built plans and drawings of the Projects and any other documents required to be furnished under this Agreement or requested by the Director. If land is being transferred, a property deed in substantially the form attached hereto as **Exhibit F1** or **F2** with indefeasible title, property survey and environmental report shall be required. If only an improvement is being transferred, a Bill of Sale shall be required substantially in the form attached hereto as **Exhibit F3**. At transfer, the Director shall acknowledge in writing the City's acceptance of the Park Project and any Deed and/or Bill of Sale as described above. Unless previously dedicated, Park dedications for the respective properties shall occur in accordance with Section 5.10 above. Restrictive Covenants for the respective properties will be recorded upon said transfer in accordance with Section 10.22, below.

(b) County. Certain Park Projects shall be transferred to the County within 30 days after: (i) Final Completion, and (ii) acceptance by the County upon certification by the Project Manager in accordance with Section 5.13, in each case, of the applicable Park Project. Transfer shall be completed by delivery of a fully executed copy of the Deed or Bill of Sale, as applicable, substantially in the form attached hereto and made a part hereof as **Exhibit F**, all warranties or guarantees related to each Park Project, as-built plans and drawings of the Projects and any other documents required to be furnished under this Agreement or requested by the Director. If land is being transferred, a property deed in substantially the form attached hereto as **Exhibit F1** or **F2** with indefeasible title, property survey and environmental phase 1 report shall be required. If only an improvement is being transferred, a Bill of Sale shall be required substantially in the form attached hereto as **Exhibit F3**. At transfer, the Director shall acknowledge in writing the County's acceptance of the Park Project and any Deed and/or Bill of Sale as described above. Restrictive Covenants for the respective properties will be recorded upon said transfer in accordance with Section 10.22, below. The following Park Projects shall be transferred to the County in accordance with this section:

- (i) The Sims Metal Property portion of Japhet Creek Phase 2 (Item M, **Exhibit A4**); however, BBP may at its option retain title to the Sims Metal Property therein as further described in Section 5.14;

- (ii) Japhet Creek Bridge (Item M, **Exhibit A1**);
- (iii) BBP-owned property adjacent to Tony Marron Park west of North York Street (Item I, **Exhibit A4**) totaling 4.5 acres and excepting an abutting area to be retained by BBP for future compatible development and the Central Maintenance Facility.
- (iv) As part of the County's agreement with BBP for the Marron Park Way/Lockwood Trailhead Park Project, the County shall pay BBP \$130,710 for the BBP property that separates the County's 601 Lockwood property from its 4625 Crites Street property (Item L, **Exhibit A4**).
- (c) BBP. BBP will not be required to transfer the following properties to the City or County:
 - (i) Lockwood South Housing Developments and greenspaces BBP owns (Item R, **Exhibit A1**);
 - (ii) Turkey Bend (Item V, **Exhibit A1**), excluding the Turkey Bend Easement, as defined below, and the City's rights associated with the HHRC;
 - (iii) 9.9 acres of land west of North York abutting Tony Marron Park, including abutting undeveloped right-of-way that the City "non-accepts" as described in Section 5.14 (Item I, **Exhibit A1**);
 - (iv) The portion of BBP's "silos property" not required for the trail and its improvements consisting of three parcels owned by BBP on Kennedy, North Live Oak and North Nagle streets (Item Q1, **Exhibit A4** (demarcation line to be determined));
 - (v) Velasco property donated by Pinto East End LLC that is not required for the South Bank Trail (Item R2, **Exhibit A4** (demarcation line to be determined));
 - (vi) Easements owned by BBP prior to execution of the Agreement and any easements over Union Pacific railroad properties when the underlying owners are not willing to assign the easement or for which attempts to assign the easement would require additional compensation or other complications; and
 - (vii) Equipment and fixtures installed by BBP at its Central Maintenance Facility and on any property for a Concession licensee under the terms of its Concession agreement.

Section 5.13 Project Manager Certification. Prior to each Park Project transfer, the Project Manager and the City as applies to City-owned property, the County as applies to County-owned property (or property to be owned by the County), or BBP as applies to BBP-owned property shall certify that there is no litigation or other governmental proceedings that have been commenced or threatened with regard to, or which would affect, the transfer provided for in this Agreement. The Project Manager shall provide the City, County or BBP with all consents, approvals, releases or waivers from third parties deemed by the Director to be reasonably necessary or advisable to allow the transfer of each Park Project, including, without limitation, any consents

from lenders or litigants. Compliance with this Section shall be a condition precedent for the transfer of a Park Project to the City and/or County under Section 5.12.

Section 5.14 Land Acquisition for Park Projects.

(a) Except as provided in this section, BBP shall acquire all property interests necessary to create a continuous, publicly accessible trail system (i) on the south bank of Buffalo Bayou from the Union Pacific Railroad Trestle Bridge east of East Street and west of Jensen Drive to South Lockwood Drive, (ii) on the north bank from the Union Pacific Railroad Trestle Bridge to Jensen Drive connecting into the East River trail at Jensen Drive and (iii) on the north bank along Japhet Creek to Clinton Drive. The properties to be acquired are described in **Exhibit A4**. BBP also shall secure a temporary public easement for a safe public trail along the north edge of the temporary East River golf course in lieu of the permanent trail along the Buffalo Bayou while the golf course is operating.

(1) If BBP is unsuccessful negotiating the acquisition of a property or easement required to create a continuous, publicly accessible trail system as described in subsection (a), BBP shall notify the City about the property it is unable to acquire, except for the Sims Metal Property, on or before the date listed in **Exhibit A3** for such land acquisition, and BBP and the City shall work collaboratively to establish a budget, subject to BBP's final approval, for such land acquisition, which budget for acquisition shall in any event be within the total budget for the applicable Project as set forth in **Exhibit A2**. The City shall proceed to acquire such properties in accordance with the schedule in **Exhibit A3** and the budget for such land acquisition using any legal means available to the City pursuant to Applicable Laws, and shall reasonably coordinate with BBP throughout the process, including providing BBP with notice of any anticipated scheduling delays or budget overages. BBP and the City may mutually agree to modify the land acquisition budget if necessary, and BBP shall pay for all land, consulting and other costs related to the acquisition process including administrative hearing and court fees, other than the cost of City staff, City's outsourced legal services and administrative costs, provided that the cumulative total of such costs is within the budget for such land acquisition. BBP and the City may mutually agree to modify the area of the property to be acquired or the type of acquisition (fee simple or easement) as part of this process; however, the resulting acquisition must provide a route for a continuous public trail and the acquisition costs must be within the land acquisition budget established therefor (including any mutually agreed modifications thereto). Accordingly, to the extent permitted by Applicable Laws, the City shall assume responsibility to acquire Parcels C, F and G described in **Exhibit A4** in accordance with the schedule in **Exhibit A3** and the land acquisition budget established therefor (including any mutually agreed modifications thereto).

(2) If BBP is unsuccessful in negotiating the acquisition of the Sims Metal Property (Item M, **Exhibit A4**), BBP shall notify the County on or before the date listed in **Exhibit A3** for such land acquisition and shall establish and provide to the County a budget for such land acquisition, which budget for acquisition shall in any event be within the total budget for the applicable Project as set forth in **Exhibit A2**. The County shall proceed to acquire such properties in accordance with the schedule in **Exhibit A3** and the budget for such land acquisition using any legal means available to the County pursuant to Applicable

Law, and shall reasonably coordinate with BBP throughout the process, including providing BBP with notice of any anticipated scheduling delays or budget overages (and BBP and County may mutually agree to modify the land acquisition budget if necessary). BBP shall pay for all land, consulting, and other costs related to this process including administrative hearing and court fees, other than the cost of County staff County's outsourced legal services and administrative costs, provided that the cumulative total of such costs is within the budget for such land acquisition. BBP and County may mutually agree to modify the area of the property to be acquired or the type of acquisition (fee simple or easement) as part of this process; however, the resulting acquisition must provide a route for a continuous public trail and the acquisition costs must be within the land acquisition budget established therefor (including any mutually agreed modifications thereto).

(3) BBP shall transfer Parcel N2 on **Exhibit A4**, which is south of Japhet Creek, to the City in accordance with Section 5.14(b)(1).

(4) BBP's Affiliate BBP Velasco North LLC shall grant an easement over a portion of its property located at 0 North Velasco Street to the City for the Gregg Street Bridge, as reflected on **Exhibit A5**. The easement shall be based on the physical requirements of the final engineering plans, provided by the City for BBP's Director to review and approve in accordance with Section 5.02. Such easement shall be granted prior to the start of Construction. Furthermore, the City shall be granted perpetual access rights for repair and restoration of the bridge, subject to reasonable restrictions as described in **Exhibit C**, including a requirement that the City access the bridge for routine maintenance from Gregg Street and its easements north of Buffalo Bayou unless conditions prevent it from accessing the bridge in this manner.

(b) The City also shall:

(1) convey to BBP the surplus rights-of-way and certain land owned in fee by the City within Tony Marron Park – Phase 1 area (Item H, **Exhibit A4**). Specifically, for such portions that are surplus rights-of-way, the City shall either abandon or “non-accept” the City's interest in such rights-of-way pursuant to the City's Joint Referral Committee process which, in turn, will return full ownership in the land to BBP as the abutting landowner, and, for tracts that are fee owned by the City, the City shall convey to BBP its fee ownership via deed. It is agreed and understood by the City and BBP that the requirement for the City to receive fair market value for such conveyances of title will be satisfied by BBP conveying to the City title of its fee ownership of parcels to be transferred to the City as shown and described on **Exhibit A4**, and by other non-monetary considerations from BBP's obligations under this Agreement;

(2) acquire a trail easement on Parcel D, as described on **Exhibit A4**, from the Houston Housing Authority, with no BBP monetary contribution;

(3) act in good faith to support BBP in taking such actions necessary to allow City's assignee to acquire a temporary public easement (Segment E1 on **Exhibit A4**) for the East River Trail along the north edge of the temporary East River golf course and cause its assignee to accept such temporary public easement at no cost to BBP, which shall

terminate when the permanent trail along Buffalo Bayou is opened for public use (Segment F in **Exhibit A1**);

(4) acquire easements or fee simple ownership of land for the Gregg Street Bridge and the East River Trail along Buffalo Bayou in the Excluded Area (Segments C and D, **Exhibit A1**) from Hirsch Road east to Japhet Creek (Segment E on **Exhibit A4**);

(5) acquire the north bank area of the Downtown Gateway (Segment B on **Exhibit A4**) from BBP for \$925,000;

(6) acquire the south bank area of the Downtown Gateway (Segment A on **Exhibit A4**) from BBP for \$150,000;

(7) if requested by BBP, accept the Turkey Bend Easement allowing public access and use for recreation along Turkey Bend and provide utilities for the same pursuant to Section 6.06(a);

(8) execute the inter-departmental transfer of Parcel N1 on **Exhibit A4** to the Department and reclassify the parcel from right-of-way to City-owned park property for Japhet Creek Park; and

(9) subject to the requirements of Chapter 26 of the Texas Parks and Wildlife Code, grant an easement over a portion of Tony Marron Park to the County for the Japhet Creek Bridge. The easement shall be based on the physical requirements of the final engineering plans, provided by the County for City's Director to review and approve in accordance with Section 5.02 hereof. Such easement shall be granted prior to the start of Construction. Furthermore, the County shall be granted perpetual access rights for repair and restoration of the bridge, subject to reasonable restrictions as described in **Exhibit C**. However, it being specifically stated that should the Japhet Creek Bridge be abandoned or removed, this easement will automatically expire.

(c) The City owns the right-of-way under the Lockwood Bridge where the Lockwood Trailhead will be located (Item K, **Exhibit A4**), and, without limitation of the provisions of Sections 3.02 and 3.03 hereof, the City expressly grants the County and BBP a license to enter such property in order to perform its obligations hereunder. In furtherance of the foregoing, the County and BBP shall:

(1) construct a parking lot on the property subject to plans and permits approved by the City; and

(2) consistently maintain the Projects located thereon and keep the property open to the public at all times in support of activities at Lockwood Park.

(d) In the Excluded Area, the City shall not be required to acquire any additional rights other than the easements it owns as of the Effective Date of the Agreement other than the easements described in Section 5.14(b)(4). The City's current easements give it the right to develop a trail that meets BBP Standards but do not restrict additional development by the underlying fee owner.

Section 5.15 Reverter of Certain Donated Properties. Except as provided below, each property conveyed in fee between or among the Parties pursuant to this Agreement will be transferred using a deed in substantially the form attached hereto as **Exhibit F1**, which includes a clause expressly providing that in the event that the Party receiving such donated property commits a monetary default under this Agreement or fails to renew this Agreement as set forth in Section 10.01(a), the grantor thereunder shall have an express right to exercise a "Right of Reverter" (as such term is defined in the form of deed attached hereto as **Exhibit F1**). Upon the exercise of any Right of Reverter, the property will remain subject to the Restrictive Covenants. For the avoidance of doubt, the exercise of any Right of Reverter shall not in itself result in termination of this Agreement, and the rights and obligations of each Party will remain in full force and effect following such exercise, including but not limited to the defaulting or non-renewing Party's obligation to continue to perform all maintenance obligations on all property for which the defaulting Party retains ownership of the fee or other real property interest, but the defaulting or non-renewing Party will not be entitled to any further monetary support from the other Parties in respect of such obligations. Notwithstanding the foregoing, if any property is conveyed in fee between or among the parties in connection with a fair market value transaction, the Right of Reverter shall not apply, and the form of deed attached in **Exhibit F2** shall be used.

Section 5.16 Consideration. For the avoidance of doubt, the Parties have found and hereby affirm that the mutual benefits conferred by this Agreement, including, without limitation, the funding obligations of the Parties set forth in Article VII herein, are adequate consideration for the property transfers.

ARTICLE VI

MAINTENANCE AND OPERATIONS

Section 6.01 BBP's Maintenance and Operations Obligations.

(a) Upon substantial completion of each Project and for the remainder of the Term, BBP, at its sole cost and expense, shall have full maintenance and operational responsibility for the completed Projects except as described in Section 6.02 and Section 6.03.

(b) Except for the Excluded Area and as described in Section 6.02 and Section 6.03, BBP shall maintain and operate the Park described in **Exhibit D** in accordance with the Maintenance and Operations Standard, and at its sole cost and expense, subject to and in accordance with the terms of this Agreement, shall be obligated to promptly provide and undertake:

(1) all Greenspace Maintenance in the Park, consistent with the maintenance tasks and schedule set forth in **Exhibit C**;

(2) all equipment necessary to conduct Greenspace Maintenance (BBP may use Park Project funds for such equipment, initial tools and initial supplies);

(3) Operations of the Park consistent with the Maintenance and Operations Standard as set forth in **Exhibit C** and in accordance with park rules and regulations pursuant to Section 6.04;

- (4) primary property insurance in accordance with Article IX;
 - (5) utilities in accordance with Section 6.06;
 - (6) conservation and administration of permanent artworks in the Park, including art owned by the City or County;
 - (7) all Capital Expenditure Projects pertaining to any Park Project Constructed by BBP except the Japhet Creek Bridge;
 - (8) all maintenance and repairs associated with the restoration of the Park following a Casualty event impacting the Park, excepting the Excluded Area, Japhet Creek Bridge, and other areas of the Park maintained by Permitted Assignees or other entities;
 - (9) all annual reporting requirements set forth in Section 7.01(c); and
 - (10) administrative support for the Standards Committee during the Term.
- (c) BBP also shall have maintenance and other operations obligations and a Capital Expenditure Requirement with respect to:
- (1) During the Term, BBP at its sole cost and expense, shall have full maintenance and operational responsibility for all elements of the Non-Park Projects at the Lockwood South Housing Development following their substantial completion, and shall maintain and operate these Projects for the benefit of the City, the surrounding communities, and the residents of Lockwood South. Specific maintenance and Operations requirements are included or will be included in funding agreements for Lockwood South. For avoidance of doubt, these Projects are outside the purview of the Standards Committee following their substantial completion except for an annual review of the BBP Lockwood South Budget pursuant to Section 7.02(e). BBP may assign this obligation to Affiliates.
 - (2) During the Term, BBP at its sole cost and expense, shall have full maintenance and operational responsibility for all Projects at Turkey Bend following their substantial completion for the benefit of the City and the surrounding communities, subject to BBP's agreement with the City for the HHRC. BBP shall maintain open access to the common areas for the general public as a public amenity for the community with reasonable restrictions on hours of operation. For avoidance of doubt, the Turkey Bend Projects are outside the purview of the Standards Committee following their substantial completion except for an annual review of the BBP Turkey Bend Budget pursuant to Section 7.02(d). BBP may assign this obligation to Affiliates.
- (d) BBP may employ staff, contract services or make use of volunteers as needed to execute its duties outlined in this Agreement.

Section 6.02 City's Maintenance and Operations Obligations. Upon substantial completion of certain Projects and for the remainder of the Term, the City shall be responsible, at its sole cost and expense, for the following:

(a) City shall maintain and operate the Excluded Area in accordance with the Maintenance and Operations Standard, and at its sole cost and expense, subject to and in accordance with the terms of this Agreement, shall be obligated to provide and undertake the following with respect to the Excluded Area:

(1) all maintenance, consistent with the maintenance tasks and schedule set forth in **Exhibit C**;

(2) all equipment necessary to conduct such maintenance;

(3) paying for utilities in accordance with Section 6.06;

(4) all Capital Expenditure Requirements;

(5) all repairs associated with the restoration following a Casualty event affecting City-owned property, including the Gregg Street Bridge, in accordance with Article IX; and.

(6) ensuring the operation of the Excluded Area complies with the Maintenance and Operations Standards, including ensuring the hours the Excluded Area is open to the general public and administration of the park rules and regulations are consistent with other areas of the Park.

(b) In City-owned areas of the Park outside the Excluded Area, City shall:

(1) pay for utilities associated with the Park in accordance with Section 6.06;

(2) include vertical improvements in City-owned areas of the Park on its property insurance policy in accordance with Section 9.01;

(3) manage activities related to free speech pursuant to standard procedures as in other City-owned parks, unless those wanting to exercise their right to free speech voluntarily obtain a permit for a Special Use or Park Event from BBP in order to reserve a City-owned area of the Park; and

(4) administer Special Events in accordance with **Exhibit C**.

(c) In all areas of the Park, City shall undertake Capital Expenditure Requirements, with regard to City infrastructure owned by HPW within the Park.

(d) For other completed Projects outside the Park, the City shall:

(1) operate and maintain the HHRC at a level of quality consistent with the City's three existing research centers (the Houston History Research Center, located in the Julia Ideson Building; the African American History Research Center, located at the Gregory School; and The Family History Research Center, located at the Clayton Library Campus);

(2) pay for utilities associated with the Turkey Bend Easement in accordance with Section 6.06;

(3) maintain the Navigation Greenway at a level of quality consistent with other greenways maintained by the City or its Permitted Assignees;

(4) maintain the Lockwood Drive CIP Project at a level of quality consistent with other roadways and high comfort bikeways maintained by the City;

(5) maintain the Marron Park Way and Lockwood Park Lane roadways and City utilities from Lockwood Drive to North York Street in a manner consistent with other roadways and utilities maintained by the City; and

(6) undertake Capital Expenditure Requirements for the HHRC, Navigation Greenway, Lockwood Drive CIP Project, Marron Park Way and Lockwood Park Lane roadways, and City utilities provided under Section 6.06.

(e) Nothing in the foregoing shall operate to prevent the City from assigning some of its obligations under this Agreement pursuant to Section 10.04, however, no assignment of the City's obligations under this Agreement shall release the City from liability for performance, or lack thereof, of any obligation to which it is subject.

(f) Generally, the City will maintain and operate the rights-of-ways within the Park, but to the extent BBP needs to use the rights-of-way within the Park to meet its obligations under this Agreement, BBP may do so but shall maintain and operate any and all improvements installed related to the Park for the duration of the Term.

Section 6.03 County's Maintenance and Operations Obligations. Upon substantial completion of the following Park Projects and for the remainder of the Term, the County shall be responsible, at its sole cost and expense, for:

(a) funding repairs and restoration following a Casualty affecting County-owned property and the Japhet Creek Bridge in accordance with Article IX;

(b) any Capital Expenditure Requirements with regard to the Japhet Creek Bridge;

(c) managing activities related to free speech, unless those wanting to exercise their right to free speech voluntarily obtain a permit for a Special Use or Park Event from BBP in order to reserve a County-owned area of the Park; and

(d) utilities in accordance with Section 6.06.

Section 6.04 Law Enforcement, Park Rules and Regulations. The City shall work cooperatively with BBP to prevent crime, enforce the law, preserve the peace, and provide a safe environment in the Park. The rules and regulations of the Department relating to use of the Park, as contemplated in Articles II and XIII of Chapter 32 of the City Code, shall be administered by BBP and enforced by the City in City-owned areas of the Park. Likewise, the rules and regulations of County relating to use of County-owned areas of the Park shall be administered by BBP and

enforced by the County. Upon approval by the Standards Committee, BBP may adopt and promulgate other or additional rules that are specific to the Park and adjust City and County rules and regulations as administered by BBP within the Park solely to provide a consistent user experience within and between City, County and BBP-owned areas of the Park. Such adjustments will be documented as amendments to the Operations and Maintenance Manual attached hereto as **Exhibit C**.

Section 6.05 Programs; City Events; Fees in the Park.

(a) Except as otherwise provided in this Section 6.05, the City hereby grants to BBP the exclusive right to develop, implement and host programs, activities and services in City-owned areas of the Park, including but not limited to fee and non-fee based Park Events, Special Uses, temporary art installations, performances, visitor services, classes, and other educational opportunities, recreational activities, and volunteer opportunities (each, a “**Program**,” whether or not the same is a Park Event) in the Park (not including the Excluded Areas or rights-of-way) that are consistent with the quality and character of Buffalo Bayou Park, as recommended by BBP and reported to the Standards Committee. The term “**Program**” also includes communicating with the public regarding BBP’s marketing and fundraising efforts for the benefit of the Park. Likewise, the County hereby grants to BBP the exclusive right to develop, implement and host Programs in County-owned areas of the Park.

(b) All Park Events, Special Uses, or other organized uses or activities by members of the public in the Park (other than in the Excluded Area or public rights-of-way), shall be reserved or scheduled through BBP, and BBP shall issue “park use permits” in City-owned areas pursuant to Chapter 32, Article III and Article XIII of the City Code and designate the venue or facilities (i.e. picnic tables, etc.) and area(s) where such activity may be held. BBP shall submit the required map of Park Event sites for Standards Committee consideration and approval, and annually provide a summary report of the same to the Standards Committee and the Director.

(c) Pursuant to subsections (a) and (b), BBP shall have the exclusive right, subject to approval by the Standards Committee, (i) to establish reasonable, non-discriminatory fee structures and/or rate schedules from time to time for Programs, Park Events, Special Uses, and various venues and facilities in the Park, (ii) to charge such park user fees, space rental rates or other charges according to such structures and schedules, (iii) to collect the revenue arising therefrom for BBP’s use during the Term in connection with costs of Programs for the benefit of the Park and (iv) to establish, charge and collect any such additional reasonable fees for Programs subject to the fee schedule in **Exhibit C** as may be amended from time to time by BBP and approved by the Standards Committee (the “**Park Fee Schedule**”) to cover related expenses such as damage deposits, set-up/break-down fees, trash removal, security, and other direct costs of BBP. BBP’s fees for Programs in City-owned areas of the Park that are not specifically established in the Park Fee Schedule are subject to any fee schedule established by the City and as may be amended from time to time. BBP’s fees for Programs in County-owned areas of the Park that are not specifically established in the Park Fee Schedule are subject to any applicable rules and regulations for County Parks in Harris County, Texas. BBP agrees to use good faith efforts to set fees and rates that promote and allow the general public to access the Park and its amenities. The maximum amounts of the fees established in the Park Fee Schedule may, upon approval of the Standards Committee, be adjusted annually by application of the Escalator Index, on January 1 of

each calendar year. Following the adoption by the Standards Committee of a revised Park Fee Schedule, BBP will provide a copy of the revised Park Fee Schedule to the Directors and post the revised Park Fee Schedule on the Park's website as outlined on **Exhibit C**.

(d) BBP is authorized to develop the appropriate fees and related charges for any and all parking or vehicular management in connection with any Special Events or Special Uses in the Park and for other vehicular uses as such fees come into common practice in the Houston area. Such fees and rates shall be approved by the Standards Committee and shall be incorporated into the Park Fee Schedule with any revenues deposited in accordance with Section 6.05(e).

(e) Except as provided in Section 7.03(b), revenue from Programs shall be deposited into the Park Fee Fund to support Programs, including related administrative expenses, in the Park. BBP shall be responsible for identifying other revenue sources, such as sponsorships and donations, to fully fund Programs.

(f) The City reserves the right to develop, implement and/or host a maximum of 4 City-sponsored Special Events per year in the City-owned area of Tony Marron Park without being required to pay the applicable permitting and program fees on its own behalf; provided, however, that the City shall coordinate with and seek approval from BBP for any required permit in connection with scheduling, security, traffic management and locations; shall comply with BBP permitting regulations and general guidelines, including ensuring that there is at least 1 month between events; and shall collect and provide to BBP the applicable permitting and programming fees for any third party involved in City-sponsored Special Events, all as further described in **Exhibit C**. Planning for City-sponsored Special Events shall include a BBP representative, and the events shall be scheduled such that a maximum of 2 City-sponsored Special Events occur prior to June 30th of each year and a maximum of 2 City-sponsored Special Events occur after June 30th of each year. BBP and the City may agree to other Special Events in the Park from time to time provided that such Special Events are implemented and hosted in the manner set forth in this Section 6.05 and the proceeds from such Special Events benefit the Park, as may be mutually determined by the City and BBP.

Section 6.06 Utilities.

(a) As limited by this Agreement, the City shall provide, at the City's sole cost and expense, all utilities for Park Projects on City-owned land or easements, including the Turkey Bend Easement once conveyed to the City, that have been developed in accordance with the Ten-Year Plan pursuant to this Agreement, including, without limitation, water, electricity, storm and sewer services, and gas, but excluding telecommunication service and utilities for privately-operated Concessions. Irrigation plumbing that is installed under this Agreement shall be segregated from plumbing for delivery of water for human use so as to allow supply of irrigation water from reclaimed wastewater or greywater. City will provide water for ground irrigation purposes from either public potable water lines, bayou water, reclaimed wastewater, or greywater at City's election. However, should the Turkey Bend Easement ever be abandoned, the City's obligation to provide utilities for the Turkey Bend Easement shall automatically cease.

(b) Likewise, and as limited by this Agreement, the County shall provide, at the County's sole cost and expense, all utilities for county-owned areas of the Park as developed in

accordance with the Ten-Year Plan, including, without limitation, water, electricity, drainage, storm and sewer services, but excluding telecommunication service, water for irrigation and utilities for privately-operated Concessions.

(c) BBP shall pay for telecommunications service, utilities for privately-owned Concessions, and utilities for areas of Turkey Bend outside of the Turkey Bend Easement.

(d) To simplify metering, separate water, electric and gas meters will not be required solely based on which Party is paying for utilities in a certain area of the Park. Instead, the Parties may agree on a formula that allocates utility costs in an equitable manner prior to the Notice to Proceed. Administrative duties related to this allocation shall be managed by BBP except for meters located within the Excluded Area.

Section 6.07 Concessions.

(a) Concessions. With the exception of the Excluded Area and public rights-of-ways, the City grants BBP the exclusive right to develop and manage, directly or through vendors, contractors and licensees, Concession operations in City-owned areas of the Park, including the right to (i) select and issue permits to concessionaires, vendors, contractors and licensees; (ii) develop and construct improvements; (iii) develop and operate parking and vehicle staging areas to serve a Concession in locations within the Park designated in the Ten-Year Plan; and (iv) offer special parking privileges to permitted vendors, contractors and licensees. However, BBP is excluded from concessions related to telecommunications, including, but not limited to, public internet access and digital information kiosks. The County grants the same rights to BBP in County-owned areas of the Park. BBP's management of Concessions shall include the rights and duties described in the Operations and Maintenance Manual.

(b) Concession Utilities. Utilities for privately operated Concessions are the responsibility of BBP but may be delegated to its concessionaires. For the avoidance of doubt, the City shall not be required to pay for any concession utilities.

(c) Concessions Parking. With the exception of the capital cost specifically discussed within this Agreement, BBP shall cause all Concessions and related parking and vehicle staging areas to be conducted in designated areas within the Park, excluding rights-of-way, in accordance with Section 6.08 and the Ten-Year Plan and operated in accordance with the Operations and Maintenance Manual.

(d) Alcohol. BBP, its contractors and other users of the Park may serve and/or sell alcoholic beverages at the Park for a Program or a Special Event, subject to (i) BBP or its third-party vendor obtaining any required governmental approvals and licenses for the service or sale of alcoholic beverages and (ii) BBP or its third-party vendor obtaining and maintaining liquor liability insurance as reasonably required by the Director representing the owner of the property (City or County) where alcohol is to be served. Subject to Applicable Laws, BBP and its vendors, licensees or contractors also have the right to sell and serve alcohol in BBP-owned areas of the Park.

(e) Proceeds. BBP shall document and account for all Concession Revenue and shall submit such documentation to the City and/or County no later than June 30 of each Agreement Year for BBP's preceding fiscal year. BBP shall deposit all Concession Revenues in the Capital

Expenditure Reserve Fund or, as deemed necessary and appropriate by BBP, transferred to one of the operations and maintenance funds described in Section 7.01(b) for the benefit of the Park during the Term.

(f) Permits and Licenses. Except for the Concession permits required under Chapter 32 of the City Code, which shall be issued by BBP, the City shall issue or approve all permits and licenses required under the City Code for vendors, contractors and licensees and vendors shall be selected by BBP for Concessions in the Park on the same terms and conditions as the City generally issues or approves licenses and permits elsewhere in the corporate city limits of the City. All permit and license fees charged by the City shall be retained by the City in the same manner as fees charged by the City on licenses and permits elsewhere in the corporate city limits of the City.

Section 6.08 Parking.

(a) With the exception of the Excluded Area and public rights-of-way, the Parties recognize and agree that Park users should have convenient and sufficient automobile parking and ample bicycle parking options for Park use. Accordingly, in addition to Concession parking described in Section 6.07, the City hereby grants to BBP the exclusive right to develop, manage and cause the operation of public parking in or for the Park in accordance with the Ten-Year Plan, the Operations and Maintenance Manual and the goals expressed herein. BBP commits to manage the public parking component of the Ten-Year Plan in a manner that will ensure that both metered and non-metered parking will be provided and be available to all Park users consistent with the Ten-Year Plan.

The City hereby authorizes, but does not require, installation and implementation of metered parking in the Park, including the Lockwood Trailhead (as depicted in **Exhibit E**), with all revenue arising therefrom (the "**Parking Revenue**") to be remitted to BBP for Greenspace Maintenance until the Greenspace Maintenance Annual Target is met, at which point Parking Revenue may be used for any purpose of BBP for the benefit of the Park, as further set forth in Section 7.03(c) of this Agreement, provided, however, the City may retain a portion of such Parking Revenue to recover any capital costs for the parking meters in such cases that BBP does not directly pay these costs. For the convenience of the general public, BBP may offer an annual pass in lieu of requiring hourly payments for metered parking; however, all revenues from such annual parking pass will be Parking Revenue except for BBP's administrative costs to manage the annual pass program.

The City agrees that, except for the capital cost of the parking meters, if any, which shall be paid with Parking Revenues or up-front by BBP, the costs to the City of operating and maintaining the parking meters and related administrative oversight will be funded with revenues generated from the issuance of parking citations in the Park, including the Lockwood Trailhead, which shall not be deemed part of the Parking Revenues.

To ensure that Parties can fully and effectively set parking rates commensurate with demand in the Park, the City further delegates to the Standards Committee the right to determine the fees and charges for parking and any additional metered parking to be implemented in the Park except for public rights-of-way, and the City agrees to concurrently take all steps required to make

such delegation effective under the City Code upon the adoption of this Agreement by the City Council. The Parties agree and recognize that the Standards Committee shall set parking rates for the Park that are within the City's parking meter fee schedule approved by City Council pursuant to Section 26-160 of the City Code and as published on the City's fee schedule website (the "**City Parking Meter Fee Schedule**"), as both may be amended from time to time.

BBP shall prepare a revised **Exhibit E** to reflect locations of metered parking each time the Standards Committee approves the implementation of (i) additional metered parking areas or (ii) additional fees and charges for parking and other vehicular uses outside of the City Parking Meter Fee Schedule and **Exhibit E** shall be updated, supplemented or replaced in accordance with Section 10.10.

(b) Neighborhoods Adjacent to the Park. The City shall use best efforts to work with the neighborhoods adjacent to the Park to implement residential permit parking, time-limited parking or an equivalent alternative.

ARTICLE VII

FUNDING

Section 7.01 General. The Parties agree to provide the necessary funds to fully support and finance the obligations and duties of the Parties described herein, and to contribute the necessary funds to the various Accounts (as defined and created below) in the amounts and at the times specified in the various budgets of the Parties to provide for the Construction and implementation of the Ten-Year Plan and the operation and maintenance of the Projects Constructed by the Parties during the Term, all as more fully described in this Article VII.

(a) Project Funds. Certain Projects shall be funded solely by the City or County, and there is no fund created by this Agreement for those Projects. The City and County each are obligated to fund the Projects as required by the Agreement but will not be required to transfer the funds to another Party unless specifically required by this Agreement. In all other cases:

(1) BBP Non-Park Project Fund. To ensure that sufficient funds are on hand for the purpose of funding the Construction of the Non-Park Projects to be funded by BBP alone or with another or multiple Parties BBP agrees to create one or more funds and accounts that will collectively be deemed the "**BBP Non-Park Project Fund**," which shall be held at the depository of BBP for the benefit of the Non-Park Projects it is managing and subject to the terms of this Agreement and other Applicable Laws. The BBP Non-Park Project Fund shall be funded in the manner set forth in this Article and shall hold and maintain funds to be used for Non-Park Projects under the Ten-Year Plan.

(2) BBP Park Project Fund. To ensure that sufficient funds are on hand for the purpose of funding the Construction of the Park Projects for which BBP, either individually or in cooperation with another Party, is responsible pursuant to the terms hereof, BBP hereby agrees to create a fund and account that will be deemed the "**BBP Park Project Fund**," which shall be held at the depository of BBP for the benefit of the Park Projects it is managing and subject to the terms of this Agreement and other Applicable Laws. The

BBP Park Project Fund shall be funded in the manner set forth in this Article and shall hold and maintain funds to be used for Park Projects under the Ten-Year Plan. Upon Final Completion of all Park Projects, and with written approval of Major Donor, BBP shall deposit any funds remaining in the BBP Park Project Fund into one or more of the operations and maintenance funds established pursuant to Section 7.01(b).

(3) BBP will transfer its funds for the Navigation Greenway to the County as defined in its agreement with the County for that Project, and no funds for this Project will be transferred to the BBP Non-Park Project Fund.

(4) Gregg Street Bridge. The City and County will fund the Gregg Street Bridge without BBP financial participation, and the County shall transfer its funds to the City or its assignee in a manner and within a timeline that complies with the Ten-Year Plan.

(5) Federal Grants and Tax Credits. The funding for Projects specifically identified as of the Effective Date as to be partially or wholly funded with federal grant funds or tax credits for affordable housing, are subject to receipt of those grant funds or tax credits.

(6) Cost Overruns. Except as provided in Section 4.01(b) or if there is a change of Project scope requested or required by another Party, the Project Manager is responsible for any funds in excess of the amounts specified in this Agreement required to complete the Project in accordance with the Ten-Year Plan Scope.

(7) The Escalator Index shall not be applied to funding for Projects.

(b) Operations and Maintenance Funds. The City, County and BBP are not obligated under this Agreement to establish funds for the maintenance and operations of areas outside the Park or in the Excluded Area of the Park. To ensure that sufficient funds are on hand for BBP to operate and maintain the Park (except for the Excluded Area) during the Term, the Parties hereby agree to create at the depository of BBP, and for the benefit of the Park, the following funds:

(1) Greenspace Maintenance Fund. The Greenspace Maintenance Fund is hereby created for the purposes set forth in this Agreement and shall be funded annually with monies deposited in such fund, as further set forth in this Article VII, and these funds shall not be used for any purpose whatsoever outside of the Park;

(2) Park Fee Fund. The Park Fee Fund is hereby created for the purpose set forth in this Agreement and shall be funded annually with monies deposited in such fund in accordance with Section 6.05;

(3) Capital Expenditure Reserve Fund. The Capital Expenditure Reserve Fund is hereby created and confirmed for the purposes set forth in this Agreement and shall be funded consistent with this Article VII to provide a source of funds for BBP to maintain the Park consistent with the Capital Expenditure Requirement;

(4) Resilience Fund. The Resilience Fund is hereby created for the purposes set forth in this Agreement and shall hold and maintain funds to be used by BBP following

a Casualty event;

(5) BBP Endowment Fund. The BBP Endowment Fund is hereby created for the purposes set forth in this Agreement and shall consist of a trust account or similar endowment account to hold and maintain funds in trust for the sole benefit of the Park. Proceeds as described in **Exhibit B** shall then flow to the Greenspace Maintenance Fund until the Greenspace Maintenance Target is reached and then for benefit of the Park;

(6) Lockwood South Fund. In accordance with the underlying agreements governing the Lockwood South Housing Development, BBP and/or its Affiliates will create funds received by BBP from Lockwood South, and a portion of these funds as described in **Exhibit B** shall then flow to the Greenspace Maintenance Fund; and

(7) Turkey Bend Fund. The Turkey Bend Fund is hereby created for the purposes set forth in this Agreement and shall hold and maintain funds to be used by BBP to operate and maintain Turkey Bend.

Collectively, the BBP Non-Park Project Fund, BBP Park Project Fund, Greenspace Maintenance Fund, Park Fee Fund, Capital Expenditure Reserve Fund, Resilience Fund, BBP Endowment Fund, Lockwood South Fund, and Turkey Bend Fund may be referred to as the “**Accounts**” and individually as an “**Account**.”

With respect to the Accounts, BBP shall establish and maintain an accounting system, which shall be substantially in accordance with generally accepted accounting principles, that enables the City Controller, County Auditor or his or her designees to readily identify BBP’s assets, expenses, reserves and use of funds, and provides transparency for all Parties to review and understand the funding status of the Accounts. BBP covenants and agrees to promptly deposit any and all monies remitted pursuant to Section 7.02 through Section 7.06 hereof in the appropriate Account to be used solely for the purposes allowed under this Agreement and to deposit any interest or other investment returns from a specific Account into the same Account.

(c) Annual Reporting.

(1) Audits. BBP and, with respect the Excluded Area, the City, shall provide copies of their annual financial audits to the Standards Committee (and the City and County representatives on the Standards Committee shall provide the same to the appropriate representatives of the City and County) within 30 days after issuance thereof.

(2) Capital Reports. At the end of their fiscal years during the Term, BBP, the City and County shall provide an annual year-end written report, using audited or unaudited financial information, to the Standards Committee (and the City and County representatives on the Standards Committee shall provide the same to the appropriate representatives of the City and County) for the immediately preceding fiscal year providing the status of capital funding and expenditures for the Ten-Year Plan. If the City or BBP has assigned an obligation under this Agreement, it will cause its assignee to provide the annual year-end report to the Standards Committee.

(3) Capital Budgets. Until the Agreement Year following substantial completion of all Ten-Year Plan Projects, BBP, the City and County shall submit to the Standards Committee their capital budgets to fund their capital funding obligations for Projects set forth in Sections 7.03 through 7.05. Each Party shall confirm its capital budget will allow the Party to comply with the Ten-Year Plan or request the Standards Committee to approve formal amendment(s) to the Ten-Year Plan. Each Party also shall summarize the schedule for approvals already provided or still necessary for its funds to be available in compliance with the Ten-Year Plan. The City shall submit this budget on or before April 15th of each year, and the Standards Committee shall approve it on or before May 15th of each year. County shall submit this budget on or before July 15th of each year, and the Standards Committee shall approve it on or before August 15th of each year. BBP shall submit this budget on or before October 15th of each year, and the Standards Committee shall approve it on or before November 15th of each year.

(e) Except for the Excluded Area, funding for Greenspace Maintenance and Operations shall be tied to calendar years. In the final Agreement Year, the Parties shall pro-rate their final Greenspace Maintenance Contribution based on the percentage of the calendar year included in the Term.

Section 7.02 BBP Funding.

(a) BBP shall be entitled to all revenues generated within the Park, including revenues derived from BBP Programs, Concessions and parking except from the Excluded Area, public rights-of-way, or as otherwise limited in this Agreement. In consideration of this entitlement, BBP agrees to budget and use all revenues generated to create, construct, install, maintain, operate and program the Park and Projects in accordance with this Agreement, in addition to the funding sources identified in Sections 7.03 through 7.06.

(b) BBP shall be solely responsible for raising any and all private philanthropic funding required to create, construct, install, maintain, operate and program the Park and other desired improvements in the Park in accordance with this Agreement, the Ten-Year Plan and the Operations and Maintenance Manual. The Parties shall coordinate and cooperate in connection with applications for all grants for funding to create, construct, install, maintain and operate the Park and other desired improvements in the Park. As part of its annual fundraising, BBP shall, during each fiscal year of the Term, raise sufficient funds to fulfill its obligations under this Agreement, including maintaining reasonable operating reserves.

(c) Annually, BBP agrees to prepare its budget for the Park for each of BBP's fiscal years, as contemplated in Section 3.05(e)(7) hereof, and to include in such budget a reasonable determination of the amounts necessary to fund its maintenance obligations set forth in Section 7.03 and the dates such funds shall be deposited in the appropriate Account during that budget cycle. The proposed BBP budget for the Park shall reflect, at a minimum, amounts within 5% of the amounts in **Exhibit B** (as increased annually by application of the Escalator Index) and/or as adjusted by Section 7.06(c)(3) hereof. If the proposed BBP Park budget, in the aggregate, varies by more than 5% from the amounts set forth in **Exhibit B** in any Agreement Year, Standards Committee approval is required, and Major Donor approval is required if the proposed budget is projected to cause BBP to be unable to meet the Maintenance and Operations Standard for

Greenspace Maintenance. If BBP's proposed budget for the Park is within 5% of the amounts in **Exhibit B** but is projected to cause BBP to be unable to meet the Maintenance and Operations Standard for Greenspace Maintenance due to unforeseen circumstances or higher-than-projected costs, then BBP shall have the right to temporarily reduce the scope of Greenspace Maintenance to levels that can be covered by the proposed budget for the Park for that year, subject to Standards Committee's and Major Donor's approval, which shall not be unreasonably withheld. Such annual budget, after being presented to the Standards Committee and approved, if necessary, under this subsection, shall be known as the **"BBP Park Budget"** herein.

(d) Annually, BBP agrees to prepare its budget for Turkey Bend for each fiscal year and to include in such budget a reasonable determination of the amounts necessary to fund its maintenance obligations set forth in Section 7.03 and the dates such funds shall be deposited in the appropriate Account during that budget cycle. While this is a BBP obligation under this Agreement, BBP shall provide this information to the Standards Committee on an information only basis, and neither Standards Committee, City nor County approval of this budget is required. Such annual budget, after being presented to the Standards Committee shall be known as the **"BBP Turkey Bend Budget"** herein. The Parties acknowledge that BBP may have separate funding obligations for Turkey Bend associated with the HHRC, which are included in a separate agreement. BBP shall not use the Greenspace Maintenance Fund for Turkey Bend maintenance and operations.

(e) Annually, BBP agrees to prepare its budget for Lockwood South for each fiscal year and to include in such budget a reasonable determination of the amounts necessary to fund its exterior maintenance obligations pursuant to its funding obligations set forth in Section 7.03 and the dates such funds shall be deposited in the appropriate Account during that budget cycle. This budget shall include only those funds received and expended by BBP and excludes its Affiliates. While this is a BBP obligation under this Agreement, BBP shall provide this information to the Standards Committee on an information only basis, and neither Standards Committee, City nor County approval of this budget is required. Such annual budget, after being presented to the Standards Committee shall be known as the **"BBP Lockwood South Budget"**.

(f) If BBP raises funds in excess of the capital contribution amount described in Section 7.03, and such funds are not required to address cost overruns associated with its Projects, BBP first shall confirm there will be adequate funding for BBP to meet the Maintenance and Operations Standard for the current year and next calendar year, and if there is adequate funding, BBP may opt to use those funds for (i) additional work subject to approval by the Standards Committee, or (ii) the design and construction of amenities for the City's North and South Canal project between White Oak Bayou and Buffalo Bayou in the downtown area, and this work will be a Project added to the Ten-Year Plan, but will not be subject to the terms of this Agreement.

Section 7.03 Elements of BBP Funding.

(a) Capital Contributions. As of the Effective Date, to fulfill its contribution to the funding of the Ten-Year Plan pursuant to Section 4.01(a), BBP has raised in cash or commitments an amount equal to or exceeding \$37,220,585, excluding Major Donor funding, and has contributed \$25,154,669 to the Projects. BBP shall deposit the remaining balance of \$7,635,916 into the BBP Non-Park Project Fund or BBP Park Project Fund as cash is received pursuant to

these commitments. Additionally, BBP commits to raise an additional amount of \$45,852,271 for its portion of the Ten-Year Plan and shall promptly deposit such monies as received to the BBP Non-Park Project Fund, BBP Park Project Fund or BBP Endowment Fund as the monies become available to BBP. See **Exhibit A2** for more information about funding for each BBP-funded Project and the BBP Endowment Fund. For Projects that are the responsibility of another Project Manager that are partially funded by BBP, BBP shall reimburse the applicable Project Manager for BBP's pro rata share of each invoice (including any actual, out-of-pocket costs of such Project Manager resulting from BBP's delay or delinquency in making such payment) within 45 days of Project Manager's approval and submittal to BBP of such invoice, unless the reimbursement process is governed by a separate agreement, or BBP and the Project Manager mutually agree to a different procedure.

(b) The Funding Agreement provides that the Major Donor will contribute \$100,000,000 to BBP for a portion of the Ten-Year Plan, and BBP shall deposit such monies into the BBP Park Project Fund and BBP Endowment Fund on the schedule set forth in the Funding Agreement, as described in the "Project Cash Flow Requirements" table in **Exhibit A2**. Such funding shall be provided in a manner that does not delay the Ten-Year Plan Schedule, and such funds will be made available as contemplated by this Agreement, including Articles IV and V hereof. However, the Parties acknowledge that Major Donor may delay its funding for a Project, with a corresponding delay in BBP's Ten-Year Plan Schedule for the Project, if City and/or County funding for the Project is not made available in compliance with the Ten-Year Plan Schedule or Ten-Year Plan Budget.

(c) Greenspace Maintenance Contributions. BBP agrees to deposit sufficient funds to the Greenspace Maintenance Fund in accordance with this Agreement and in the amounts contemplated in **Exhibit B**, as increased annually by application of the Escalator Index. BBP shall deposit half of the total on or before January 10th and half on or before June 1st of each Agreement Year (the "**BBP Greenspace Maintenance Contribution**"). The January deposit shall be adjusted for the prior June's Escalator Index plus a catch-up payment determined by the difference between BBP's prior June's deposit due as subsequently adjusted by the Escalator Index and BBP's actual deposit made on or before June 1st of the prior year. To the extent required to fund BBP's obligation to provide tools and supplies for use in Greenspace Maintenance activities during the Term pursuant to Section 6.01, such amounts shall be reflected in the BBP Park Budget and deposited in the Greenspace Maintenance Fund, as needed. Additionally, Parking Revenue shall be deposited to the Greenspace Maintenance Fund up to the Greenspace Maintenance Annual Target, calculated pursuant to Section 7.06. Once the Greenspace Maintenance Annual Target has been reached pursuant to Section 7.06, additional Parking Revenue shall be retained by BBP for any use during the Term in connection with costs of Operations, Greenspace Maintenance, Programs, the Capital Expenditure Reserve Fund and/or the Resilience Fund for the benefit of the Park.

(d) Park Fee Fund. BBP shall deposit in the Park Fee Fund all revenue from Special Events and Programs and at BBP's option other unrestricted BBP funds to fund Programs. The Park Fee Fund also may be used to help fund BBP's Greenspace Maintenance Contribution.

(e) Capital Expenditure Reserve Fund Contributions. BBP shall raise and maintain funds (as increased by the application of Escalator Index) in the Capital Expenditure Reserve Fund in accordance with **Exhibit B** and shall use good faith efforts to continue to fund the Capital

Expenditure Reserve Fund in order to fund its Capital Expenditure Requirement and the deductible portion of property insurance claims. To the extent required to fund BBP's obligation to fund the Capital Expenditure Projects pertaining to Park Projects BBP has Constructed throughout the Term pursuant to Section 6.01, such amounts shall be reflected in the BBP Park Budget and deposited in the Capital Expenditure Reserve Fund, as needed.

(f) Resilience Fund Contributions. BBP shall deposit funds into the Resilience Fund for use for the Park following Casualty events in accordance with **Exhibit B** (as increased by the application of Escalator Index).

(g) BBP Endowment Fund Contributions. By the end of BBP fiscal year 2027, BBP shall deposit sufficient funds in the BBP Endowment Fund to attain a balance of at least \$13,500,000 (including Major Donor funds) to provide investment income to support Greenspace Maintenance until the Greenspace Maintenance Annual Target is reached and then to benefit the Park, in accordance with this Agreement, the Master Plan, and the Operations and Maintenance Manual, and as further outlined in **Exhibit B**.

(h) Other Funds. BBP shall secure adequate funds to maintain and operate Turkey Bend and non-Park areas of Lockwood South.

Section 7.04 Elements of City Funding.

(a) Capital Contributions to Projects. Pursuant to Section 4.01(a), the City agrees to contribute \$83,517,935 for its share of the capital costs of the Ten-Year Plan, as set forth in **Exhibit A2**; however, the budgets for Segments D, E, and G depicted in **Exhibit A1** are estimates prepared by BBP that do not include the future cost of Segment F and may be modified without Standards Committee approval as long as the City is in compliance with the Ten-Year Plan Schedule and Ten-Year Plan Scope. Such funding shall be provided by the dates listed in **Exhibit A3** to not delay the Ten-Year Plan Schedule, and such funds will be made available as contemplated by this Agreement. The City shall take the steps necessary to secure any tax increment reinvestment zone or other funding necessary to meet the City's funding obligations for Projects as described in Section 7.06(b). Furthermore, the City will use best efforts to ensure that any capital improvement bonds required to meet the City's funding obligations in **Exhibit A2** are timely included on the agenda for City Council's approval. See **Exhibit A2** for more information about funding for each City-funded Project. For Projects that are the responsibility of another Project Manager that are partially funded by the City, the City shall fund in advance or reimburse the Project Manager for City's pro rata share of each invoice (including any actual, out-of-pocket costs of such Project Manager resulting from the City's delay or delinquency in making such payment) within 45 days of Project Manager's approval and submittal to the City of such invoice, unless the reimbursement process is governed by a separate agreement or the City and the Project Manager mutually agree to a different procedure and subject to Section 7.07. In order to establish a funding source for its contributions under this Section 7.04(a), the City shall use best efforts to take all necessary steps and secure all approvals by the dates described and set forth in **Exhibit J**.

(b) City Greenspace Maintenance Contributions. The City agrees to deposit or cause its assignee to deposit sufficient funds to the Greenspace Maintenance Fund in accordance with this Agreement and in the amounts contemplated in **Exhibit B**, as increased annually by

application of the Escalator Index. The City will deposit half of the total on or before January 10th and half on or before June 1st of each Agreement Year (the “**City Greenspace Maintenance Contribution**”) or, once the Greenspace Maintenance Annual Target has been met, to BBP for any Park purpose relating to maintenance, repairs, and Operations. The January deposit shall be adjusted for the prior June’s Escalator Index plus a catch-up payment determined by the difference between City’s prior June’s deposit due as subsequently adjusted by the Escalator Index and City’s actual deposit made on or before June 1st of the prior year.

(c) Excluded Area. With respect to the Excluded Area of the Park, the City shall separately fund the costs of maintenance and operations of the Excluded Area, in accordance with the Maintenance and Operations Standard.

(d) Utilities. City shall pay for utilities in accordance with Section 6.06.

(e) Casualty. City shall be responsible for funding repairs and restoration following a Casualty affecting City-owned property and/or the Gregg Street Bridge in accordance with Section 9.01.

(f) Capital Expenditure Contributions. City shall fund any Capital Expenditure Project required for the Excluded Area, Lockwood CIP Project, Navigation Greenway after transfer of title from the County, and HHRC.

Section 7.05 Elements of County Funding

(a) Capital Contributions to Projects. Pursuant to Section 4.01(a), the County agrees, as further detailed in Section 7.08 below, to contribute \$24,285,575 for its share of the capital costs of the Ten-Year Plan, as set forth in **Exhibit A2** attached hereto. Such funding shall be provided by the dates listed in **Exhibit A3** to not delay the Ten-Year Plan Schedule, and such funds will be made available as contemplated by this Agreement, including Articles IV and V hereof. Furthermore, the County will use best efforts, subject to approval by Commissioners Court, to authorize any capital improvement bonds required to meet the County’s funding obligations in **Exhibit A2** as part of this Agreement. See **Exhibit A2** for more information about funding for each County-funded Project. For Projects that are the responsibility of another Project Manager that are partially funded by County, County shall fund in advance or reimburse the Project Manager for County’s pro rata share of each invoice within 45 days of Project Manager’s approval and submittal to County of such invoice (including any actual, out-of-pocket costs of such Project Manager resulting from County’s delay or delinquency in making such payment), unless the reimbursement process is governed by a separate agreement or County and the Project Manager mutually agree to a different procedure. In order to establish a funding source for its contributions under this Section 7.05(a), County shall take all necessary steps and secure all approvals by the dates described and set forth in **Exhibit J**.

(b) Greenspace Maintenance Contributions. The County agrees to deposit or cause its assignee to deposit sufficient funds to the Greenspace Maintenance Fund in accordance with this Agreement and in the amounts contemplated in **Exhibit B**, as increased annually by application of the Escalator Index, half of the total on or before January 10th and half on or before June 1st of each Agreement Year (the “**County Greenspace Maintenance Contribution**”) or, once the

Greenspace Maintenance Annual Target has been met, to BBP for any Park purpose. The January deposit shall be adjusted for the prior June's Escalator Index plus a catch-up payment determined by the difference between County's prior June's deposit due as subsequently adjusted by the Escalator Index and County's actual deposit made on or before June 1st of the prior year.

(c) Utilities. County shall pay for utilities in accordance with Section 6.06.

(d) Casualty. County shall be responsible for funding repairs and restoration following a Casualty affecting County-owned property and/or the Japhet Creek Bridge in accordance with Section 9.02.

(e) Capital Expenditure Contributions. County shall fund any Capital Expenditure Project required for the Japhet Creek Bridge.

Section 7.06 Annual Greenspace Maintenance Funding. The aggregate target for funding dedicated to Greenspace Maintenance on an annual basis in accordance with this Agreement (the "**Greenspace Maintenance Annual Target**") shall be determined as follows:

(a) As of January 1, 2028 or the beginning of another calendar year after the completion of all Park Projects in accordance with the Ten-Year Plan Schedule, whichever is later, the Greenspace Maintenance Annual Target shall be \$1,300,000 (in 2022 dollars), as set forth in **Exhibit B** (as such exhibit may be revised or amended pursuant to this Agreement including annual increases by application of the Escalator Index, which shall expressly apply to the Greenspace Maintenance Annual Target).

(b) In order to establish a funding source for its Greenspace Maintenance Contribution, City shall use best efforts to take all necessary steps and secure all approvals by the dates described and set forth in **Exhibit J**.

(c) In order to establish a funding source for its Greenspace Maintenance Contribution, County shall take all necessary steps and secure all approvals by the dates described and set forth in **Exhibit J**.

The funding sources to determine whether the Greenspace Maintenance Annual Target will be attained for a given Agreement Year include the following (collectively, the "**Greenspace Maintenance Annual Funding**"):

(1) the City Greenspace Maintenance Contribution equal to 25% of the Greenspace Maintenance Annual Target and in accordance with **Exhibit B**;

(2) the County Greenspace Maintenance Contribution equal to 25% of the Greenspace Maintenance Annual Target and in accordance with **Exhibit B**; and

(3) the BBP Greenspace Maintenance Contribution equal to 50% of the Greenspace Maintenance Annual Target and in accordance with **Exhibit B**, including projected Parking Revenue in the Park, and other BBP funds required to
(i) meet the difference between the current calendar year's Greenspace Maintenance Annual Target and the combined total of the City Greenspace

Maintenance Contribution and the County Greenspace Maintenance Contribution for the current calendar year, or (ii) address unforeseen unusual conditions or higher-than-projected costs following its temporary reduction of Greenspace Maintenance pursuant to Section 7.02(c) by (a) identifying efficiencies to reduce costs, (b) shortening the operating hours or closing non-essential facilities and amenities as described in **Exhibit C**, or (c) increase funding, all in accordance with Section 7.06(d).

(d) During the calendar year following the substantial completion of the implementation of the Ten-Year Plan's Park Projects and annually thereafter, the Parties agree that the Standards Committee shall evaluate the Greenspace Maintenance Annual Target for the then-current fiscal year through the end of the Term, as set forth in **Exhibit B**. This evaluation shall be based on an analysis of the funding and expenses for Greenspace Maintenance under this Agreement in prior years along with the projections of any consultants hired by the Standards Committee for such purpose, if necessary or helpful. In the event the Standards Committee determines based on this evaluation that the Greenspace Maintenance Annual Target set forth in **Exhibit B** should be updated to ensure sufficient funds are available to conduct Greenspace Maintenance of the Park in accordance with the Maintenance and Operations Standard for the remainder of the Term, then the Standards Committee may reasonably adjust and amend the Maintenance and Operations Standard and/or **Exhibit B** to reflect an updated Greenspace Maintenance Annual Target for all future fiscal years during the Term (such amount the "**Updated Greenspace Maintenance Annual Target**"). For avoidance of doubt, and in recognition that BBP already has committed to funding 50% of the Greenspace Maintenance expenses plus the Capital Expenditure Requirement and Resilience Fund, the Standards Committee shall first request additional funding from the City and County.

Section 7.07 Limit of Appropriation by City Council. The Parties acknowledge that City's City Council has the sole authority to appropriate and allocate City Funds specified in this Agreement. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article IX, Section 5 of the Texas Constitution, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates and allocates for this Agreement. It is expressly understood and agreed by the Parties that the City has not appropriated funds to fulfill an obligation created by the terms of this Agreement; provided further, however, that the City may, but shall not be obligated to, from time to time budget and appropriate funds to fulfill any obligation created hereunder. Should the City Council fail to appropriate and allocate amounts sufficient to fund City's obligations under this Agreement, BBP's sole remedies are either to reduce its scope of Park care pursuant to Section 7.02(c), exercise the right of reverter for certain properties as described in Section 5.15, or termination for cause pursuant to Section 10.04.

Section 7.08 Limit of Appropriation by Commissioners Court. The Parties acknowledge that County Commissioners Court has the sole authority to appropriate and allocate County Funds specified in this Agreement. In order to comply with Article III, Sections 52 of the Texas Constitution, the County may not obligate itself by contract to pay more money than the amount Commissioners Court appropriates and allocates for this Agreement. It is expressly understood and agreed by the Parties that the County has not currently appropriated, but agrees to make good faith efforts to do so, funds to fulfill an obligation created by the terms of this Agreement; provided further, however, that the County may from time to time budget and appropriate funds, and agrees

to make good faith efforts toward such, to fulfill any obligation created hereunder. Should the County fail to appropriate and allocate amounts sufficient to fund County's obligations under this Agreement, BBP's sole remedies are either to reduce its scope of Park care pursuant to Section 7.02(c), exercise the right of reverter for certain properties as described in Section 5.15, or termination for cause pursuant to Section 10.04.

Section 7.09 Tax Increment Financing. A portion of each of the County's and the City's financial contributions under this Agreement are currently anticipated to be funded through application of a portion of each of the County's and the City's respective tax increment contributed to certain tax increment reinvestment zones as described in **Exhibit J** and in accordance with Sections 7.04(a), 7.05(a), 7.06(b) and 7.06(c).

ARTICLE VIII

INDEMNIFICATION

Section 8.01 Indemnification. BBP AGREES TO AND WILL DEFEND, INDEMNIFY, AND HOLD CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "**CITY INDEMNITEES**"), COUNTY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "**COUNTY INDEMNITEES**"), AND THE MAJOR DONOR, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "**MAJOR DONOR INDEMNITEES**") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE DEFINITIVE AGREEMENTS OR ANY CONTRACT OR SUBCONTRACT THEREUNDER INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(a) BBP AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS' OR SUBCONTRACTORS' (COLLECTIVELY, "**BBP PARTIES**"), ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(b) CITY INDEMNITEES', COUNTY INDEMNITEES', MAJOR DONOR INDEMNITEES' AND BBP PARTIES' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER BBP IS IMMUNE FROM LIABILITY OR NOT; AND;

(c) CITY INDEMNITEES', COUNTY INDEMNITEES', MAJOR DONOR INDEMNITEES' AND BBP PARTIES' ACTUAL OR ALLEGED STRICT STATUTORY LIABILITY, WHETHER BBP IS IMMUNE FROM LIABILITY OR NOT.

BBP WILL DEFEND, INDEMNIFY, AND HOLD CITY INDEMNITEES, COUNTY INDEMNITEES', AND MAJOR DONOR INDEMNITEES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. BBP'S INDEMNIFICATION IS LIMITED TO FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000) PER OCCURRENCE. BBP WILL NOT INDEMNIFY

ANY MAJOR DONOR INDEMNITEE TO THE EXTENT ANY SUCH CLAIMS ARE CAUSED BY CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES FOR THE SOLE OR CONTRIBUTORY NEGLIGENCE OF SUCH MAJOR DONOR INDEMNITEE.

Section 8.02 INDEMNIFICATION – PROCEDURES.

(a) Notice of Claims. If the City, County, Major Donor or BBP receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (1) a description of the indemnification event in reasonable detail,
- (2) the basis on which indemnification may be due, and
- (3) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City, County or Major Donor from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City, County or Major Donor does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that BBP is prejudiced, suffers loss, or incurs expense because of the delay.

(b) Defense of Claims.

(1) Assumption of Defense. BBP may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City, County or Major Donor, as applicable. BBP shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, BBP must advise the City, County and/or Major Donor as to whether or not it shall defend the claim. If BBP does not assume the defense, the City, County or Major Donor shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(2) Continued Participation. If BBP elects to defend the claim, the City, County and/or Major Donor may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. BBP may settle the claim without the consent or agreement of the City, County or Major Donor, unless it (x) would result in injunctive relief or other equitable remedies or otherwise require the City, County or Major Donor to comply with restrictions or limitations that adversely affect the City, County or Major Donor, (y) would require the City, County or Major Donor to pay amounts that BBP does not fund in full, (z) would not result in the City's, County's or Major Donor's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE IX

CASUALTY AND INSURANCE

Section 9.01 City Obligations. City shall be solely responsible for the cost of any repair or restoration of vertical improvements in the City-owned areas of the Park and the Gregg Street Bridge if damaged or destroyed by fire, flood, windstorm, or other Casualty, to the extent that proceeds available from BBP's insurance coverage (pursuant to Section 9.03) are insufficient or unavailable to fund such repair or restoration (and in any event, City shall be solely responsible for the cost of any repair or restoration to the Gregg Street Bridge, which is expressly excluded from BBP's insurance coverage). City may meet the obligations set forth in this Section 9.01 by adding vertical improvements in the City-owned areas of the Park and the Gregg Street Bridge to its then-current property insurance or similar insurance at full replacement value during the Term, provided, however, that for the avoidance of doubt, City's obligations in this Section 9.01 shall not be limited by the coverage, deductibles, or policy limits of any such insurance policy. The Parties acknowledge that the City maintains a program of self-insurance as of the date of this Agreement.

Section 9.02 County Obligations. County shall be solely responsible for the cost of any repair or restoration of vertical improvements in the County-owned areas of the Park and the Japhet Creek Bridge if damaged or destroyed by fire, flood, windstorm, or other Casualty, to the extent that proceeds available from BBP's insurance coverage (pursuant to Section 9.03) are insufficient or unavailable to fund such repair or restoration (and in any event, County shall be solely responsible for the cost of any repair or restoration to the Japhet Creek Bridge, which is expressly excluded from BBP's insurance coverage). County may meet the obligations set forth in this Section 9.02 by carrying property insurance, adding the County-owned areas of the Park and the Japhet Creek Bridge to any program of insurance or self-insurance maintained by the County from time to time, or otherwise, provided, however, that for the avoidance of doubt, County's obligations in this Section 9.02 shall not be limited by the coverage, deductibles, or policy limits of any such insurance policy or self-insurance program. The Parties acknowledge that the County maintains a program of self-insurance as of the date of this Agreement.

Section 9.03 Insurance Requirements for BBP and Contractors.

(a) BBP agrees to obtain and maintain at all times during the Term of this Agreement insurance meeting at a minimum the requirements set forth in subsection (c) below.

(b) BBP, City, County and each Project Manager shall cause all contractors or subcontractors, in either case, whose contracts exceed \$100,000 to provide proof of coverage meeting at a minimum all requirements set forth in subsection (c) below, and naming each of BBP, City, County, and Major Donor and each of its and their agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties. The amount of liability coverage must be commensurate with the amount of the contract, but no less than \$500,000 per claim. Each of BBP, City, and County agree to provide copies of such contracts and certificates of insurance evidencing compliance with this Section 9.03(b) prior to commencement of any Project and upon request from any other Party or Major Donor from time to time; provided that the

applicable standards for determining compliance shall be those in effect under this Agreement at the time of award.

(c) The coverage requirements set forth below are subject to adjustment only in accordance with Section 9.04(m).

Coverage	Limit of Liability
(1) Workers' Compensation:	Statutory Limits for Workers' Compensation
(2) Employer's Liability:	• Bodily Injury by Accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee)
(3) Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury; and Products and Completed Operations coverage	Bodily Injury and Property Damage, Combined limit of \$1,000,000 (each occurrence), and \$2,000,000 aggregate
(4) Automobile Liability Insurance:	\$1,000,000 combined single limit each occurrence
(5) Builder's Risk, during Construction	Full replacement cost of all improvements
(6) Property insurance on completed Projects maintained by BBP, <u>excluding</u> Gregg Street Bridge and Japhet Creek Bridges with City and/or County, as applicable, to be identified as named insured for property owned by such Party.	\$2,000,000 combined single limit each occurrence.
(7) BBP will require Professional Liability, for design and engineering contracts in excess of \$100,000	\$1,000,000 per claim
Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.	

Section 9.04 Additional Insurance Requirements.

(a) Forms of Policies. The insurance may be in one or more policies of insurance.

(b) Certificates. The insurance coverages may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve the Party from its duties to provide the required coverage hereunder.

(c) Issuers. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least "B+" and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Each issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

(d) Additional Insured. Each BBP policy, except those for Workers' Compensation and Employer's Liability, must name the City and its agents, officers, directors, officials, legal representatives, employees and assigns, the County and its agents, officers, directors, officials, legal representatives, employees and assigns, and Major Donor and its agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties on the original policy and all renewals or replacement during term of such BBP's agreement or contract with contractor and/or Party. If any of such policies are written as "claims made" coverage and the City, County or Major Donor are required to be carried as an additional insured, then BBP must purchase policy period extensions so as to provide coverage to the City, County or the Major Donor, as applicable, for a period of at least two (2) years after the completion of the work contemplated by such Contractor's agreement or contract with contractor and/or Party.

(e) Deductibles. A policy held by BBP or a contractor of BBP may contain deductible amounts as approved by BBP. BBP shall assume and bear any claims or losses to the extent of such deductible amounts in a policy held by BBP or its contractors and waives any claim it may ever have for the same against the City, its officers, agents or employees, County, its officers, agents or employees, and Major Donor, its officers, agents or employees with respect to such deductible amounts.

(f) Cancellation. BBP shall notify the City, County and Major Donor in writing not less than 30 days before cancellation of any policy. BBP shall notify the City, County and Major Donor in writing not less than 30 days before any material change or reduction of coverage. BBP shall give written notice to the City, County and Major Donor within 5 days of the date upon which total claims by any party against BBP reduce the aggregate amount of coverage below the amounts required by this Agreement. BBP shall notify the Directors in writing to any cancellation or material change to BBP's insurance coverage. Within the 30-day period, BBP shall provide other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If BBP does not comply with this requirement, each Director, at his or her sole discretion, or Major Donor may immediately suspend BBP from any further performance under this Agreement and begin procedures to terminate for default.

(g) Subrogation. Each policy must contain an endorsement to the effect that the insurer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees; County, its officers, agents or employees; and the Major Donor, its officers, agents or employees.

(h) Endorsements. Each policy, except for Workers' Compensation, must contain an endorsement that such policy is primary insurance to any other insurance available to the City, County and the Major Donor as an additional insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

(i) Premiums. Each Party shall pay all insurance premiums for the policies it holds, if applicable, and the City, County and the Major Donor shall not be obligated to pay another Party's premiums.

(j) Blanket Policies. BBP shall be entitled to purchase and maintain the insurance under so called "blanket" policies, provided the coverage thereunder is at least the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

(k) Proof of Insurance. At a Party's or Major Donor's request, copies of all policies referred to above, certified by the attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited with the Directors or the Major Donor, as applicable. If the Directors or Major Donor fails to request copies of such policies, BBP shall provide certificates of insurance, in lieu of policies, reflecting that the terms of this Article have been met, such certificates to be provided before BBP or the Contractor begins any work in, on or about the Premises. Further, to the extent that any Party self-insures its obligations hereunder, it shall provide a self-insurance letter or similar description of its insurance program to a Party or to Major Donor upon request from time to time.

(l) Contractor Indemnification. BBP, City, County, and each Project Manager shall require that each contract or agreement with any contractor or subcontractor, in either case, whose contract exceeds \$100,000 to include an indemnification provision substantially in the form attached hereto as **Exhibit M** that expressly identifies each of BBP, City, County, and Major Donor and each of its and their and its agents, officers, directors, officials, legal representatives, employees and assigns as a beneficiary of such indemnity by such contractor or subcontractor.

(m) Approval of Changes. For avoidance of doubt, any changes to the insurance requirements in this Article IX must be approved pursuant to Section 3.05(e)(12).

Section 9.05 WAIVER OF SUBROGATION AND RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, BBP WAIVES ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION OR SUBROGATION AGAINST CITY, COUNTY, MAJOR DONOR AND THEIR RESPECTIVE AFFILIATES, PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PREMISES AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF CITY, BBP, COUNTY, MAJOR DONOR, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES OR ASSIGNEES.

Section 9.06 Restoration following Casualty. If any vertical improvements in the Park are damaged or destroyed by fire or other Casualty, BBP shall give prompt written notice thereof to all Parties. Except as noted in this section, each Party shall deposit into the Resilience Fund: (a) immediately upon receipt, proceeds of property insurance maintained under this Article IX; and (b) if applicable, such other funds required to be paid by City and/or County in accordance with Section 9.01 and/or 9.02. BBP shall proceed with reasonable diligence to repair and restore such damaged improvements, subject, however, to receipt of funds made available in the

Resiliency Fund for such repair and/or restoration, and in any event, if funds in the Resiliency Fund are insufficient or unavailable for repair and/or restoration, BBP shall not be required to expend any out-of-pocket funds for performance hereunder. However, if the Gregg Street Bridge is damaged, the City shall retain any insurance proceeds and fully fund, repair, and restore the damaged improvements, and if the Japhet Creek Bridge is damaged, the County shall retain any insurance proceeds and fully fund, repair, and restore the damaged improvements.

ARTICLE X

GENERAL PROVISIONS

Section 10.01 Term of Agreement. This Agreement shall be in force and effect commencing on the Effective Date and continuing for an initial term of 30 years subject to the renewal provisions herein.

(a) Renewal Terms. BBP shall have the option to renew this Agreement for 2 additional consecutive periods of up to 30 years each (each, a “**Renewal Term**”), subject to the approval of City Council and Commissioners Court, by giving the other Parties hereto written notice of renewal no less than 15 months before the last day of the then current Term. If City Council and/or Commissioners Court fails to renew this Agreement following timely written notice from BBP, however, then BBP may, at its election, exercise its Right of Reverter as to any properties of the non-renewing Party subject to such Right of Reverter, as described in Section 5.15, and for the avoidance of doubt, the properties within the Park owned by such non-renewing Party will remain subject to the Restrictive Covenants, and such non-renewing Party shall not be entitled to any further monetary support from the other Parties in respect of any such obligations. The initial Term and any Renewal Term(s) are individually and collectively referred to in this section as the “**Term**.”

(b) Secondary Renewal Options. If BBP notifies the other Parties in writing that it will not exercise its rights with respect to renewing the Agreement for a Renewal Term or fails to timely submit its renewal notice renewing the Term for one of the Renewal Terms, the Parties agree that the Major Donor shall have the secondary right, but not the obligation, to exercise the Renewal Term option by sending written notice to all Parties hereto during the period beginning with the earlier of (i) receipt by Major Donor of notice from BBP waiving its renewal rights or (ii) no more than 15 months and no fewer than 9 months before the end of the then-current Term. Such notice by the Major Donor shall indicate a successor non-profit entity to replace BBP, as BBP’s assignee, subject to the approval of the City and County, which approval shall not be unreasonably withheld. If Major Donor timely exercises such secondary renewal option, then BBP and the Major Donor (or Major Donor’s approved successor entity) shall cooperate in making an orderly transition of BBP’s activities in connection with the Park in accordance with the transition provisions of Section 10.04(c). On or before the last day of the then-current Term, BBP shall (i) assign this Agreement and all of the Park-related contracts and assets to Major Donor’s designated successor entity for the continuation of implementation of the Ten-Year Plan and Greenspace Maintenance and Operations obligations hereunder, and (ii) transfer to such successor entity all funds held by BBP in the (i) BBP Park Project Fund; (ii) Greenspace Maintenance Fund; (iii) Park Fee Fund (iv) Capital Expenditure Reserve Fund; (v) Resilience Fund; and (vi) all amounts attributable to contributions of the Major Donor to the BBP Endowment Fund prior to such assignment (including

any interest or other proceeds applicable thereto), for use solely for the benefit of the Park for the purposes designated in this Agreement for such funds. BBP also shall transfer title to and control of the Central Maintenance Facility, as identified on **Exhibit A5**, to the successor entity. If the Major Donor elects not to exercise such secondary renewal option(s), then this Agreement shall automatically terminate at the end of the then-current Term, in which event the provisions of Section 10.04 shall apply.

(c) Expiration. For the avoidance of doubt, if BBP fails to timely submit its renewal notice renewing the Term for one of the Renewal Terms and Major Donor does not elect the secondary renewal option described in 10.01(b), above, then this Agreement shall expire at the end of the initial Term or then-applicable Renewal Term, BBP shall not have the right to exercise its Right of Reverter as set forth in 10.01(a), and the Parties shall have no further rights or obligations hereunder.

Section 10.02 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, action or other part of this Agreement or application thereof to any person or circumstance shall ever be held by any court or regulatory authority of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the Agreement and the application of such word, phrase, clause, sentence, paragraph, section or part, of this Agreement to other persons or circumstances shall not be affected thereby.

Section 10.03 Events of Default.

(a) Default by a Party shall occur if the Party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by the Party. If a default occurs, an injured Party shall deliver a written notice to the other Parties describing the default and the proposed termination date. The proposed termination date shall be at least 90 days after the defaulting Party's receipt of the notice. The injured Party, at its sole option, may extend the proposed termination date to a later date. If the defaulting Party completely cures the default before the proposed termination date, as the same may be extended by an event of Force Majeure, the proposed termination date is ineffective. If the defaulting Party does not cure the default before the proposed termination date, the injured Party may stay the termination or terminate its performance under this Agreement on the termination date. The applicable Director shall act on behalf of BBP, the City, or the County to notify one or the other Parties of a default and to effect termination.

(b) The City or the County may terminate in the event of BBP (i) being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) any action or answer by BBP approving of, consenting to, or acquiescing in, any such proceeding, or (iii) the levy of any distress, execution or attachment upon the property of BBP which shall prevent its performance hereunder.

Section 10.04 Termination; Assignment.

(a) Any Party may terminate its performance under this Agreement if another Party defaults and fails to cure the default within 90 days after receiving notice of it and such default is

not stayed; provided, however, BBP, the City and/or the County may not terminate this Agreement at any time after it commences Construction of a Project until such Construction has achieved Final Completion, unless it returns the Project site to its condition prior to the commencement of Construction of such Project. However, the Parties affected by the termination may elect, in writing, to accept the Project site "as-is" without requiring the site to be returned to its prior condition.

(b) Except as specifically described in this Agreement, no Party shall, wholly, in part, by law or otherwise, transfer, assign or otherwise dispose of any of its rights or interests in this Agreement, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (i) the City and BBP may assign portions of their rights and obligations under this Agreement to Permitted Assignees listed in **Exhibit K**, as may be updated from time to time with the approval of the Standards Committee, but without the need to obtain City Council approval, without requiring consent of any other Party, subject to such assignee's express assumption of such assigned obligations and provision of such documentation reasonably required by the Parties hereto that such assignee has the financial capacity to fulfill its prospective obligations hereunder, (ii) if the City and/or County authorizes the creation of a local government corporation whose governmental functions include maintenance and operation of the applicable portions of the Park and BBP is determined (whether through its bylaws or by contract) to manage such local government corporation, BBP may assign its rights and obligations under this Agreement to the local government corporation without requiring consent of any other Party, subject to such assignee's express assumption of such assigned obligations; and (iii) if BBP becomes insolvent, is in default (as set forth in Section 10.03) beyond the applicable notice and cure period, or declares that it is unable or unwilling to proceed with implementation of the Ten-Year Plan or its Greenspace Maintenance and Operations obligations hereunder, Major Donor may designate another nonprofit entity to complete work under the Ten-Year Plan, such designated entity shall be automatically assigned all rights of (i) Construction and entry and (ii) maintenance and Operations possessed by BBP under this Agreement relating to the Ten-Year Plan and shall be subject to the Maintenance and Operations Standard required hereunder, and BBP shall transfer to such successor entity all funds held by BBP in the (i) BBP Park Project Fund; (ii) Greenspace Maintenance Fund; (iii) Park Fee Fund, (iv) Capital Expenditure Reserve Fund; (v) Resilience Fund; and (vi) all amounts attributable to contributions of the Major Donor to the BBP Endowment Fund prior to such assignment (including any interest or other proceeds applicable thereto). BBP also shall transfer title to and control of the Central Maintenance Facility to the successor entity. For the avoidance of doubt, no assignment of a Party's rights or obligations under this Agreement shall release such Party from liability for performance of any obligation to which it is subject pursuant to this Agreement as of its Effective Date.

(c) Upon termination or expiration of this Agreement for any reason, or upon the assignment of this Agreement by BBP or any successor entity to BBP hereunder, then BBP or such assignor shall cooperate with the City and County (in the case of a termination or expiration of this Agreement) or with the assignee (in the case of an assignment hereof) to accomplish the orderly transition of Greenspace Maintenance, Operations, Programs, and obligations relating to the Park. Upon termination or expiration of this Agreement, all public funds remaining in the Accounts shall be transferred to the City and County in accordance with their share of the public contribution of funds to Projects and the Park. In the event of an assignment of this Agreement by BBP, BBP shall

transfer to such successor entity all funds held by BBP in the (i) BBP Non-Park Project Fund and BBP Park Project Fund; (ii) Greenspace Maintenance Fund; (iii) Park Fee Fund, (iv) Capital Expenditure Reserve Fund; (v) Resilience Fund; and (vi) all amounts attributable to contributions of the Major Donor to the BBP Endowment Fund prior to such assignment (including any interest or other proceeds applicable thereto). BBP also shall transfer title to and control of the Central Maintenance Facility to the successor entity.

(d) For the avoidance of doubt, in the event that this Agreement is terminated, all maintenance obligations under this Agreement shall continue to be performed by the Party owning fee or other real property interest in the applicable property, and the defaulting Party will not be entitled to any further monetary support from the other Parties in respect of such obligations. To the extent that BBP has an existing "right of entry" from the City pursuant to a separate agreement at the time this Agreement is terminated, BBP's right of entry under that agreement shall not be affected and shall survive termination of this Agreement.

Section 10.05 Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all rights and remedies now or hereafter existing whether by statute, at law, or in equity; provided, however, no Party may terminate its duties under this Agreement except in accordance with the provisions hereof.

Section 10.06 Representations of BBP. BBP represents to the City and County that:

(a) BBP is duly organized as a nonprofit corporation under the laws of the State of Texas and is duly qualified and authorized to carry on the operations contemplated by this Agreement.

(b) BBP has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by BBP (i) have been duly authorized by BBP's Board of Directors, shall not violate any judgment, order, law or regulation applicable to BBP, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of BBP under the agreement or instrument to which the City or County is a party or by which BBP or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by BBP and constitutes a legal, valid and binding obligation of BBP, enforceable in accordance with its terms.

Section 10.07 Representations of the City. The City hereby represents to County and BBP that:

(a) The City is duly created under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations contemplated by this Agreement.

(b) The City has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, shall not violate any judgment, order, law or regulation applicable to the City, and (ii) do not constitute a default under or result in the creation of, any lien, charge,

encumbrance or security interest upon any assets of the City under any agreement or instrument to which BBP or County is a party or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable in accordance with its terms.

Section 10.08 Representations of County. County represents to the City and BBP that:

(a) The County is a political subdivision operating as such under the Constitution and laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations contemplated by this Agreement.

(b) The County has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, shall not violate any judgment, order, law or regulation applicable to the County, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the County under any agreement or instrument to which City or BBP is a party or by which the County or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the County, enforceable in accordance with its terms.

Section 10.09 Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "**notice**") herein provided or permitted to be given, made or accepted by any Party to the other must be in writing and may be given or be served by depositing the same in the United States Postal Service mail, postpaid and registered or certified, and addressed to the Party to be notified, with return receipt requested, or by delivering the same to any reasonable officer of such Party, or by prepaid telegram, when appropriate, addressed to the Party notified or by facsimile, with a copy to be sent by United States Postal Service mail. Notice deposited in the United States Postal Service mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of 3 days after it is so deposited, or the confirmed receipt of the facsimile. Notice given in any manner other than stated herein shall be effective only if and when received by the Party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as herein provided be as follows:

If to the City, to: Houston Parks and Recreation Department
2999 South Wayside
Houston, Texas 77023
Attn: Director

If to BBP: Buffalo Bayou Partnership
1019 Commerce, Suite 200
Houston, Texas 77002
Attn: President

If to County:

County of Harris, Texas
1019 Congress, 15th Floor
Houston, Texas 77002
Attn: County Attorney

Each Party shall have the right from time to time at any time to change its respective address and each shall have the right to specify as its address any other address, provided that at least 15 days' written notice is given of such new address to the other Party.

Section 10.10 Merger and Amendments. This Agreement comprises the complete and entire Agreement among the Parties. Each Party shall maintain a copy of this Agreement that shall incorporate all amendments, corrections and updates hereto. Except as described in Section 4.01 and below in respect to an update or revision to an exhibit of this Agreement, this Agreement may not be altered or amended except in writing executed on behalf of the Parties, duly approved by the governing body of each Party and also approved by the Major Donor, with such approval by the Major Donor not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Parties may make corrections and updates to certain of the exhibits (including the schedules attached thereto) to this Agreement strictly in accordance with the terms of this Agreement, and such corrections and updates shall not be deemed amendments to the Agreement under this section. For the avoidance of doubt, such corrections and updates include changes to the exhibits in accordance with the respective requirements hereof, provided, however, that any correction, update, or amendment to **Exhibit A2** which would have the effect of modifying the funding for any Project must be approved by the applicable Project Manager. Any corrected or updated exhibit shall be deemed provided by a Party to the other Parties through provision thereof to the Standards Committee.

Section 10.11 Captions. The captions at the beginning of the Articles of this Agreement are guidelines and labels to assist in locating the reading of such Articles, and therefore, shall be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Agreement.

Section 10.12 Choice of Law. This Agreement is subject to and shall be construed in accordance with the Constitution and the laws of the State of Texas and the Charter and Ordinances and Administrative Policies, as applicable, of the City. All obligations hereunder shall be performed in Houston, Harris County, Texas.

Section 10.13 Equal Employment Opportunity. BBP shall not discriminate against any employee, contractor, vendor or concessionaire or any applicant or bidder for employment, contracts or Concessions on the basis of race, religion, color, sex, national origin, age, handicap or disability, marital status, veteran status, political affiliation, sexual orientation, gender identity, gender expression or any basis that would violate Applicable Laws.

Section 10.14 Enforcement.

(a) The City Attorney or his or her designee and the County Attorney or his or her designee shall have the right to enforce all their respective legal rights and obligations under this Agreement without further authorization. BBP covenants to provide to the City Attorney all

documents and records that the City Attorney deems necessary to assist in determining BBP's compliance with this Agreement, with the exception of those documents made confidential by Applicable Laws. BBP covenants to provide to the County Attorney all documents and records that the County Attorney deems necessary to assist in determining BBP's compliance with this Agreement, with the exception of those documents made confidential by Applicable Laws.

(b) Upon at least 3 business days advance notice to BBP, the City and County shall each have the right, directly or through duly authorized representatives, during normal business hours and at its expense, to audit and obtain copies of BBP's books and records relating to the Projects and the Park, provided, however, that BBP shall not be subject to audit more frequently than once in any City or County fiscal year during the Term.

(c) This Agreement constitutes a contract for goods and services under Chapter 271 of the Texas Local Government Code.

Section 10.15 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, pandemics, endemics, acts of civil disobedience, fire, flood or other casualty, shortage of materials, severe natural disturbance, 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 a 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 Parties 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.

Section 10.16 Federally Declared Disaster. The Parties agree to cooperate to establish written federally declared disaster procedures and protocols. The procedures and protocols shall establish the role and responsibility of each Party in the event any of the Park or the Projects are impacted, damaged or destroyed, in whole or in part, as a result of or in connection with the occurrence of a federally-declared disaster/emergency event for the procurement, purchase, repair, replacement, reconstruction, emergency work, monitoring or other aspects related to restoration of the Projects and/or the Park and any projects resulting from the occurrence of such event. Such procedures and protocols (including any amendments thereto) must be approved by the Parties and shall supplement the provisions of this Agreement. At all times after a declared disaster/emergency declaration from the federal government, or notification from the Director(s) to BBP of an impending declaration, BBP agrees to work with the City and County to ensure compliance with all federal, state, and local laws and regulations applicable to all aspects of the restoration of the City-owned and/or County-owned property or assets in the Park.

Section 10.17 Pay or Play. The requirements and terms of the City Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes applying to City property. BBP has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

Section 10.18 Compliance with Equal Opportunity Ordinance. BBP shall comply with the requirements of the City's Equal Employment Opportunity Ordinance as set out in **Exhibit G**, attached hereto.

Section 10.19 Environmental Compliance. BBP shall maintain and operate the Park in an environmentally sound manner that complies with all Applicable Laws and permits, and BBP shall maintain current certifications required by applicable federal, state and local law to use any and all chemicals required for BBP to perform BBP's maintenance obligations with respect to the Park.

Section 10.20 BBP Debt. Unless excluded by Section 15-125 of the City Code of Ordinances, if BBP, at any time during the Term of this Agreement, incurs a "debt," as the word is defined in Section 15-122 of the City Code, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that BBP has incurred a debt, the City Controller shall immediately notify BBP in writing. If BBP does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to BBP under this Agreement, and BBP waives any recourse therefor.

Section 10.21 Major Donor as 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. In addition, the Parties hereby expressly acknowledge, stipulate and agree that this Agreement shall also inure to the benefit of the Major Donor, that the Major Donor is a third party beneficiary of this Agreement and all Definitive Agreements, and that the Major Donor shall have the right (but not the obligation) and legal standing to enforce the respective obligations of the Parties under all Definitive Agreements to the full extent allowed at law or in equity, or as otherwise provided under the Definitive Agreements, to the same extent as any Party hereto would have.

Section 10.22 Restrictive Covenants.

(a) City's Declaration of Restrictive Covenants. The City, as owner of certain real property and interests in real property within the Park, hereby declares that the Restrictive Covenants are covenants running with the land within the Park owned by the City (both real property and interests in real property), and shall file the Restrictive Covenants in the real property records in accordance with the terms of this Agreement. For any portions of the real property and interests in real property acquired by the City after the Effective Date, the City agrees that the Restrictive Covenants will become covenants running with the land (both real property and interests in real property) as of the date of such acquisition, and the City shall take all necessary steps to file the Restrictive Covenants with Harris County with respect to properties in the Park acquired by the City within 30 days of such acquisition and provide a file-stamped copy to each Party and the Standards Committee (provided, however, that to the extent that property is conveyed to the City by a Party pursuant to Section 5.12, Restrictive Covenants shall be recorded concurrently with such transfer and conveyance). The Parties hereby acknowledge and agree that the Restrictive Covenants shall be binding on the Parties, their respective employees, agents, contractors and subcontractors, and the activities and operations of the foregoing, respectively, in those areas of the Park and otherwise relating to the Park Projects, from and after the Effective Date hereof for the duration of the Term. The Parties hereby further acknowledge and agree that any one of the Parties hereto (or their permitted successors or assigns), and/or the Major Donor

and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third party beneficiaries, acting jointly or severally, shall have the right, but not the obligation, to enforce the Restrictive Covenants against any of the Parties, their respective employees, agents, contractors and subcontractors, with any rights and remedies available at law or in equity, or as otherwise set forth in this Agreement. The Parties hereby further 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 the Parties hereto (or their permitted successors or assigns), and/or Major Donor and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third-party beneficiaries, acting jointly or severally.

(b) County's Declaration of Restrictive Covenants. The County, as owner of certain real property and interests in real property within the Park, hereby declares that the Restrictive Covenants are covenants running with the land within the Park owned by the County (both real property and interests in real property), and shall file the Restrictive Covenants in the real property records in accordance with the terms of this Agreement. For any portions of the real property and interests in real property acquired by the County after the Effective Date, the County agrees that the Restrictive Covenants will become covenants running with the land (both real property and interests in real property) as of the date of such acquisition, and the County shall take all necessary steps to file the Restrictive Covenants with Harris County with respect to properties in the Park acquired by the County within 30 days of such acquisition and provide a file-stamped copy to each Party and the Standards Committee (provided, however, that to the extent that property is conveyed to the County by a Party pursuant to Section 5.12, Restrictive Covenants shall be recorded concurrently with such transfer and conveyance). The Parties hereby acknowledge and agree that the Restrictive Covenants shall be binding on the Parties, their respective employees, agents, contractors and subcontractors, and the activities and operations of the foregoing, respectively, in those areas of the Park, from and after the Effective Date hereof for the duration of the Term. The Parties hereby further acknowledge and agree that any one of the Parties hereto (or their permitted successors or assigns), and/or Major Donor and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third party beneficiaries, acting jointly or severally, shall have the right, but not the obligation, to enforce the Restrictive Covenants against any of the Parties, their respective employees, agents, contractors and subcontractors, with any rights and remedies available at law or in equity, or as otherwise set forth in this Agreement. The Parties hereby further 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 the Parties hereto (or their permitted successors or assigns), and/or Major Donor and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third party beneficiaries, acting jointly or severally.

(c) BBP's Declaration of Restrictive Covenants. BBP, as owner of certain real property and interests in real property within the Park, hereby declares that the Restrictive Covenants are covenants running with the land within the Park owned by BBP (both real property and interests in real property), and shall file the Restrictive Covenants in the real property records in accordance with the terms of this Agreement. For any portions of the real property and interests in real property acquired by BBP after the Effective Date, BBP agrees that the Restrictive Covenants will become covenants running with the land (both real property and interests in real property) as of the date of such acquisition, and BBP shall take all necessary steps to file the Restrictive Covenants with

Harris County with respect to properties in the Park acquired by BBP within 30 days of such acquisition and provide a file-stamped copy to each Party and the Standards Committee (provided, however, that to the extent that property is conveyed to BBP by a Party pursuant to Section 5.12, Restrictive Covenants shall be recorded concurrently with such transfer and conveyance). The Parties hereby acknowledge and agree that the Restrictive Covenants shall be binding on the Parties, their respective employees, agents, contractors and subcontractors, and the activities and Operations of the foregoing, respectively, in those areas of the Park, from and after the Effective Date hereof for the duration of the Term. The Parties hereby further acknowledge and agree that any one of the Parties hereto (or their permitted successors or assigns), and/or Major Donor and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third party beneficiaries, acting jointly or severally, shall have the right, but not the obligation, to enforce the Restrictive Covenants against any of the Parties, their respective employees, agents, contractors and subcontractors, with any rights and remedies available at law or in equity, or as otherwise set forth in this Agreement. The Parties hereby further 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 the Parties hereto (or their permitted successors or assigns), and/or Major Donor and/or BBP (after any assignment to a BBP Affiliate under Section 10.04) as third-party beneficiaries, acting jointly or severally.

(d) Recordation of Memorandum. Whenever the terms of this Agreement require a Party to file the Restrictive Covenants, such Party shall execute and record in the Official Public Records of Harris County, Texas, the Memoranda of Restrictive Covenants, in the form attached hereto as **Exhibit H**, for the purpose of giving actual, constructive and legal notice that this Agreement, together with the Ten-Year Plan and the Operations and Maintenance Manual, as amended from time to time, impose the Maintenance and Operations Standard as a land use restriction on those areas of the Park owned by a Party where the Restrictive Covenants apply, except for the Excluded Area. The legal description of those areas of the Park to be used in the Memoranda of Restrictive Covenants shall be: (i) as agreed by the Parties and as sufficient to describe the real property and interests in real property in the Park and constituting a Project for purposes of Construction (including permitting) and submitting a Notice to Proceed; or (ii) the description reflected in the Deed or other conveyance instrument for such properties in the Park acquired by a Party after the Effective Date. Upon termination or expiration of this Agreement for any reason, the Parties shall cooperate to execute and record an instrument that releases the Park from the Restrictive Covenants.

(e) Memorandum Review at Completion. Upon Final Completion of all Park Projects, any Party, or Major Donor, may request that the Standards Committee conduct a review of all Memoranda of Restrictive Covenants filed in the public records to confirm that all areas of the Park have been restricted as required by this Agreement, and the Parties agree to reasonably cooperate with such review and to file corrective instruments or additional Restrictive Covenants necessary to carry out the intent and accomplish the purposes of this Section 10.22.

Section 10.23 No Waiver of Immunity. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City or County of any provisions of any law relating to governmental immunity or limitations of liability of a governmental entity.

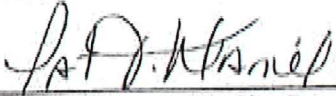
Section 10.24 Form 1295. BBP will provide a completed Form 1295 generated by the Texas Ethics Commission's electronic filing application in accordance with the provisions of Section 2252.908, Texas Government Code, as amended, and the rules promulgated by the Texas Ethics Commission ("**Form 1295**"), to each of the City and the County in connection with entry into this Agreement. Upon receipt of BBP's Form 1295, the City and the County agree to acknowledge BBP's Form 1295 through their respective electronic filing applications. The City, the County and BBP understand and agree that, with the exception of information identifying BBP and the contract identification number, the City and the County are not responsible for the information contained in BBP's Form 1295, and the City and the County have not verified such information.

Section 10.25 Agreement Controls. To the extent there is a conflict between the terms of the Agreement and the terms of a Definitive Agreement or any other exhibit to this Agreement, the terms of this Agreement shall control.

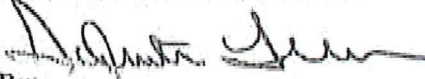
FINAL VERSION FOR APPROVAL

IN WITNESS WHEREOF, the City, County, and BBP have made and executed this Agreement in multiple counterpart originals, each of which is an original.

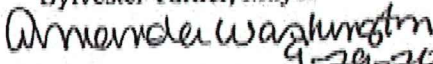
ATTEST:

By: 
Pat Jefferson-Daniel, City Secretary

CITY OF HOUSTON, TEXAS

By: 

Sylvester Turner, Mayor


9-29-2022

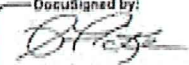
COUNTERSIGNED:

By: 
Chris B. Brown, Controller

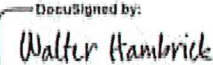
DATE OF COUNTERSIGNATURE:

10-19-22

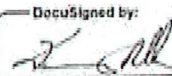
APPROVED:

By: 
Andy Icken, Chief Development Officer

APPROVED:

By: 
Walter Hambrick, Deputy Chief of Staff

APPROVED:

By: 
Kenneth Allen, Director
Houston Parks and Recreation Department

APPROVED AS TO FORM:

By: 
Ondrea U. Taylor
Senior Assistant City Attorney
LD # 0392200146001

Execution Page

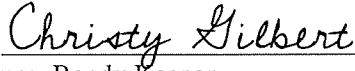
COUNTY:

HARRIS COUNTY, TEXAS,
a body corporate and politic under the laws of the State
of Texas

By: 
Name: Lina Hidalgo
Title: County Judge

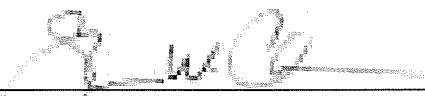
Approved as to Form:

By: CHRISTIAN MENEFEE
Harris County Attorney

By:  for:
Name: Randy Keenan
Title: Senior Assistant County Attorney

BBP:

BUFFALO BAYOU PARTNERSHIP,
A Texas non-profit corporation

By: 

Name: Shawn W. Cloonan

Title: Chair

FINAL VERSION FOR APPROVAL

EXHIBIT A

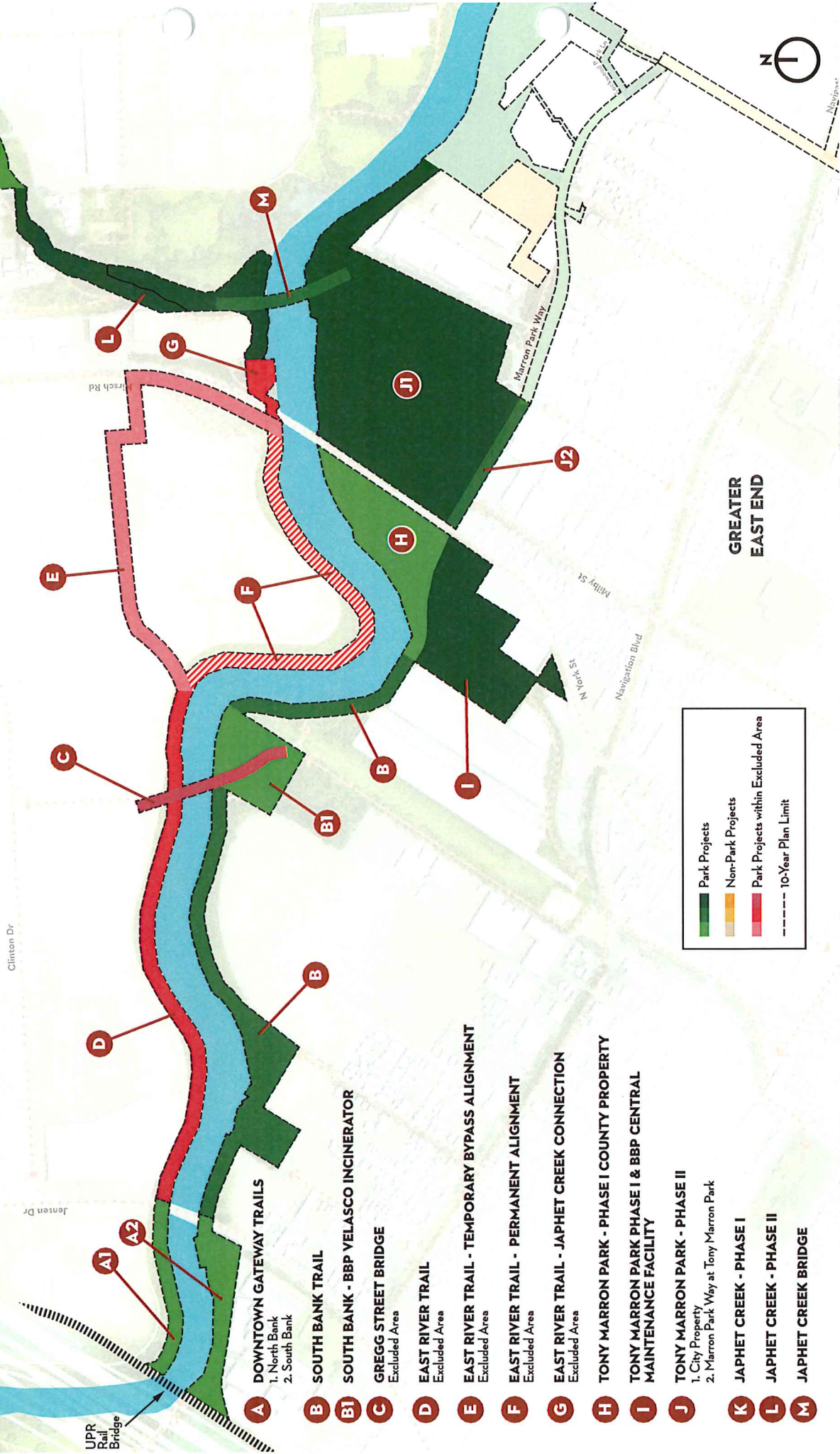
TEN-YEAR PLAN, SCOPE, BUDGET AND SCHEDULE

[See attached.]

EXHIBIT A1 - PROJECTS OVERVIEW

FIFTH WARD

PAGE 1



A DOWNTOWN GATEWAY TRAILS
1. North Bank
2. South Bank

B SOUTH BANK TRAIL

B1 SOUTH BANK - BBP VELASCO INCINERATOR

C GREGG STREET BRIDGE
Excluded Area

D EAST RIVER TRAIL
Excluded Area

E EAST RIVER TRAIL - TEMPORARY BYPASS ALIGNMENT
Excluded Area

F EAST RIVER TRAIL - PERMANENT ALIGNMENT
Excluded Area

G EAST RIVER TRAIL - JAPHET CREEK CONNECTION
Excluded Area

H TONY MARRON PARK - PHASE I COUNTY PROPERTY

I TONY MARRON PARK PHASE I & BBP CENTRAL MAINTENANCE FACILITY

J TONY MARRON PARK - PHASE II
1. City Property
2. Marron Park Way at Tony Marron Park

K JAPHET CREEK - PHASE I

L JAPHET CREEK - PHASE II

M JAPHET CREEK BRIDGE

Park Projects

Non-Park Projects

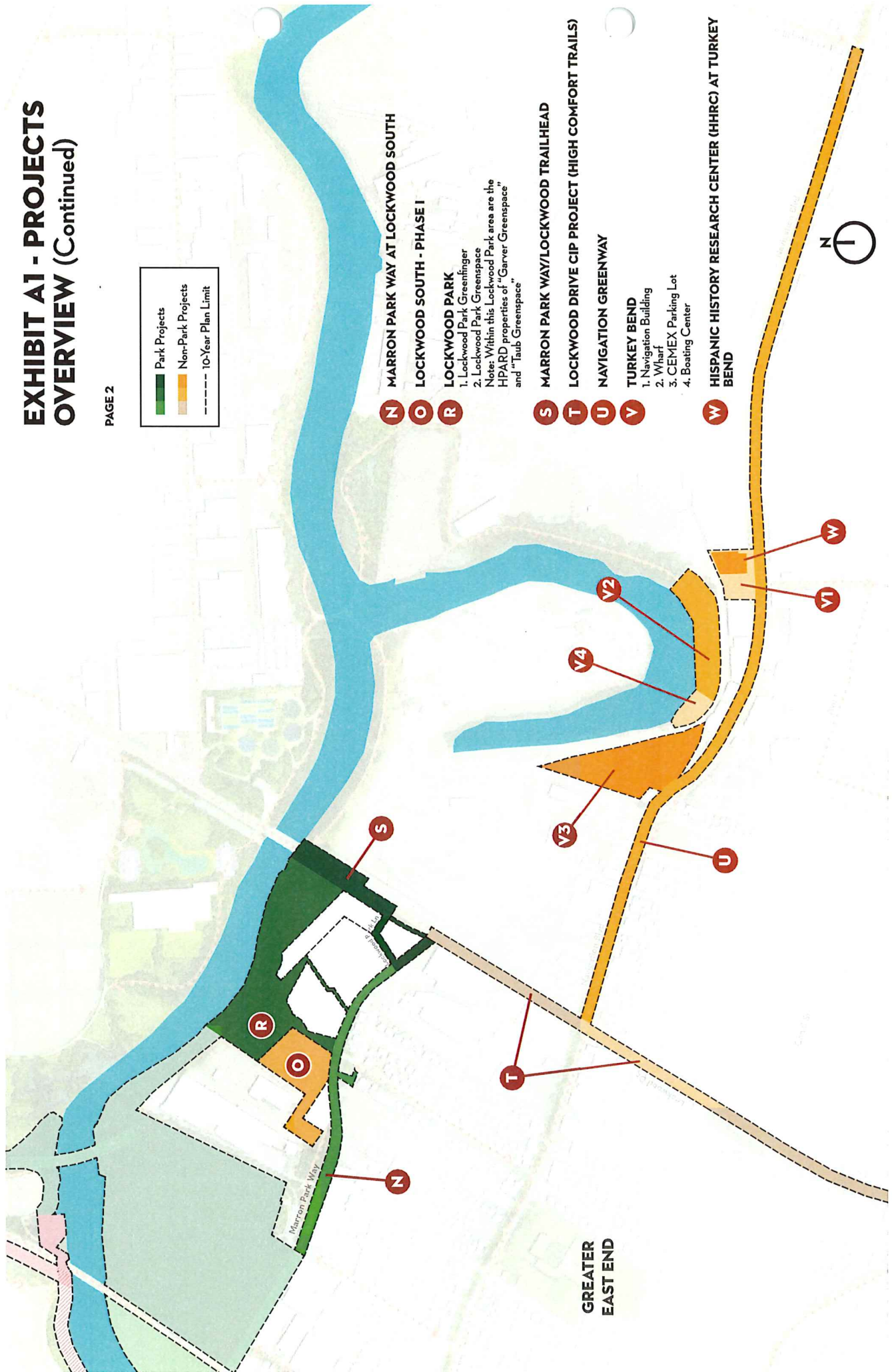
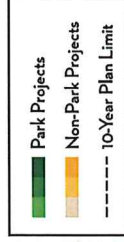
Park Projects within Excluded Area

10-Year Plan Limit

GREATER EAST END

EXHIBIT A1 - PROJECTS OVERVIEW (Continued)

PAGE 2



**EXHIBIT A1-PROJECT SUMMARIES
BUFFALO BAYOU EAST
(See Exhibit A5 for more details)**

PARK PROJECTS

A. DOWNTOWN GATEWAY TRAILS

North Bank: Approximately 1,000 linear feet of trail and bulkheads from Union Pacific Rail Bridge to Jensen Drive.

South Bank: Approximately 1,000 linear of trail from Union Pacific Rail Bridge to Jensen Drive including an area known as being part of Guadalupe Plaza Park (4.9 acres).

B. SOUTH BANK TRAIL

Approximately 4,360 linear feet of trail, park, and bulkhead improvements from Jensen Drive east to Tony Marron Park (west of N. York) by BBP. Segment consists of some properties not currently under control of BBP or City.

C. GREGG STREET BRIDGE

A new hike and bike bridge crossing Buffalo Bayou, connecting the East River Trails near Gregg Street with the South Bank Trail at the BBP Velasco Incinerator Site.

D. EAST RIVER TRAILS

A new hike and bike trail built within the existing City easement on the north side of Buffalo Bayou connecting the Downtown Gateway Trails North Bank trail to the temporary trail alignment bypassing the golf course as describe in "E" below.

E. EAST RIVER TRAILS – TEMPORARY BYPASS ALIGNMENT

A new hike and bike trail built within a temporary public trail easement (to be acquired) along a route around the northside of the "East River 9" golf course that allows for a complete trail with the East River Development between Jensen Drive and Hirsch Road. This trail segment will remain open to the public until the permanent alignment described in "F" is completed.

F. EAST RIVER TRAIL – PERMANENT ALIGNMENT

A new, permanent hike and bike trail built within the existing City trail easement. This trail segment will be constructed upon the redevelopment of the "East River 9" golf course as part of the East River Development. The timeline for construction of this segment may not occur within the Ten-Year Plan Schedule.

G. EAST RIVER TRAIL – JAPHET CREEK CONNECITON

A new hike and bike trail within a public trail easement (to be acquired) along the north side of Buffalo Bayou connecting the East River Trails at Hirsch Road to new trails in Japhet Creek Park (also to be acquired).

H. TONY MARRON PARK PHASE I – COUNTY

4.5 acres of new park and trails west of N. York Street on land BBP owns. Includes improved boat launch developed in partnership with HCFCD under separate agreement. BBP will transfer title to County upon completion.

I. CENTRAL MAINTENANCE FACILITY AND BBP CONCESSION

Adjacent to Tony Marron Park Phase 1, a new facility owned and operated by BBP that will contain park and boating maintenance operations, located west of N. York Street, on 9.9 acres. Includes land future supportive development (designated as the BBP Concession in Exhibit C).

J. TONY MARRON PARK PHASE II AND MARRON PARK WAY (at Tony Marron Park)

Expand existing Tony Marron Park to include the approximately 9.8-acre City-owned property abutting the eastern boundary of the current park. A section of the new Marron Park Way will be developed at the southern boundary of the park from N. York Street to Drennan Street as part of this Park Project. The new Tony Marron Park Way will be built by BPP, providing a safe, convenient multimodal connection for the community to access Tony Marron Park.

K. JAPHET CREEK PHASE I

The approximately 4.6-acre Phase I includes construction, restoration, and expansion of the City's existing Japhet Creek Park. The City will transfer surplus rights-of-way within the area to the Houston Parks & Recreation Department inventory, and acquire land from BBP south of Billy Street as part of a "land swap" transaction in connection with Tony Marron Park Phase I.

L. JAPHET CREEK PHASE 2

Southern portion of park development on existing City and SIMS Metal Company properties. Will connect to the new Japhet Creek Bridge to Tony Marron Park and west to East River Trails. Sims Metal property south of City Phase 2 parcel needs to be acquired and improved. It is a goal but not a requirement that the property rights and improvements will be dedicated to County.

M. JAPHET CREEK BRIDGE

A new hike & bike pedestrian bridge crossing Buffalo Bayou linking Tony Marron Park Phase 2 to Japhet Creek Phase 2. Requires coordination with Tony Marron Park Phase 2, Japhet Creek Phase 2 and East River Trails Segment G. Transfer title to County upon completion.

N. MARRON PARK WAY AT LOCKWOOD SOUTH

Extension of Marron Park Way within the previous Union Pacific railroad right-of-way that connects the current Foley Street (to be renamed by the City to "Marron Park Way") at Tony Marron Park with the segment of the new public street right-of-way being developed as part of the Marron Park Way/Lockwood Trailhead Project. The new street will have wide sidewalks and a hike and bike trail along its north side.

R. LOCKWOOD PARK

Lockwood Park Greenfinger: Approximately 1-acre of greenspace improvements developed on an Houston Parks Board easement providing access from neighborhood(s) south of Marron Park Way to Buffalo Bayou.

Lockwood Park Greenspace: Approximately 11-acres of existing City trails, Lockwood Park Greenfinger, new greenspace and Lockwood Trailhead combined will form Lockwood Park. To be developed on existing BBP and City owned land, (effectively expanding Tony Marron Park).

S. MARRON PARK WAY / LOCKWOOD TRAILHEAD

New parking facility located under Lockwood Drive Bridge on City right-of-way and a trail connection to Marron Park Way. Also includes Marron Park Way Street from, and to be built, Lockwood Park Lane (see Exhibit A4) to Lockwood Drive and new signalized intersection at Lockwood Drive [County]. Dedicate to City upon completion.

NON-PARK PROJECTS

O. LOCKWOOD SOUTH PHASE I HOUSING

An 80 unit "family" multifamily 9% tax credit housing project.

P. Omitted

Q. Omitted

T. LOCKWOOD DRIVE CIP PROJECT

A street and drainage improvement project for Lockwood Drive that will include improved sidewalks and a high-comfort bike facility along Lockwood Drive connecting the trails being constructed as part of the Marron Park Way/Lockwood Trailhead Project with Harrisburg Boulevard and the Navigation Greenway Project. The City is coordinating with METRO on specific design and scheduling plans for the proposed University Corridor Bus Rapid Transit Segment 4 project.

U. NAVIGATION GREENWAY

Median expansion to include new hike and bike trails, greenspace, and lane reductions from Lockwood Drive to Caesar Chavez Blvd. Title of improvements transferred to City upon completion.

V. TURKEY BEND

- a. Navigation Building: A 52,000 square-foot warehouse on Navigation to house the HHRC (see W below), community-based retail, and a large central public space and as described in more detail in a separate agreement.
- b. Wharf and Wharf Structures: Approximately 3 acres of waterfront park development.
- c. CEMEX Parking Lot: Land owned by CEMEX to be developed as parking and greenspace supportive of Turkey Bend by BBP.
- d. Boating Center: Rice Crew, Dragon Boat, and community boating facilities.

W. HPL – HISPANIC HISTORY RESEARCH CENTER (HHRC) AT TURKEY BEND

A new, approximately 25,000 square-foot Houston Public Library (HPL) facility at Turkey Bend. The combination of the HHRC and the HPL Express will provide an invaluable repository for Hispanic heritage and access to technology, materials, and programming for all ages.

Key Project
(Costs inflated at 3.3% per year per Exhibit A3)

Total BBP City County Federal and
Other Sources

TOTAL INVESTMENT		309,969,926	183,072,856	83,517,935	24,285,575	19,093,559
MAINTENANCE ENDOWMENT		13,500,000	13,500,000	0	0	0
TEN-YEAR PLAN		296,469,926	169,572,856	83,517,935	24,285,575	19,093,559
PARK PROJECTS (includes land where required)		178,548,614	118,535,104	36,727,935	23,285,575	0
	Trails to Downtown	32,844,694	25,169,694	7,675,000	0	0
A	Downtown Gateway Trails	10,434,000	9,359,000	1,075,000		
B	South Bank Trail	22,410,694	15,810,694	6,600,000		
C	Gregg Street Bridge	14,400,000	0	7,200,000	7,200,000	0
D-G	All East River Trails (estimate)	15,052,935	0	15,052,935	0	0
D-G	Trail Easement Acquisition	8,152,935		8,152,935		
D-G	Trail Construction	6,900,000		6,900,000		
	Tony Marron Park	63,760,000	63,760,000	0	0	0
H-J	Pre-development	2,380,000	2,380,000			
	County, BBP Concession and Central					
H-I	Maintenance Facility	20,380,000	20,380,000			
J	Park - Phase 2	38,200,000	38,200,000			
J	Marron Park Way-Drennan to North York	2,800,000	2,800,000			
	Japhet Creek	32,512,116	20,142,116	0	12,370,000	0
K	Park - Phase 1	3,042,117	3,042,117			
L	Park - Phase 2	13,370,000	13,370,000			
M	Bridge	16,100,000	3,730,000	0	12,370,000	
	Lockwood Park	19,978,869	9,463,294	6,800,000	3,715,575	0
N	Marron Park Way-Drennan to Maplewood	8,175,460	1,375,460	6,800,000		
R	Phase 1 Greenfinger	1,301,749	1,301,749			
R	Phase 2 Greenspace - Land	2,086,085	2,086,085			
R	Phase 2 Greenspace	4,700,000	4,700,000			
S	Marron Park Way /Lockwood Trailhead Land	130,710			130,710	
S	Marron Park Way /Lockwood Trailhead	3,584,865			3,584,865	
OTHER PROJECTS (includes land where required)		117,921,312	51,037,753	46,790,000	1,000,000	19,093,559
	Lockwood South	36,009,132	6,965,573	9,950,000	0	19,093,559
	Land and Predevelopment	4,222,717	4,222,717			
O	Phase 1	31,786,415	2,742,856	9,950,000		19,093,559
	Neighborhood Connection	19,382,000	1,000,000	17,382,000	1,000,000	0
T	Lockwood CIP Project	17,382,000		17,382,000		
U	Navigation Greenway	2,000,000	1,000,000		1,000,000	TBD
	Turkey Bend	62,530,180	43,072,180	19,458,000	0	0
V	Land and Pre-development	5,932,500	5,932,500			
V1-W	Navigation Building	7,880,000	7,880,000			
V2	Wharf, Wharf Bldgs	19,800,000	19,800,000			
V3	Cemex Parking	4,084,586	4,084,586			
V4	Boating Center	5,375,094	5,375,094			
W	HHRC at Turkey Bend	7,500,000		7,500,000		
W	HHRC at Turkey Bend	11,958,000		11,958,000		

**EXHIBIT A2-FUNDING DESCRIPTIONS
BUFFALO BAYOU EAST**

PARK PROJECTS

A. DOWNTOWN GATEWAY TRAILS

North Bank – BBP; City to purchase land from BBP (“Ojala JRC Transaction” funds)

South Bank – BBP; City Park Sector funds to support BBP acquisition of Union Pacific Railroad property

(HCFCD for bulkhead via separate agreement)

B. SOUTH BANK TRAIL

BBP funds design/engineering phase and construction

City funds to BBP for construction via TIRZ 23

C. GREGG STREET BRIDGE

City – allocation to engineering and construction phases TBD (assignment to partner allowed)

County – allocation to engineering and construction phases TBD

D. EAST RIVER TRAILS

City (assignment to partner allowed)

E. EAST RIVER TRAILS – TEMPORARY BYPASS ALIGNMENT

City (assignment to partner allowed)

F. EAST RIVER TRAILS – PERMANENT ALIGNMENT

City (assignment to partner allowed); may not be constructed during Ten-Year Plan Schedule

G. EAST RIVER TRAILS – JAPHET CREEK CONNECTION

City (assignment to partner allowed)

H. TONY MARRON PARK - COUNTY

BBP

(HCFCD funding for boat dock under separate agreement)

I. CENTRAL MAINTENANCE FACILITY AND BBP CONCESSION

BBP

J. TONY MARRON PARK PHASE II AND ABUTTING MARRON PARK WAY

BBP

K. JAPHET CREEK PHASE I

BBP

L. JAPHET CREEK PHASE 2

BBP

M. JAPHET CREEK BRIDGE

BBP funds design/engineering phase, construction, and certain other soft costs (TBD)

County funds to BBP for construction

N. MARRON PARK WAY AT LOCKWOOD SOUTH

BBP funds design/engineering phase

City funds to BBP for construction likely via CDBG-MIT grant funds

R. LOCKWOOD PARK

Greenfinger: BBP

Greenspace: BBP

S. MARRON PARK WAY /LOCKWOOD TRAILHEAD

County

BBP pays for cost overruns and amenities per separate agreement

NON-PARK PROJECTS

O. LOCKWOOD SOUTH PHASE I

City - CDBG DR-17 Grant

BBP – Equity and debt (via Affiliates)

Grant - 9% Federal Tax Credits

P. LOCKWOOD SOUTH PHASE II – OMITTED

Q. LOCKWOOD SOUTH PHASE III – OMITTED

T. LOCKWOOD DRIVE CIP PROJECT

City CIP funds

U. NAVIGATION GREENWAY

County for design/engineering

BBP funds to County for design/engineering

Grant funds for construction TBD

V. TURKEY BEND

Navigation Building: BBP with City funds to BBP for core and shell

Wharf: BBP

CEMEX Parking Lot: BBP

Boating Center: BBP

W. HPL – HISPANIC HISTORY RESEARCH CENTER (HHRC) AT TURKEY BEND

City CIP 22

EXHIBIT A2: PROJECT CASH FLOW REQUIREMENTS

[illegible]

BUFFALO BAYOU EAST AGREEMENT

EXHIBIT A2: PROJECT CASH FLOW REQUIREMENTS

CITY	All City funds authorized and approved by December 1, 2023												
	TOTAL	Pre-Agmt.	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
TEN-YEAR PLAN PROJECTS													
	\$83,517,935	\$8,152,935	\$4,797,582	\$25,605,873	\$32,787,243	\$4,222,803	\$3,542,799	\$4,408,700	\$0	\$0	\$0	\$0	\$0
Total - Park Projects	\$36,727,935	\$8,152,935	\$1,480,915	\$9,081,540	\$9,604,910	\$456,136	\$3,542,799	\$4,408,700	\$0	\$0	\$0	\$0	\$0
Downtown Gateway Trails	\$1,075,000		\$1,075,000										
South Bank Trail	\$6,600,000		\$26,160		\$3,221,520	\$130,800							
Gregg Street Bridge	\$7,200,000				\$335,094	\$325,396	\$3,216,799	\$3,322,771					
East River Trails Easement Acquisition	\$8,152,935	\$8,152,935											
East River Trails (estimate)	\$6,900,000			\$546,861	\$4,941,210	\$0	\$326,000	\$1,085,929					
Marron Park Way (Drennan-Maplewood)	\$6,800,000		\$379,755	\$5,313,159	\$1,107,086								
Total - Other Projects	\$46,790,000	\$0	\$3,316,667	\$16,524,333	\$23,182,333	\$3,766,667	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Lockwood Park Housing Phase 1	\$9,950,000		\$3,316,667	\$6,633,333									
Lockwood Drive CIP	\$17,382,000			\$8,691,000	\$8,691,000								
HHRC at Turkey Bend- Land / Building purchase	\$7,500,000				\$7,500,000								
HHRC at Turkey Bend Design and Constuction	\$11,958,000			\$1,200,000	\$6,991,333	\$3,766,667							

COUNTY	All County funds authorized and approved by December 1, 2023												
	TOTAL	Pre-Agmt.	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
TEN-YEAR PLAN PROJECTS	\$24,285,575	\$333,333	\$464,043	\$3,918,199	\$335,094	\$325,336	\$8,103,243	\$10,806,327	\$0	\$0	\$0	\$0	\$0
Total - Park Projects	\$23,285,575	\$0	\$130,710	\$3,584,865	\$335,094	\$325,336	\$8,103,243	\$10,806,327	\$0	\$0	\$0	\$0	\$0
Grege Street Bridge	\$7,200,000				\$335,094	\$325,336	\$3,216,799	\$3,322,771					
Japhet Creek Bridge	\$12,370,000			\$0	\$0	\$0	\$4,886,444	\$7,483,556					
Marron Park Way / Lockwood Trailhead Land	\$130,710		\$130,710	\$0									
Marron Park Way / Lockwood Trailhead	\$3,584,865			\$3,584,865									
Total - Other Projects	\$1,000,000	\$333,333	\$333,333	\$333,334	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Navigation Blvd Greenway	\$1,000,000	\$333,333	\$333,333	\$333,334									

**EXHIBIT A3-PROJECT SCHEDULES
BUFFALO BAYOU EAST**

Key	Park Project	Activity	BBP	City of Houston	Harris County
A	Downtown Gateway Trails	Funds Secured by	December 1, 2022 (includes HCFCF funds)	December 1, 2022 (land purchases)	
A		Acquire Land	December 31, 2022		
A		Design (under way)	December 1, 2022 Complete		
A		Construction	December 1, 2023 Complete		
B	South Bank Trails	Funds Secured by	December 1, 2023	December 1, 2023	
B		Acquire Land if Needed (Bayou District Inc)	December 1, 2023	December 1, 2023	
B		Acquire Land (HHA)	December 1, 2022	December 1, 2023	
B		Acquire Land if Needed (Navigation)	December 31, 2022	March 31, 2023	
B		Acquire Land if Needed (Stonelake)	December 31, 2022	March 31, 2024	
B		Design	September 30, 2022 Start December 1, 2023 Complete		
B		Construction	June 30, 2025 Complete	See BBP	
C	Gregg Street Bridge	Funds Secured by		December 1, 2023	December 1, 2023
C		Design		January 1, 2024 Start December 1, 2025 Complete	See City
C		Construction		December 1, 2027 Complete	See City
D-G	East River Trails	Funds Secured by		With agreement (D); December 1, 2023	
D & F	East River Trails and East River Trails – Permanent Alignment	Acquire Easements	December 31, 2022	With agreement	
D	East River Trails	Design (under way)		December 1, 2023 Complete	
D	East River Trails	Construction		December 1, 2024 Complete	
E	East River Trails – Temporary Bypass Alignment	Easement, Design and Construction		December 1, 2024 Complete	
G	East River Trails – Japhet Creek Connection	Acquire Land		December 1, 2024	
G	East River Trails – Japhet Creek Connection	Easement, Design & Construction		December 1, 2027 Complete	
F	East River Trails – Permanent Alignment	Design & Construction		Upon redevelopment of "East River 9" golf course	

Key	Project	Activity	BBP	City of Houston	Harris County
H-J	Tony Marron Park	Funds Secured by	December 1, 2022 (includes HCFCF funds)		
H I	Phase 1 – County, BBP Concession and Central Maintenance Facility	Design (under way)	March 31, 2024 Complete		
H I	Phase 1- County, BBP Concession and Central Maintenance Facility	Construction	June 30, 2025 Complete		
J	Phase 2 and Marron Park Way	Design (under way)	December 1, 2024 Complete		
J	Phase 2 and Marron Park Way	Construction	December 1, 2026 Complete; equipment purchase into 2027		
K-L	Japhet Creek	Funds Secured by	With Agreement		December 1, 2023
K	Phase 1	Design (under way)	December 1, 2022 Complete		
K	Phase 1	Construction	September 30, 2023 Complete		
L	Phase 2 (also for Japhet Creek Bridge)	Acquire Land (SIMS)	June 1, 2023		June 30, 2025
L	Phase 2	Design	Jan. 1, 2023 Start March 31, 2026 Complete		
L	Phase 2	Construction	December 1, 2027 Complete		See BBP
M	Japhet Creek Bridge	Funds Secured by	With Agreement		December 1, 2023
M		Design ¹	June 1, 2023 Start Dec. 31, 2025 Complete		
M		Construction	Jan. 1, 2026 Start Sept. 30, 2027 Complete		See BBP
N,R,S	Lockwood Park	Funds Secured by	Dec. 1, 2022	January 31, 2023	September 30, 2022
N	Marron Park Way at Lockwood South	Design (under way)	December 1, 2022 Complete		
N	Marron Park Way at Lockwood South	Construction	January 1, 2023 Start June 30, 2023 Complete	See BBP	
R	Green Finger	Design (under way)	December 1, 2022 Complete		
R	Green Finger	Construction	December 31, 2023 Complete		
R	Lockwood Park Greenspace	Design (under way)	December 1, 2022 Complete		
R	Lockwood Park Greenspace	Construction	April 30, 2025 Complete		
S	Marron Park Way / Lockwood Trailhead	Design (under way)			September 30, 2022 Complete
S	Marron Park Way / Lockwood Trailhead	Construction			January 1, 2023 Start September 1, 2023 Complete

¹ Early design start required to coordinate bridge abutments with Tony Marron Park and Japhet Creek Phase 2.

Key	Project	Activity	BBP	City of Houston	Harris County
O	Lockwood South Housing	Funds Secured by	Dec. 1, 2022	Phase 1 grant executed	
O	Phase 1 Housing	Design	Complete		
O	Phase 1 Housing	Construction	December 31, 2023 Complete	See BBP	
T-U	Neighborhood Connections	Funds Secured by	With Agreement	With Agreement	December 1, 2023 except grant funding TBD
T	Lockwood CIP Project (High Comfort Trail)	Construction		Jan. 1, 2023 Start Dec. 1, 2024 Complete Subject to coordination with METRO	
U	Navigation Greenway	Design (under way)	See County		Aug 1, 2022 Complete
U	Navigation Greenway	Construction			December 1, 2025 Complete, subject to award of federal grant
V-W	Turkey Bend	Funds Secured by	December 1, 2022 for Navigation Building December 1, 2026 all else	With Agreement	
V1 W	Navigation Building and HHRC at Turkey Bend	Design	May 31, 2023 Complete (requires City input on core/shell and Dec 1, 2022 COH sign-off)	December 1, 2022 Design Sign-off December 1, 2022 Start December 1, 2023 Complete	
V1 W	Navigation Building and HHRC at Turkey Bend	Construction	December 1, 2024 Complete	HPL Build-out June 1, 2025 Complete	
V2	Wharf and Greenspace	Design	July 1, 2024 Start December 1, 2025 Complete		
V2	Wharf and Greenspace	Construction	December 1, 2026 Complete		
V3	Cemex Parking Lot Easement	Acquire Donated Ground Lease	December 1, 2022		
V3	Cemex Parking Lot	Design	July 1, 2024 Start December 1, 2025 Complete		
V3	Cemex Parking Lot	Construction	December 1, 2028 Complete		
V4	Boating Center	Design	December 1, 2026 Start December 1, 2027 Complete		
V4	Boating Center	Construction	December 1, 2030 Complete		

EXHIBIT A5
OVERVIEW OF PARK AND
NON-PARK PROJECTS

EXHIBIT A5 - OVERVIEW OF PARK AND NON-PARK PROJECTS

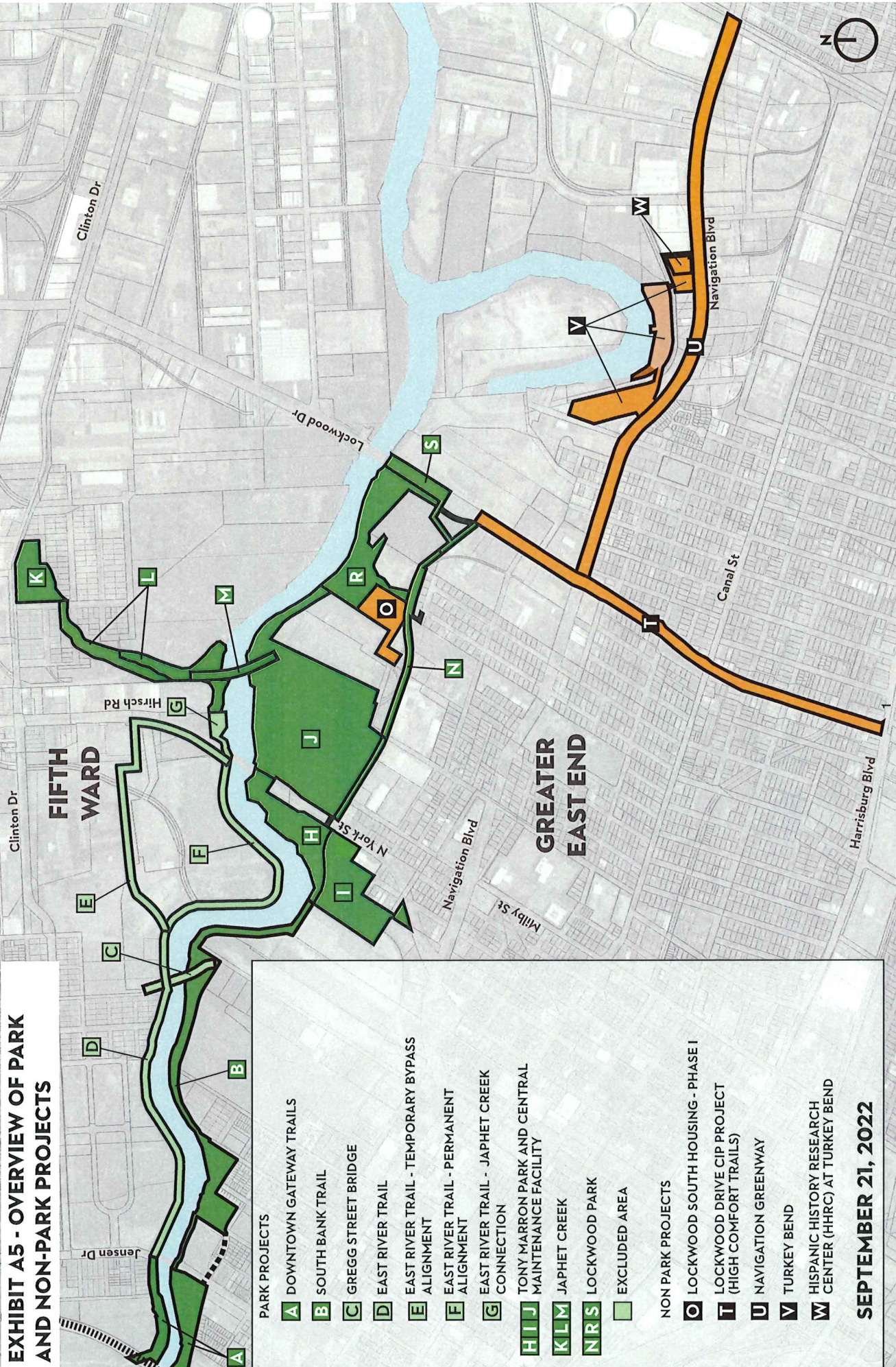


EXHIBIT A5 - DOWNTOWN GATEWAY TRAILS

**FIFTH
WARD**

**GREATER
EAST END**

PARK PROJECTS
A DOWNTOWN GATEWAY TRAILS

SEPTEMBER 21, 2022

EXHIBIT A5 - DOWNTOWN GATEWAY TRAILS

Narrative Description

Project Budget - \$10,434,000
Project Manager - Buffalo Bayou Partnership

North Bank

Spanning the distance between Jensen Drive and the Union Pacific Railroad line, the roughly 980-foot-long North Bank segment will replace the north bank trail that collapsed as a result of erosion from Hurricane Harvey. In order to provide a stabilized trail on such a steep site, the trail will include a number of additional elements beyond items included in the trail standards: 15-foot-wide concrete trails; concrete pole mounted light fixtures; benches and trash cans, wayfinding signage, and general landscaping. To protect the slope from future erosion, bank stabilization will be implemented across the 1.8-acre site and may include a combination of engineered and nature-based solutions. The trail itself may be constructed as an elevated deck or be supported in place by a retaining wall or other structural element to prevent it from collapsing again in the future. Depending on the final trail condition, railings may be included to ensure public safety.

South Bank

Guadalupe Plaza Park, situated directly across Buffalo Bayou, has an existing trail that does not conform to the new Buffalo Bayou East Trail standards. This segment of trail will be partially replaced to meet the new trail standards and to enhance the existing 4.1-acre site. To accomplish this, the 30,745 sf UPR parcel to the south of the existing COH Park is being acquired outside of this project scope to provide for the new expanded trail connecting to the Guadalupe Plaza Park parking and Jensen Sidewalk. The existing trail leading to the access ramp and staircase leading to the water and passing under Jensen will remain in place until the segment east of Jensen is replaced as part of the South Bank Trails project. The design also takes into consideration connecting to on street bike routes being planned on Jensen and cross the bayou. The on street scope is being coordinated by the COH and not part of this project.

In the additional public green space along the waterfront, new trees, vegetation, and other landscaping features may be included as part of the park enhancements. The site also contains large slabs of concrete that have fallen into the bayou. These remnants will remain to armor the bank and may include other bank stabilization measures.

EXHIBIT A5 - DOWNTOWN GATEWAY TRAILS Overall Concept Plan



Project Limits

UPR Acquisition

- LEGEND**
- 1. Picnic lawn
 - 2. Groundcover
 - 3. Native seed mix
 - 4. Reforestation buffer
 - 5. Bayou gateway plaza
 - 6. Trail canopy at UPRR
 - 7. Retaining wall
 - 8. Re-aligned hike and bike trail
 - 9. Existing bayou access
 - 10. New crosswalk with pedestrian-activated traffic signal
 - 11. Re-established native riparian forest
 - 12. Continuous guardrail
 - 13. Small Overlook
 - 14. Sheet pile retaining wall
 - 15. Existing sand depositional zone
 - 16. Riparian vegetation

swa

QUIDDITY



**BUFFALO BAYOU UPRR TO S. JENSEN
TRAIL RECONSTRUCTION**

06.23.2022

1"=30'

EXHIBIT A5 - DOWNTOWN GATEWAY TRAILS

Perspective - Trail Configuration



MVVA

EXHIBIT A5 - SOUTH BANK TRAIL

**FIFTH
WARD**

**GREATER
EAST END**

PARK PROJECTS
B SOUTH BANK TRAIL

SEPTEMBER 21, 2022

EXHIBIT A5 - SOUTH BANK TRAIL

Narrative Description

Project Budget – \$22,410,694,000
Project Manager – Buffalo Bayou Partnership

The South Bank Trails segment is the combination of the following segments: Jensen to the Silos HHA segment and Velasco to Tony Marron Park. Bayou trails will follow standards established for Buffalo Bayou East. These standards include: 15-foot-wide concrete trails; concrete pole mounted light fixtures; benches and trash cans, wayfinding signage, and general landscaping, such as turf and native grasses adjacent to the trail.

The Jensen to the Silos segment of the South Bank Trails will tie into the Downtown Gateway's south bank trail east to N. Nagle Street and includes park space at the Silos property that is envisioned to become a stormwater park adjacent to the trail. The land at the western most segment, Bayou District Inc (17790 sf), requires acquisition or an easement. The efforts on this property will commence upon execution of the Buffalo Bayou East 10-year Plan agreement. BBP will retain fee ownership of the Silos site south of the trail. The deteriorating 580' sheet pile bulkhead will be reinforced or replaced.

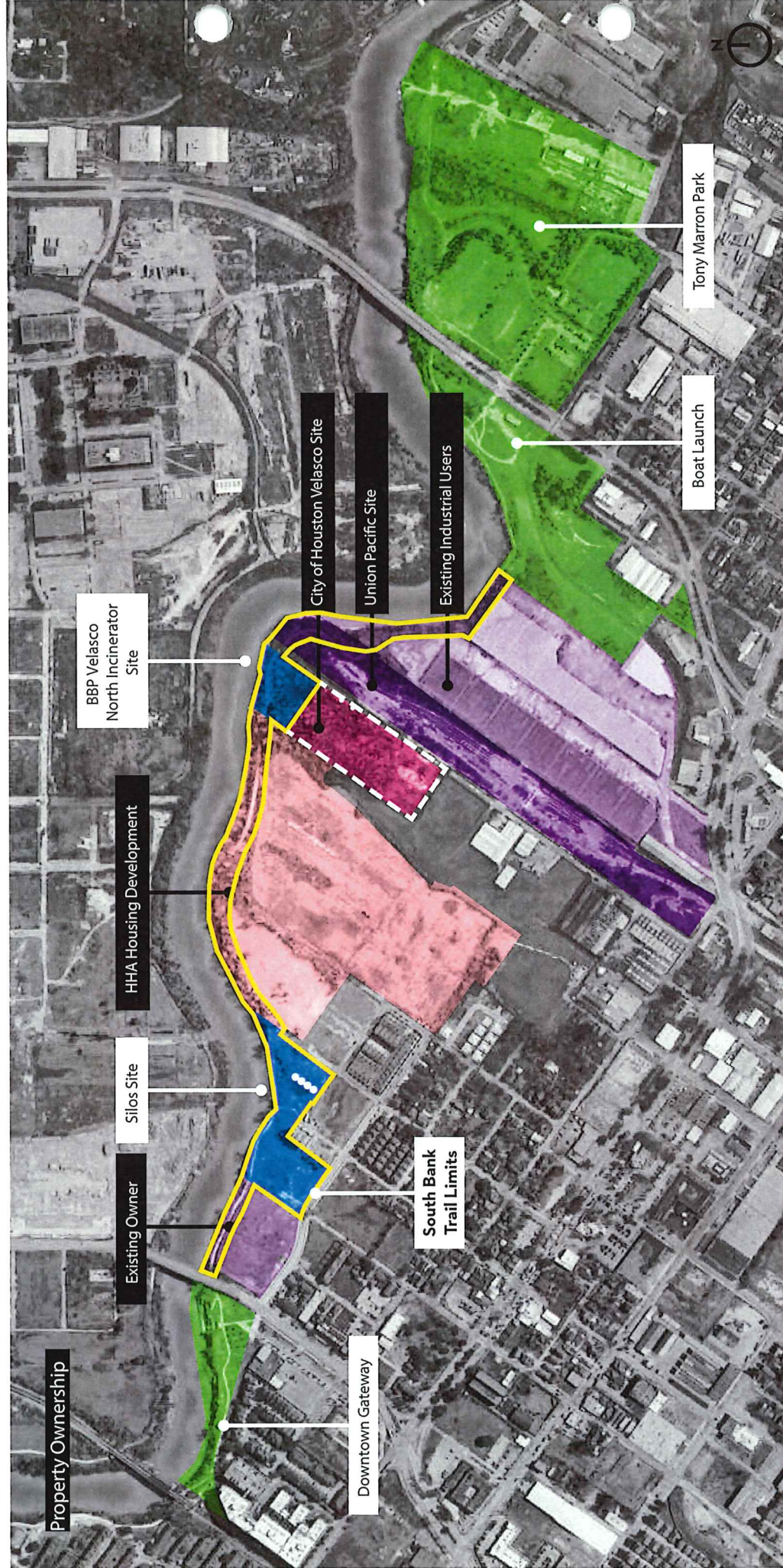
The HHA (Houston Housing Authority) segment is approximately 1500 linear feet. This segment requires an easement from HHA for the trail, which has been committed to by the Authority, and close integration with the site's development. The included design has been accepted and coordination is ongoing with the overall property improvements.

The Velasco to Tony Marron Park segment is a roughly 1,500 linear feet as well and will largely follow the bayou trail standards. It will fall within easements on UPR, Stonelake (SL Project Texas LP) and Navigation Realty properties which need to be acquired by BBP. The existing trail along this segment will be fully replaced with bulkheads anticipated for most of the segment which will tie into the bulkheads at Tony Marron Park. The BBP owned property at Velasco is currently enrolled in the VCP program with remediation anticipated to occur as part of trail construction. Real estate transactions are required to develop this segment, including an easement on the BBP Velasco Site for the Gregg Street Bridge (to the City) and Easements or Fee transactions on Stonelake and Navigation Realty Properties.

Site conditions along stretch of the trail before Tony Marron Park has steep slope conditions that mimic the north bank of the Downtown Gateway segment. Therefore, trail improvements may also include: engineered and/or nature-based slope stabilization measures; elevated trail structures or retaining walls, and railings.

EXHIBIT A5 - SOUTH BANK TRAIL

Site Conditions

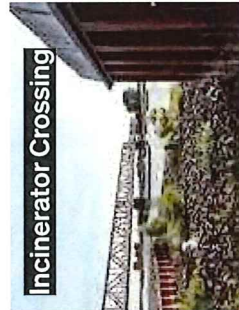
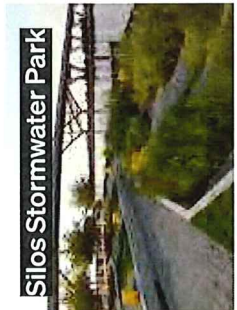
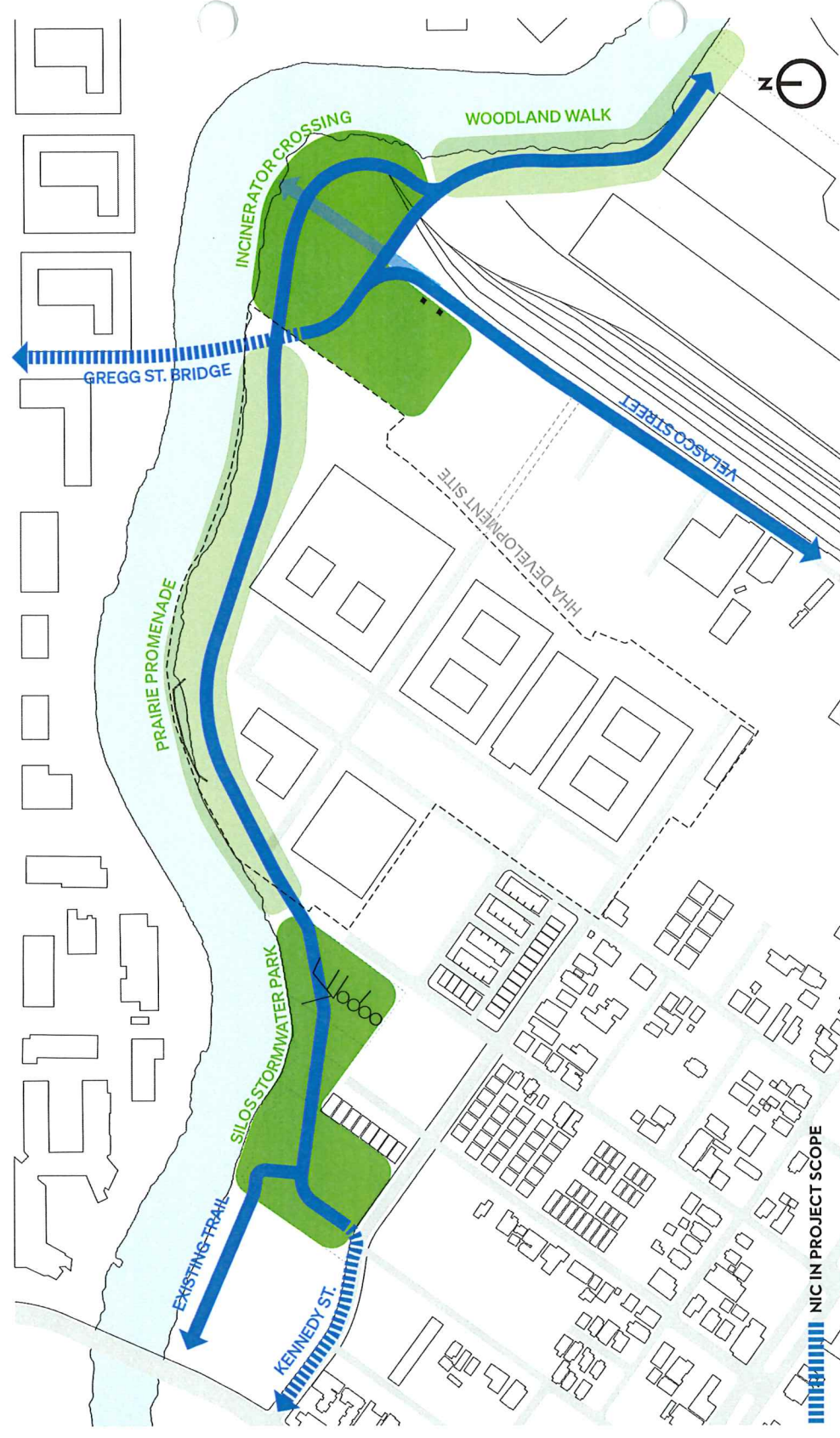


Dept.

Buffalo Bayou Partnership

Final Concept Package

EXHIBIT A5 - SOUTH BANK TRAIL



Dept.

Buffalo Bayou Partnership

Final Concept Package

EXHIBIT A5 - SOUTH BANK TRAIL

Concept Plan



Dept.

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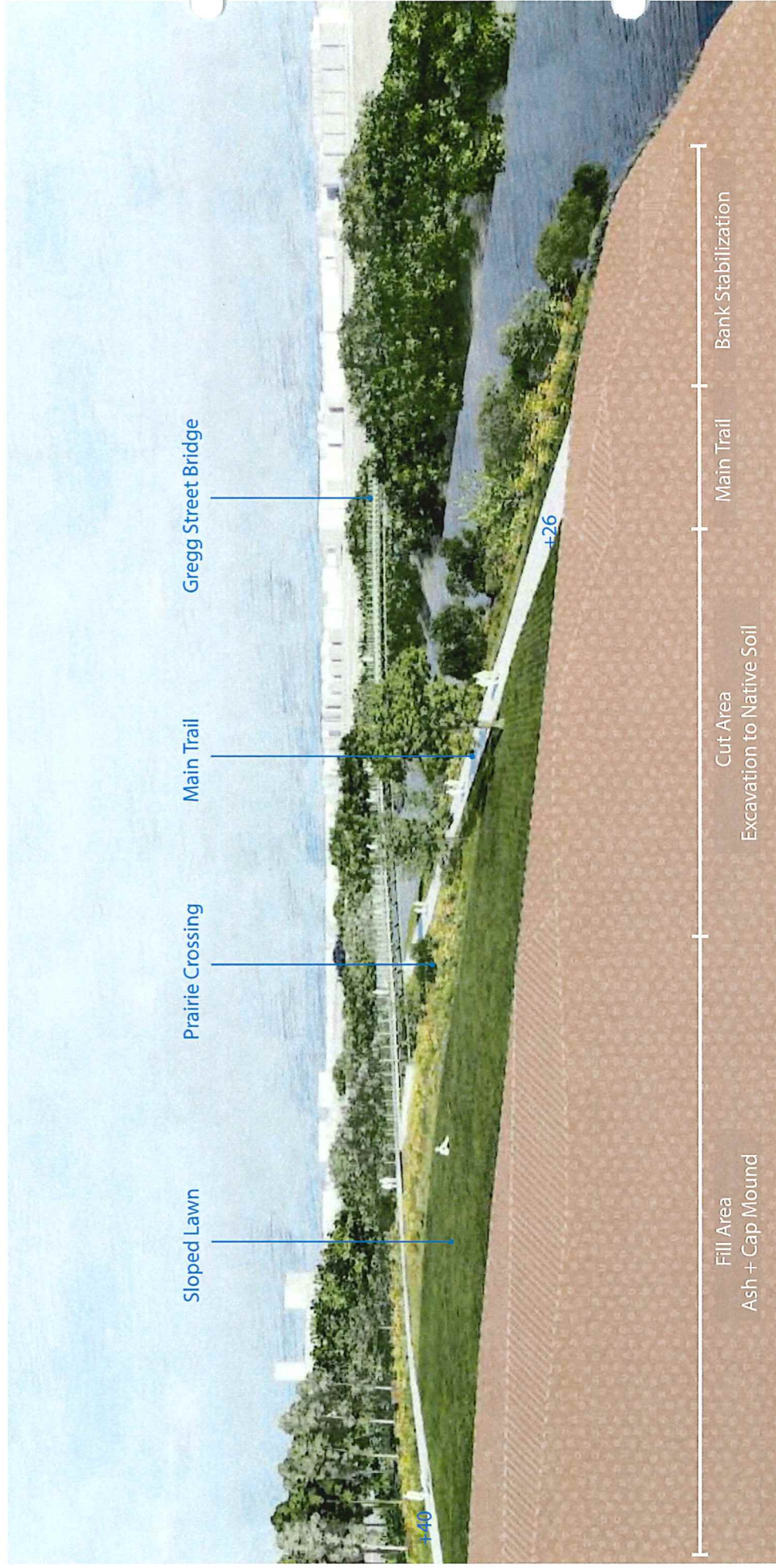
EXHIBIT A5 - SOUTH BANK TRAIL
Perspective - Trail Configuration



MVVA

EXHIBIT A5 - SOUTH BANK TRAIL

Velasco North



Dept: Buffalo Bayou Partnership Draft Incinerator Site Section

EXHIBIT A5 - SOUTH BANK TRAIL Woodland Walk (Navigation Realty and Stonelake Sections)



Dept.

Buffalo Bayou Partnership

Draft Woodland Walk Section

EXHIBIT A5 - EAST RIVER SEGMENTS

**FIFTH
WARD**

**GREATER
EAST END**

- PARK PROJECTS
- D** EAST RIVER TRAIL
 - E** EAST RIVER TRAIL - TEMPORARY BYPASS ALIGNMENT
 - F** EAST RIVER TRAIL - PERMANENT ALIGNMENT
 - G** EAST RIVER TRAIL - JAPHET CREEK CONNECTION

SEPTEMBER 21, 2022

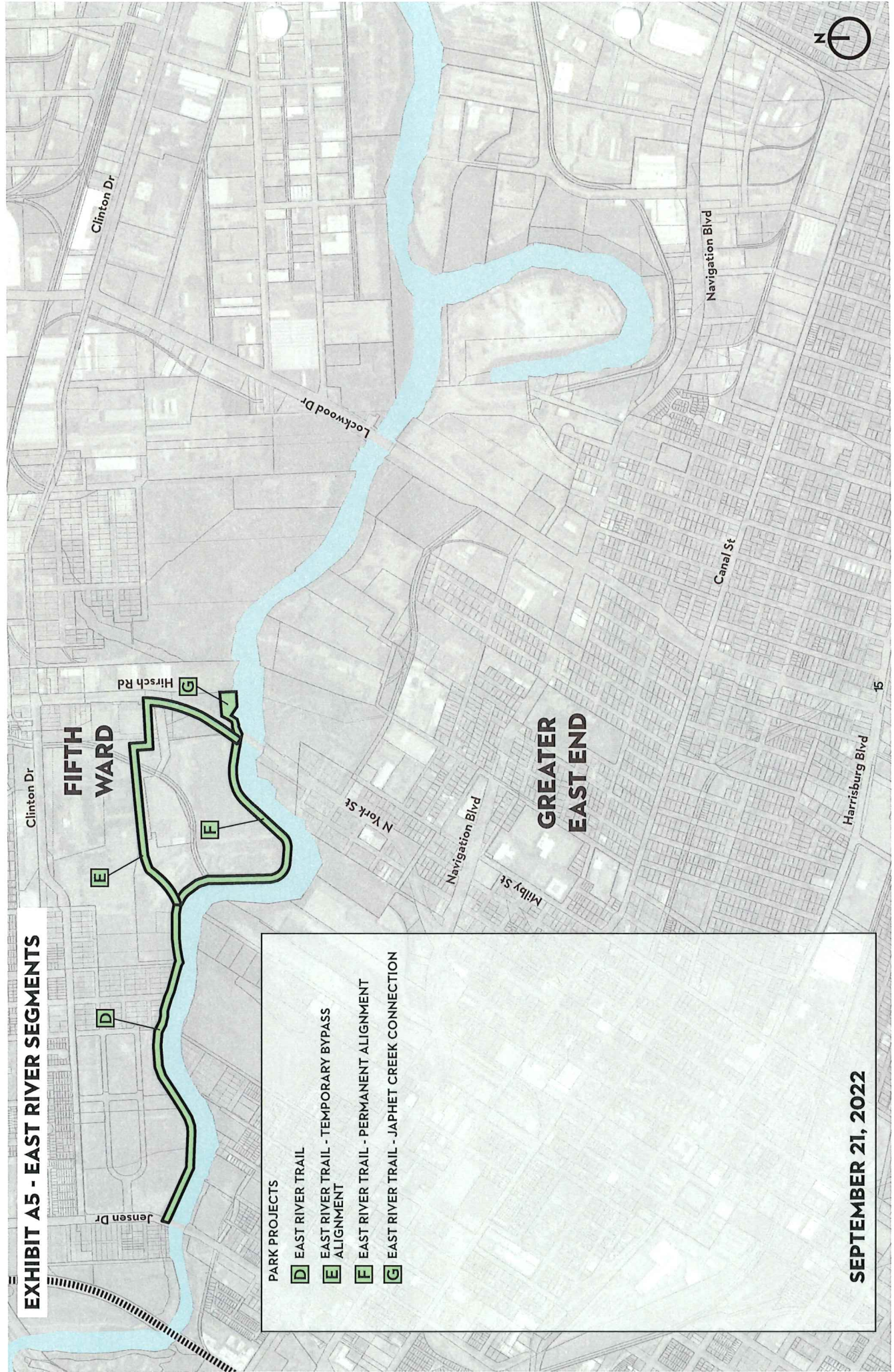


EXHIBIT A5 - EAST RIVER TRAILS

Projects D, E, F and G

Narrative Description

Project Budget - \$15,025,935
Project Manager - City of Houston

All segments of the East River Trails are to be developed by the City following the BBP trail standards. These sections connect the north bank Downtown Trail to the Japhet Creek Bridge. For segment schedules refer to Exhibit A3. The project budget consists of \$8,125,935 from trail easement acquisition valuations and \$6,900,000 for trail construction, a BBP internal estimate.

East River Trail - Project D

The East River Trail segment includes the trails and improvements from Jensen to the Temporary Bypass Alignment at the golf course and connects to the Gregg Street Bridge. This segment will be constructed on a City easement. The City has acquired the easement and has a preliminary plan to fund, design, build, and maintain the East River Trail to BBP standards.

East River Trail - 2024 Alignment - Project E

To accommodate the interim golf course development and the trail connection from the East River Trails (Project D) to Hirsch Road, an interim trail will be developed north of the golf course and along Hirsch to connect to the East River Trails - Japhet Creek Connection. This segment requires an easement to be provided for the trail to include trail lighting and signage. The final alignment of this easement will be determined prior to construction and will be terminated upon completion of the Permanent Alignment (Project F).

Future Trail Alignment - Project F

This segment will be developed on the existing easement owned by the City reserved for a trail when the temporary golf course site is redeveloped. These improvements will follow the BBP Trail standards. The City has acquired the easement but costs for this segment are not included in the 10-Year Project Budget.

East River Trail - 2027 Connection - Project G

This north bank trail will provide connection from Hirsch to Japhet Creek and new pedestrian bridge. To open in conjunction with opening of Japhet Creek Bridge and the trail east of Hirsch

The City easement for Projects D and F is limited to the trail improvements and the underlying owner (East River) may develop other improvements without approval of the Parties and the Standards Committee.

The map illustrates the East River Trail project in Houston, showing various phases and future developments. Key features include:

- PHASE I UNDER CONSTRUCTION OPENING 2023**: Located in the bottom left, showing a completed section of the trail.
- FUTURE PHASES**: A large central area labeled 'FUTURE PHASES' with a 'MOONSTRUCK DRIVE' label.
- UNDER CONSTRUCTION OPENING SEPTEMBER 2022**: A section of the trail labeled 'UNDER CONSTRUCTION' with a 'Riverhouse' logo.
- G - East River Trail - Japhet Creek Connection**: A section of the trail labeled 'G - East River Trail - Japhet Creek Connection'.
- F - East River Trail - Permanent Alignment**: A section of the trail labeled 'F - East River Trail - Permanent Alignment'.
- D - East River Trail**: A section of the trail labeled 'D - East River Trail'.
- Gregg Street Bridge (Separate Project)**: A bridge crossing the trail, labeled 'Gregg Street Bridge (Separate Project)'.
- CLINTON DRIVE**: A major road running horizontally across the middle of the map.
- JENSEN DRIVE**: A major road running horizontally across the bottom of the map.
- PORT OF HOUSTON**: A major road running vertically along the right side of the map.
- EAST RIVER 9**: A section of the trail labeled 'EAST RIVER 9'.
- Navigation Blvd + I-45**: A section of the trail labeled 'NAVIGATION BLVD + I-45'.
- 6,000 FT ALONG BAYOU**: A section of the trail labeled '6,000 FT ALONG BAYOU'.
- DOWNTOWN**: A label at the bottom right corner of the map.
- North Arrow**: A north arrow located in the bottom right corner of the map.

The master plan is conceptual and subject to change.

The master plan is conceptual and subject to change.

EXHIBIT A5 - EAST RIVER TRAILS



EAST RIVER /MIDWAY

A5 - EAST RIVER TRAIL SEGMENTS

CONSTRUCTION TIMELINE

- PHASE 1A
- PHASE 1B

PHASE 1A

COMPLETE Q1 2023

OFFICE | 136,000 SF

RETAIL | 72,000 SF

APARTMENT UNITS | 360

GREENSPACE | 3 AC

PHASE 1B

COMPLETE Q1 2024

OFFICE | 169,000 SF

RETAIL | 40,000 SF

EAST RIVER /MIDWAY

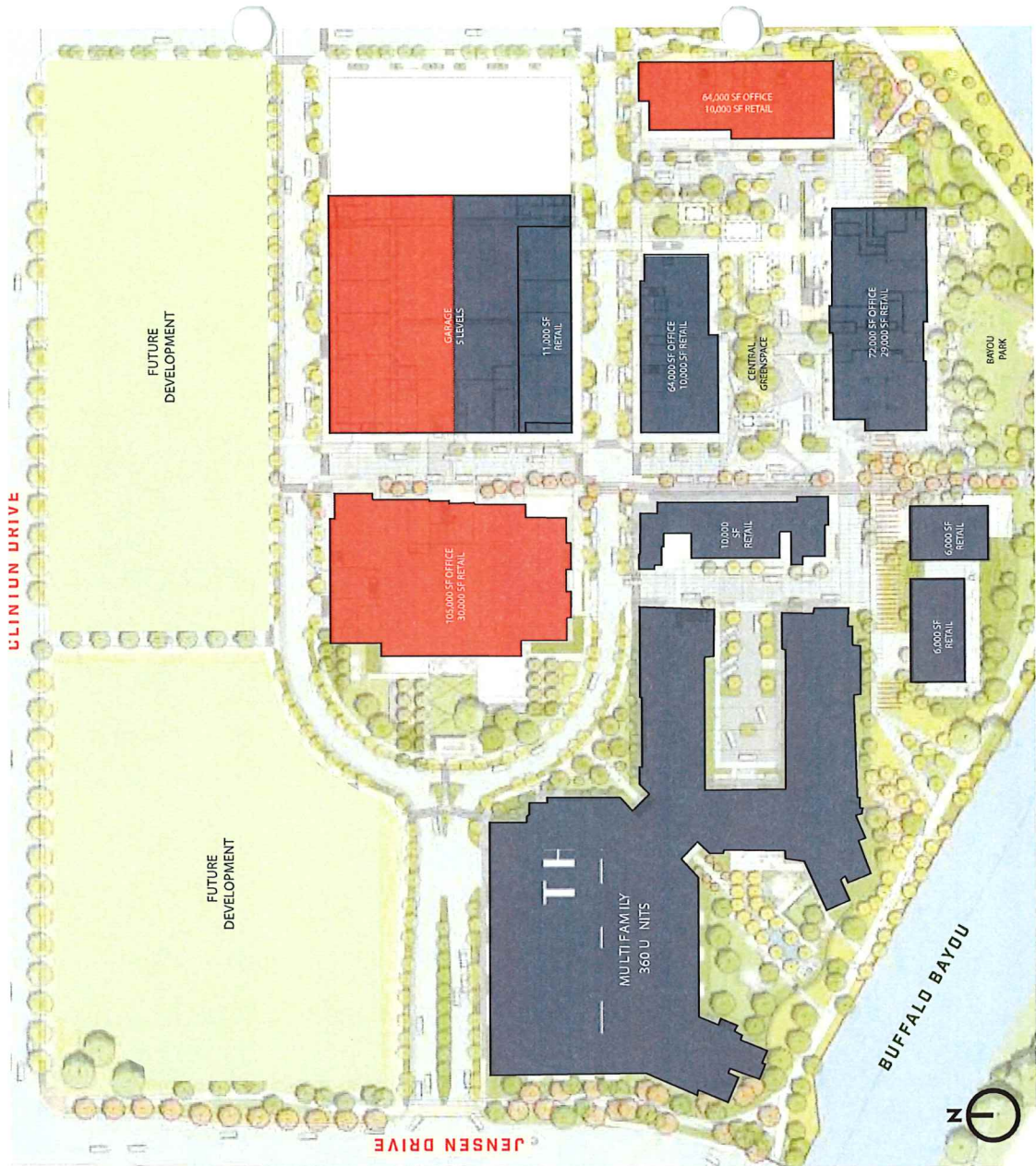


EXHIBIT A5 - GREGG STREET BRIDGE

**FIFTH
WARD**

**GREATER
EAST END**

PARK PROJECTS
 **GREGG STREET BRIDGE**

SEPTEMBER 21, 2022

EXHIBIT A5 - GREGG STREET BRIDGE

Narrative Description

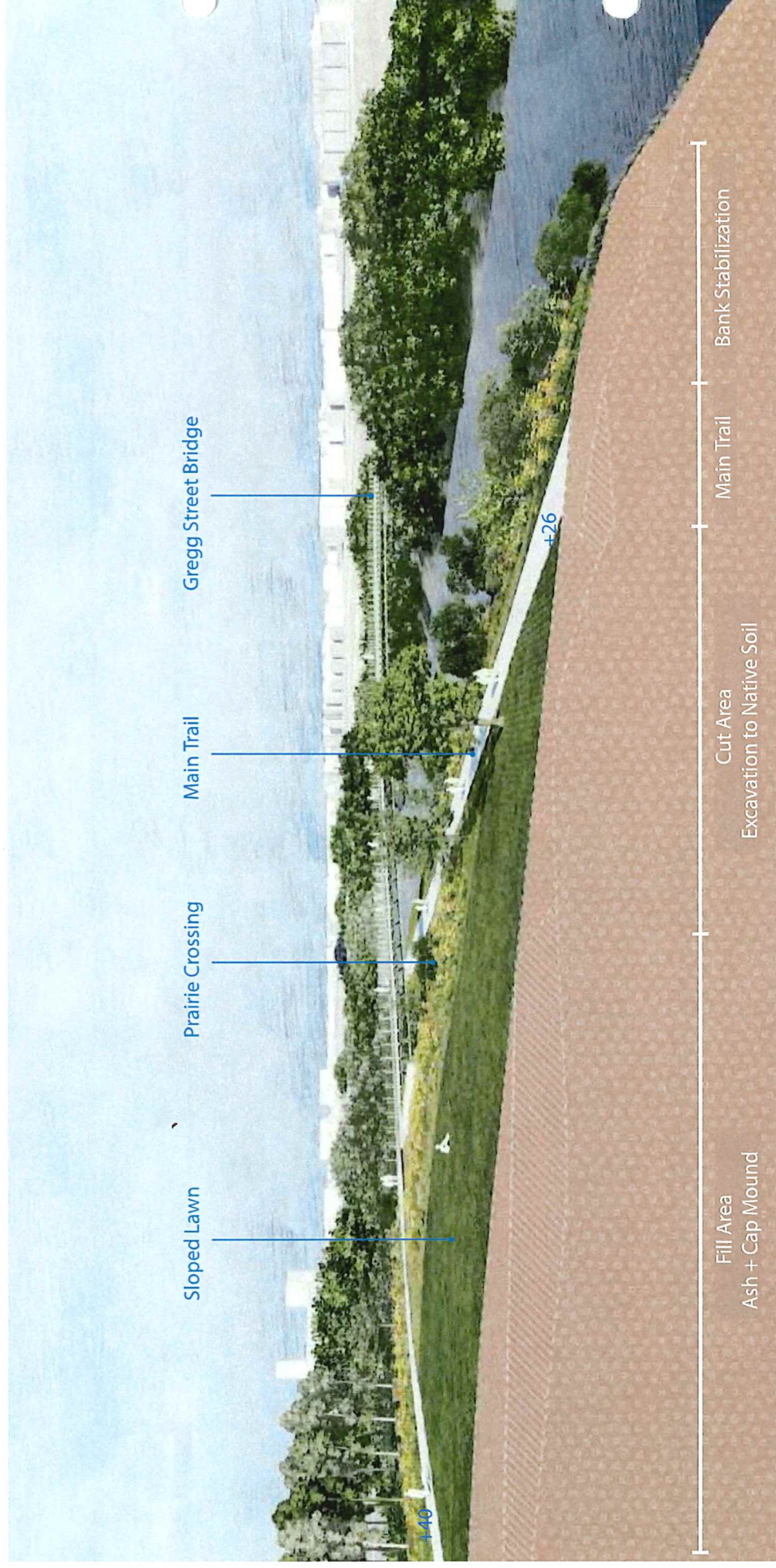
Project Budget - \$14,400,000
Project Manager -City of Houston

The Gregg Street Bridge will be developed by the City and jointly funded by Harris County. It will connect to the Gregg Street Right of Way and the East River Trail to the north, and to an easement on BBP property on the south bank. The required easement will be executed once the final design and alignment have been determined. The bridge will provide access to the South Bank Trail as well as future connections envisioned on Velasco Street.

The southern abutment of the bridge will be on BBP's Velasco Street site which is enrolled in the TCEQ Voluntary Cleanup Program and will be remediated prior to construction of the bridge. Preliminary planning, grading and alignment of the bridge is being integrated into the design of the South Bank Trail to the greatest extent possible. Any future impacts from construction of the bridge on the existing north and south banks and coordination of future improvements are included in the bridge scope and budget. Coordination of all connections to Midway's East River project and trail network will be the responsibility of the City Project Team developing the Gregg Street Bridge.

The alignment of the bridge should follow the layout included in the 10-Year Plan and the design should be modeled after the Japhet Creek Bridge design developed as a component of the Japhet Creek / Tony Marron Park designs.

EXHIBIT A5 - GREGG STREET BRIDGE



Dept:

Buffalo Bayou Partnership

Draft Incinerator Site Section

**EXHIBIT A5 - TONY MARRON PARK AND
CENTRAL MAINTENANCE
FACILITY**

- PARK PROJECTS**
- H** TONY MARRON PARK - PHASE I
(COUNTY PROPERTY)
 - I** TONY MARRON PARK - PHASE I & BBP
CENTRAL MAINTENANCE FACILITY
 - J** TONY MARRON PARK - PHASE II
INCLUDING MARRON PARK WAY AT
TONY MARRON PARK

SEPTEMBER 21, 2022

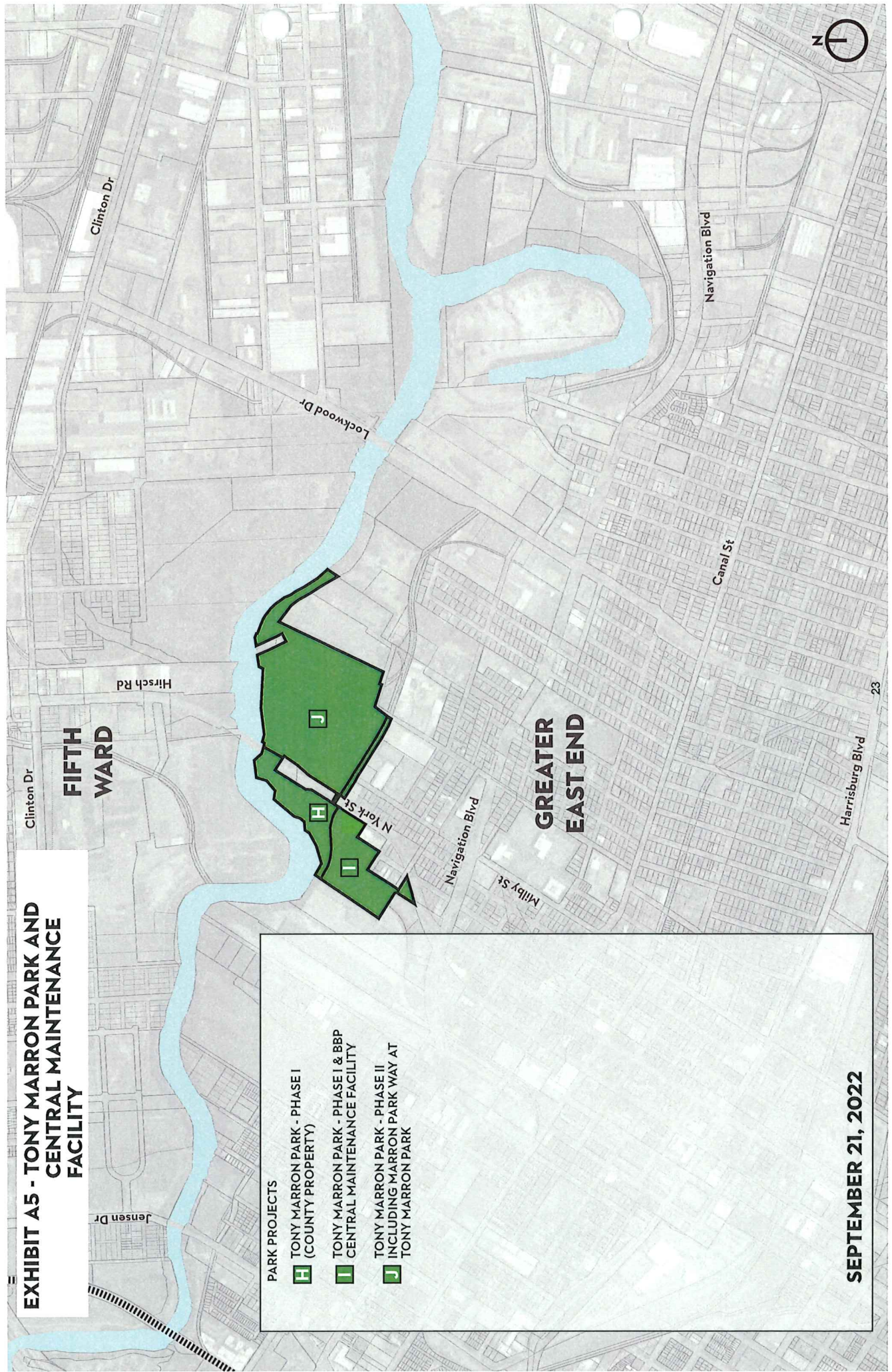


EXHIBIT A5 - TONY MARRON PARK

Projects H, I and J

Narrative Description

Project Budget - \$63,760,000
Project Manager - Buffalo Bayou Partnership

The project redevelops the existing 19-acre Tony Marron Park located at North York and Buffalo Bayou and adds 20 acres of parkland to either side of the existing park. Key site features include: a nature play area, a great lawn, two sports fields, entry gardens, a vegetated dry creek, a barbecue plaza, a boat ramp, park pavilions and restrooms, a central operations and maintenance facility, a network of trails and paths that crisscross the site, and a new multimodal public street. Site amenities will include: standard BBP trail lights; general site lighting; irrigation systems; water fountains; identity and wayfinding signage; and site furnishings. To the greatest extent possible, existing landscaping, trees, facilities, structures, and infrastructure will be retained and refurbished as part of the redeveloped park. A segment / extension of Marron Park Way from North York Street to Drennan Street will be constructed as part of the project. A new central operations and maintenance facility will house the bayou cleanup program and field maintenance operations for all BBP managed assets east of Downtown.

Phase I (Projects H and I)

The first phase of Tony Marron Park construction will occur on the roughly 7.5-acre park expansion site west of North York Street. The scope for this phase will include construction of a BBP central operations and maintenance facility on 2.5 acres of the site. A new dock facility for BBP maintenance and use by Harris County Flood Control District will be at the location of the existing boat ramp and access drive on 4.5 acres of the site. Native grassland planting, multi-use trails, a bayou lawn and general site landscaping will be included in this area as well. The remaining 7.4 acres of the site is contemplated for a future Concession or development that will be consistent with the overall design, use and character of Tony Marron Park in accordance with Chapter VII of the Operations and Maintenance Manual. This area will have minimal improvements and be used for construction requirements, event parking and remain as undeveloped greenspace once park development is complete.

Phase II and Marron Park Way (Project J)

Tony Marron Park Phase II will occur on the existing park property as well as an expansion parcel east of North York Street that total roughly 32 acres. The general scope for this phase will include construction and/or rehabilitation of entry gardens; a great lawn; existing warehouse structures, an event shed; a nature play area; two sports fields; a workout plaza; a wet meadow; a butterfly meadow; a barbecue plaza; a picnic lawn; multi-use trails; general site landscaping; and parking areas. The goal is to enhance and upgrade as many of the existing facilities and features on the Phase II site as possible. Existing facilities and features within the existing park include: a park pavilion; a restroom pavilion; two sports fields; an existing playground; a parking lot; and spaces to include visitor support and concessions. Additional structures on the adjacent expansion site will also be rehabilitated. One existing metal warehouse structure will be rehabilitated to become the event shed and incorporate new restrooms and storage enclosures. A second metal structure will be rehabilitated to become a play shed and incorporate new restrooms. A third existing metal shade structure may be relocated and reconfigured to be used as a covered area for barbecuing. The existing park restrooms will be renovated and include new fixtures and restroom partitions. The existing park pavilion will be refurbished and may be expanded. The completion of Tony Marron Phase II construction is to align with completions of Japhet Creek Pedestrian Bridge.

Marron Park Way, an extension of a local street from N. York Street to Milby Street, will be developed along the southern edge of the existing park on railroad ROW recently acquired by BBP and will be constructed concurrently with Phase II of Tony Marron Park. The street will include two lanes of traffic on street parking; above and below grade utilities and stormwater systems; a shared use trail; and general landscaping to be integrated with the park itself. A new primary entrance to Tony Marron Park along Marron Park Way will align with the existing Milby Street and will create nearly 1,000 linear feet of park frontage as the new front door to Tony Marron Park.

EXPANDING THE PARK

Harris County 4.5 AC Park Expansion

North York
Expansion Site
14.3 Acres

Harris County

9.9 AC

**Existing Tony
Marron Park
(19 Acres)**

**East
Expansion
Site**
11 Acres

City Park Expansion

**Marron
Park Way**

Lockwood Water Treatment

Turkey Bend

Concept Design

Tony Marron Park

MVVA

EXHIBIT A5 - TONY MARRON PARK

The map shows the layout of Tony Marron Park, including the Bayou Area Trail, Bayou Area Parkway, and various park features like playgrounds, sports fields, and a maintenance facility. Red lines delineate specific development zones. Callouts with arrows point to these zones, including 'Harris County Park Expansion', 'Central Maintenance Facility', 'BBP Future Development', and 'Marron Park Way at Tony Marron Park'. A north arrow is located in the top right corner.

26

EXHIBIT A5 - TONY MARRON PARK

KEY COMPONENT AREAS

ZONE 1

1. Central Maintenance Facility
2. Temporary Planting
3. North York Boat Launch & Lawn

ZONE 2

4. Riparian Restoration

ZONE 3

5. Underpass Fitness Area
6. Existing Soccer Fields
7. Bioswale Stormwater Meadow
8. The Great Lawn
9. Wetland and Bridge Landing
10. Barbecue Plaza
11. New Parking Lot
12. Event Shed Plaza
13. Playground
14. Picnic Lawn
15. Woodland Play
16. Play Lawn
17. Existing Playground
18. Existing Parking Lot
19. Entry Gardens

ZONE 4

20. Marron Park Way Extension

Tony Marron Park

MVVA

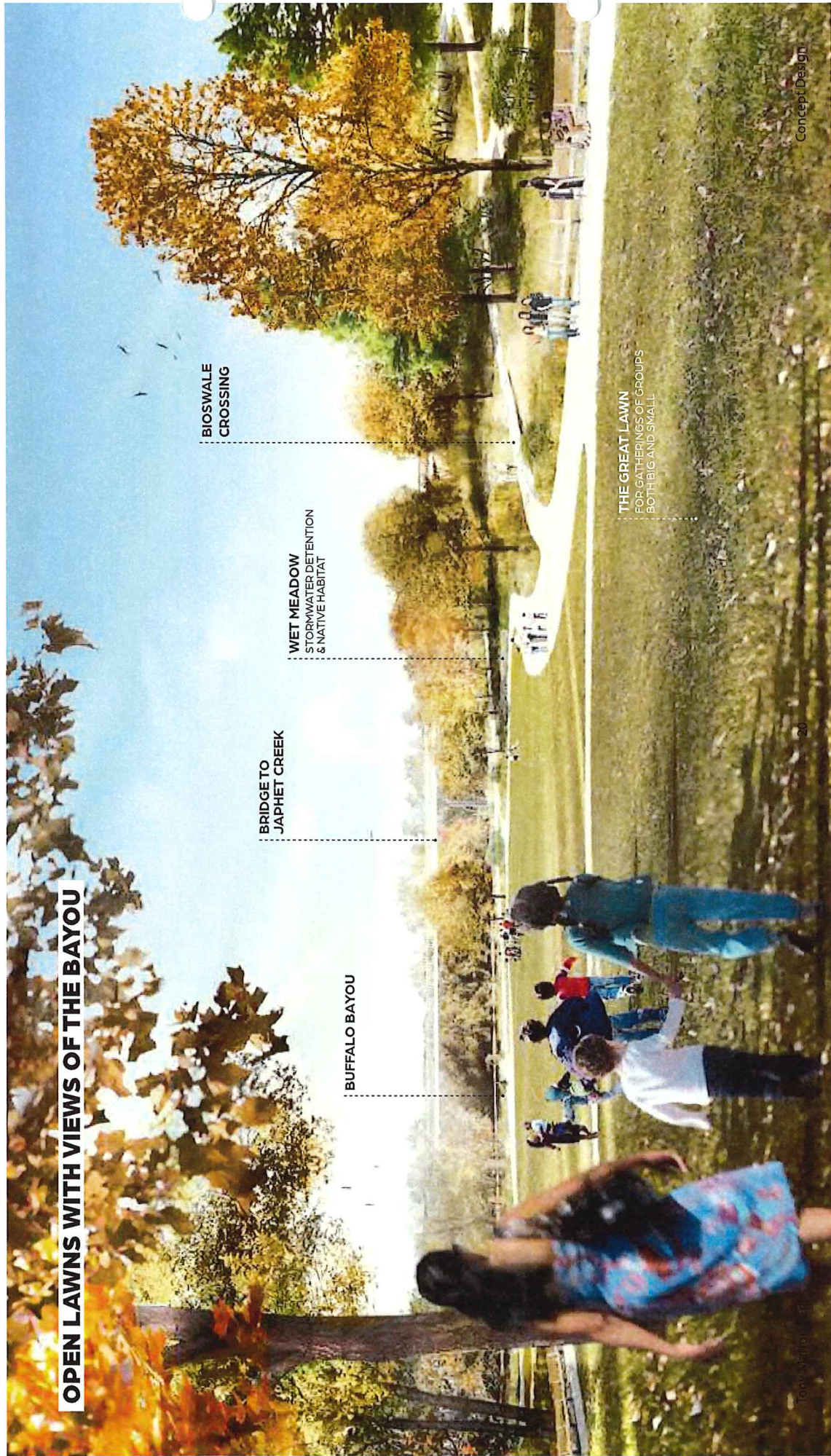


Technical Report

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

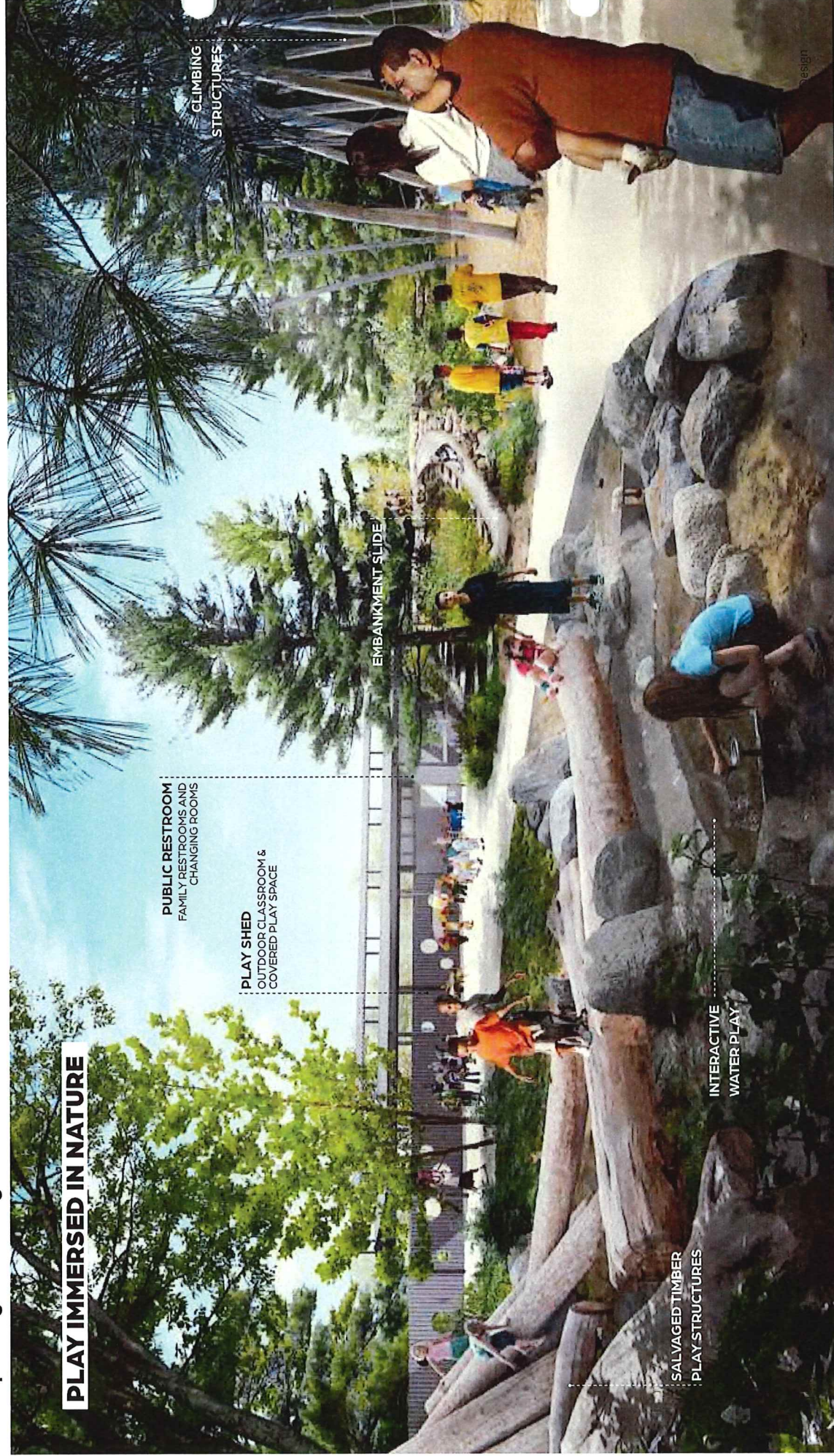
OPEN LAWNS WITH VIEWS OF THE BAYOU



MVA

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

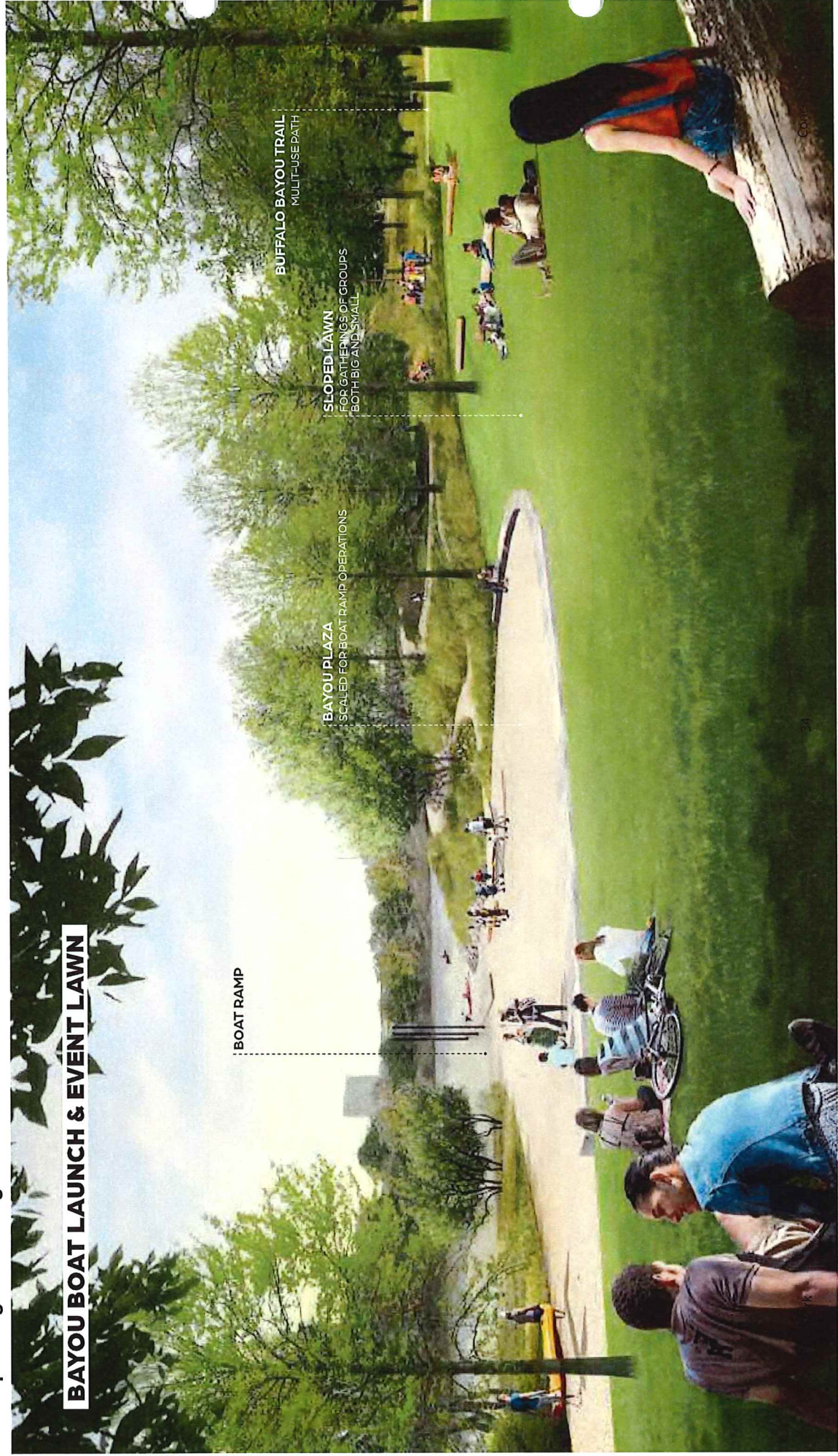


MVVA

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

BAYOU BOAT LAUNCH & EVENT LAWN

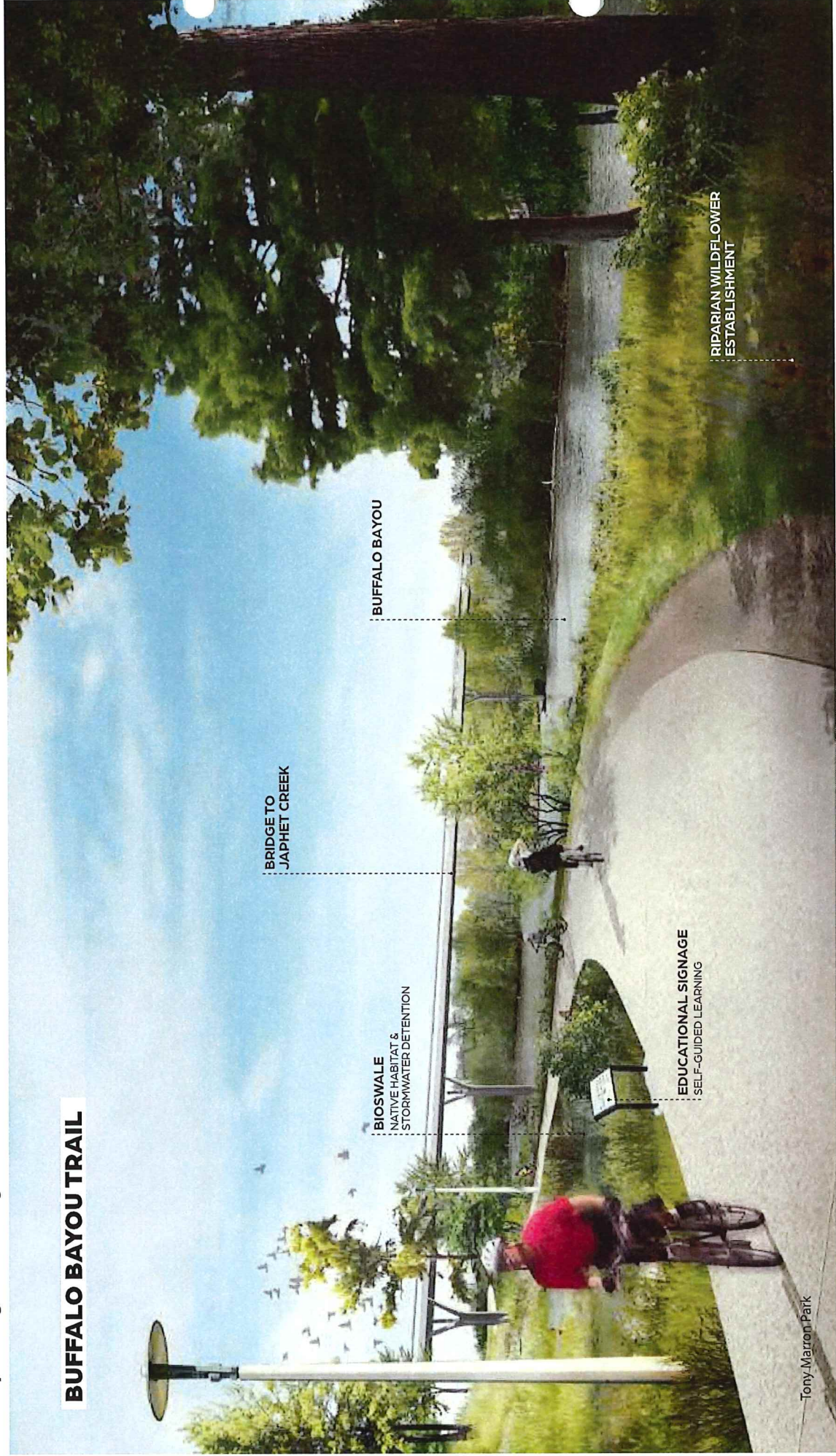


MWA

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

BUFFALO BAYOU TRAIL



Tony Marron Park

MWA

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

ADAPTIVE REUSE AT THE EVENT SHED

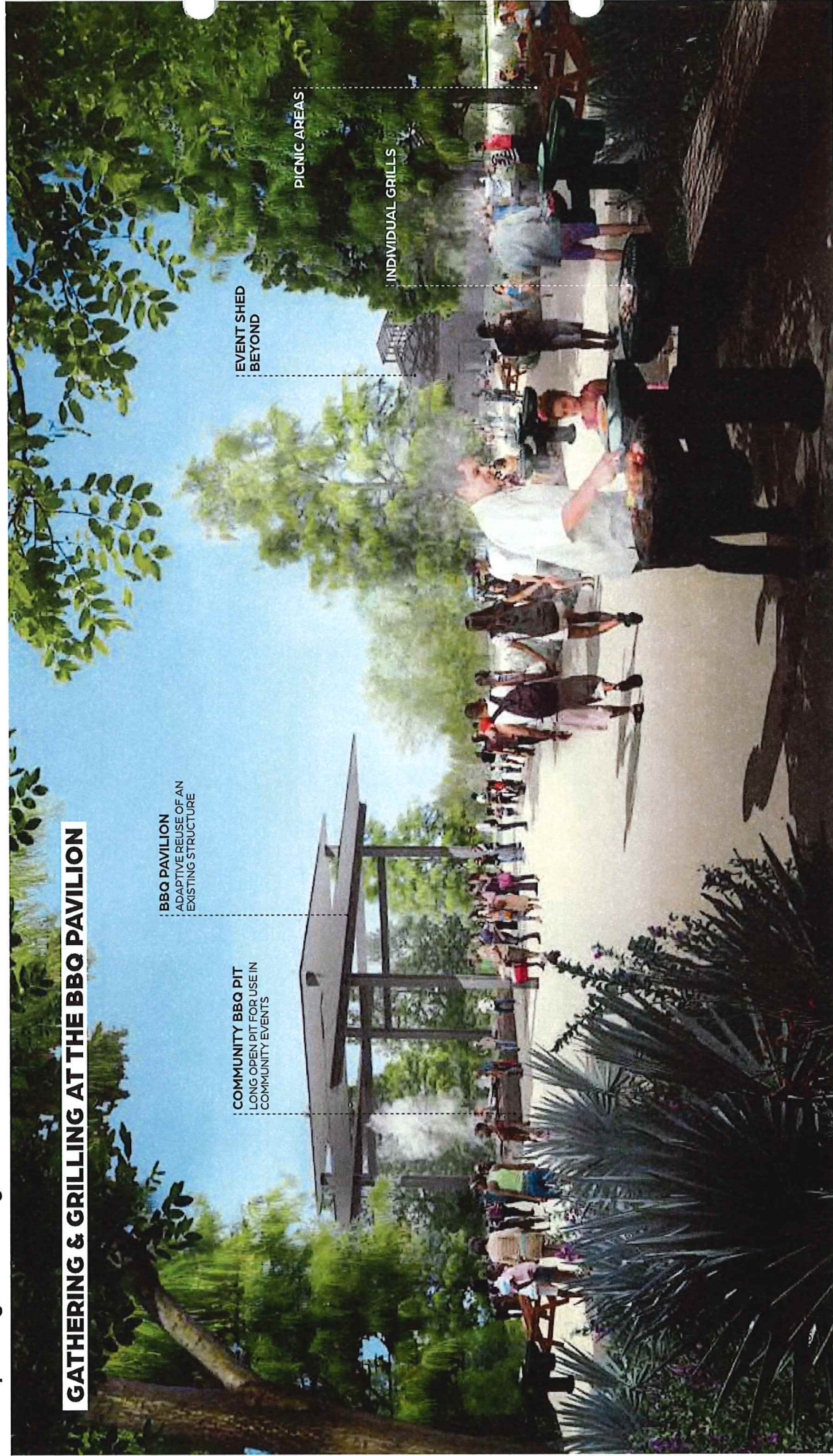


MVA

EXHIBIT A5 - TONY MARRON PARK

Concept Design Rendering

GATHERING & GRILLING AT THE BBQ PAVILION



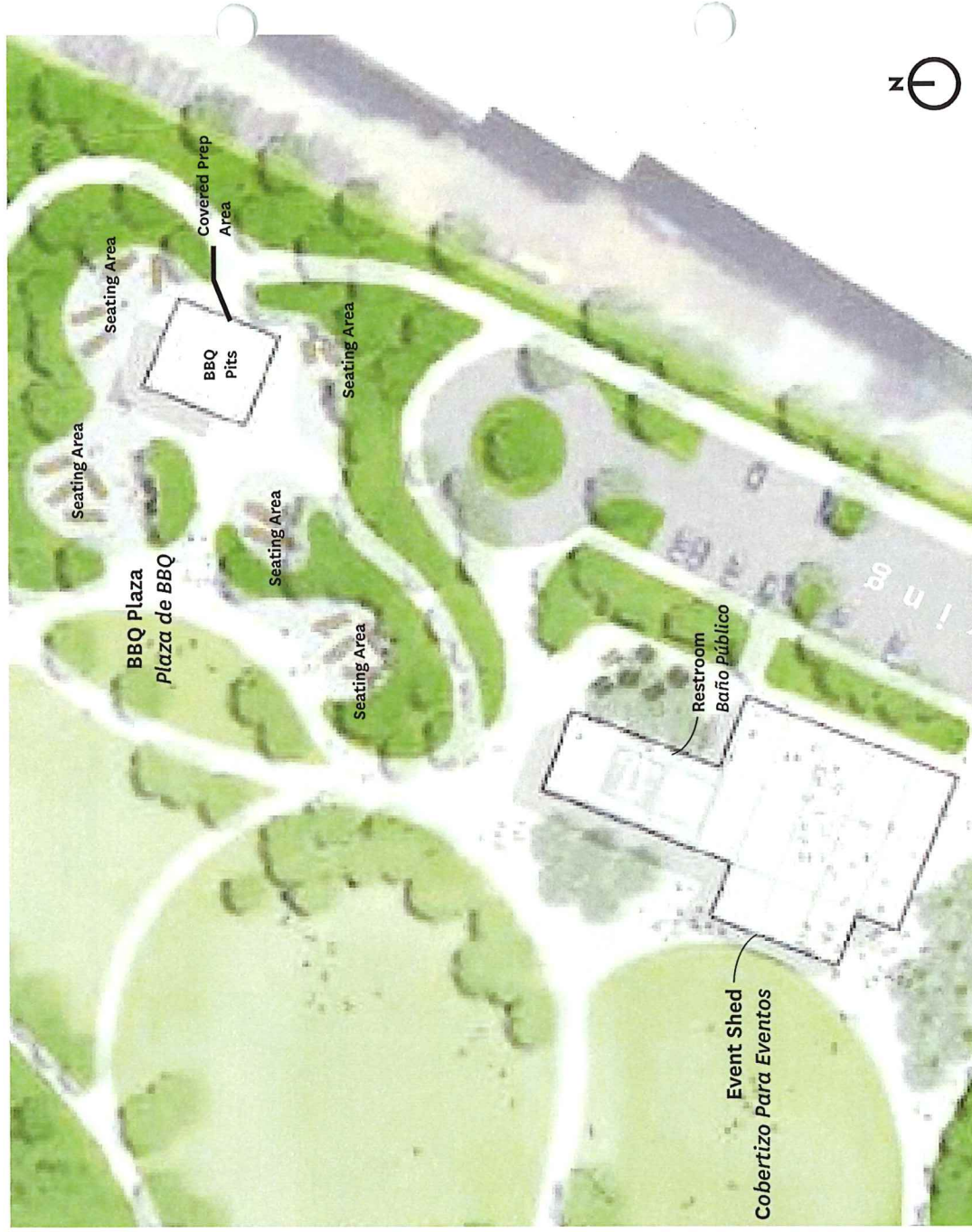
MVA

EXHIBIT A5 - TONY MARRON PARK

PROPOSED BARBECUE PLAZA



MVA



EXHIBITR A5 - TONY MARRON PARK

BUILDING FROM WHAT'S THERE

Maintaining the specific character of the neighborhood while being stewards of the available resources begins with preserving the elements of the site that are already successful. From mature trees and beloved soccer fields to industrial buildings ripe for adaptive reuse, the park has a strong foundation already in place.

Existing Vegetation to be Preserved

Existing Landscape to Remain

Existing Building to be Repurposed



Major Park Areas

Major Park Areas



Connect to the Bayou & Increasing Habitat Biodiversity

MWA, Inc.

EXHIBIT A5 - TONY MARRON PARK

Major Park Areas



A Neighborhood Park with Something for Everyone

EXHIBIT A5 - TONY MARRON PARK Major Park Areas



A Cohesive Central Lawn

MVVA, Inc.

EXHIBIT A5 - TONY MARRON PARK

PARK CIRCULATION NETWORK

Whether walking, biking, or driving, the park must be highly visible and easily accessible for everyone. The new park will include welcoming entrances, generous parking lots, an improved Buffalo Bayou Trail, and a new multi-use loop that will connect the entire park. A bridge will cross the Bayou to Japhett Creek.

- Major Paths (Multi-Use Trails)
- Secondary Paths (Pedestrian)
- Vehicular Roads
- Parking
- * Major Entrance
- * Bike Parking



Tony Marron Park

MVVA

EXHIBIT A5 - TONY MARRON PARK

Park Buildings

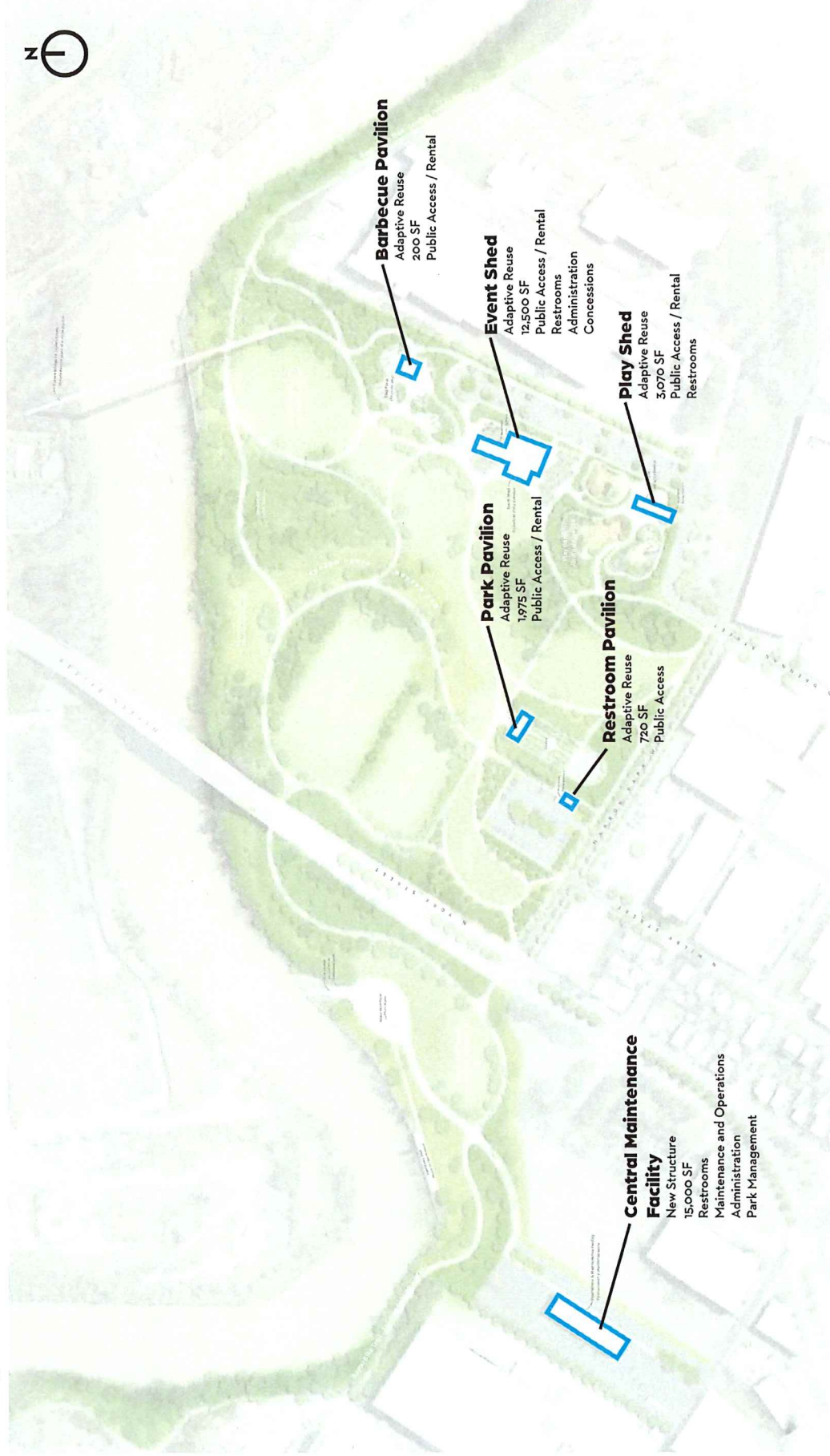


EXHIBIT A5 - TONY MARRON PARK
Central Maintenance Facility



EXHIBIT A5 - TONY MARRON PARK

Central Maintenance Facility

Preliminary Programming

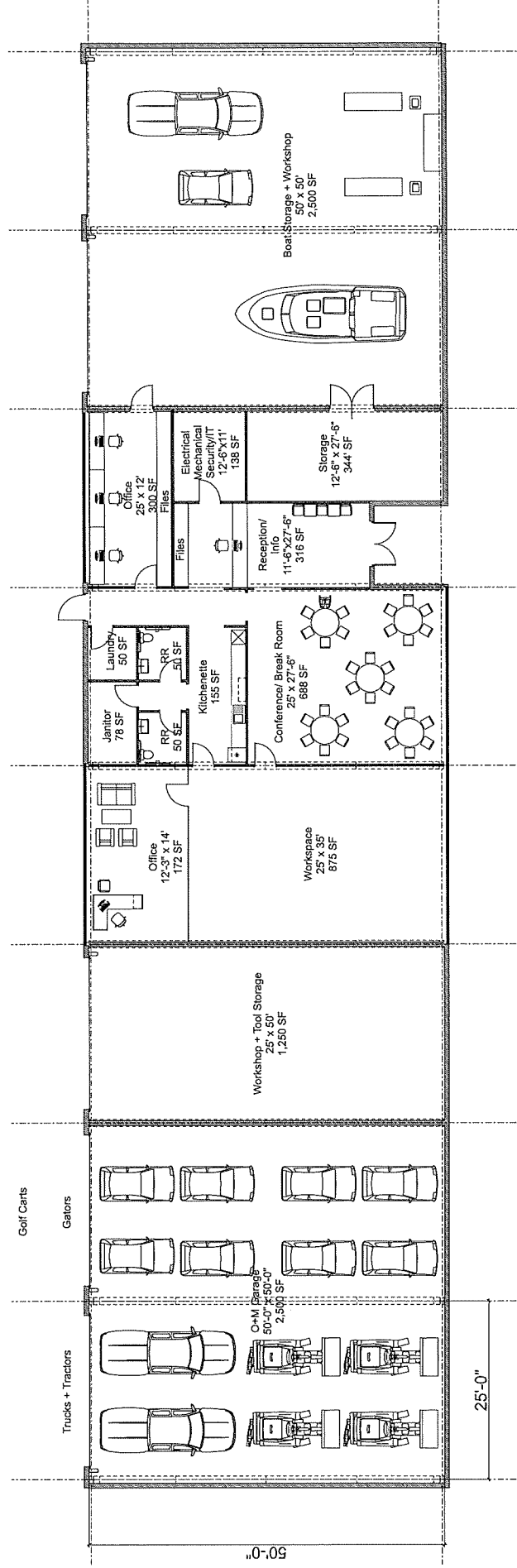


EXHIBIT A5 - TONY MARRON PARK
Central Maintenance Facility

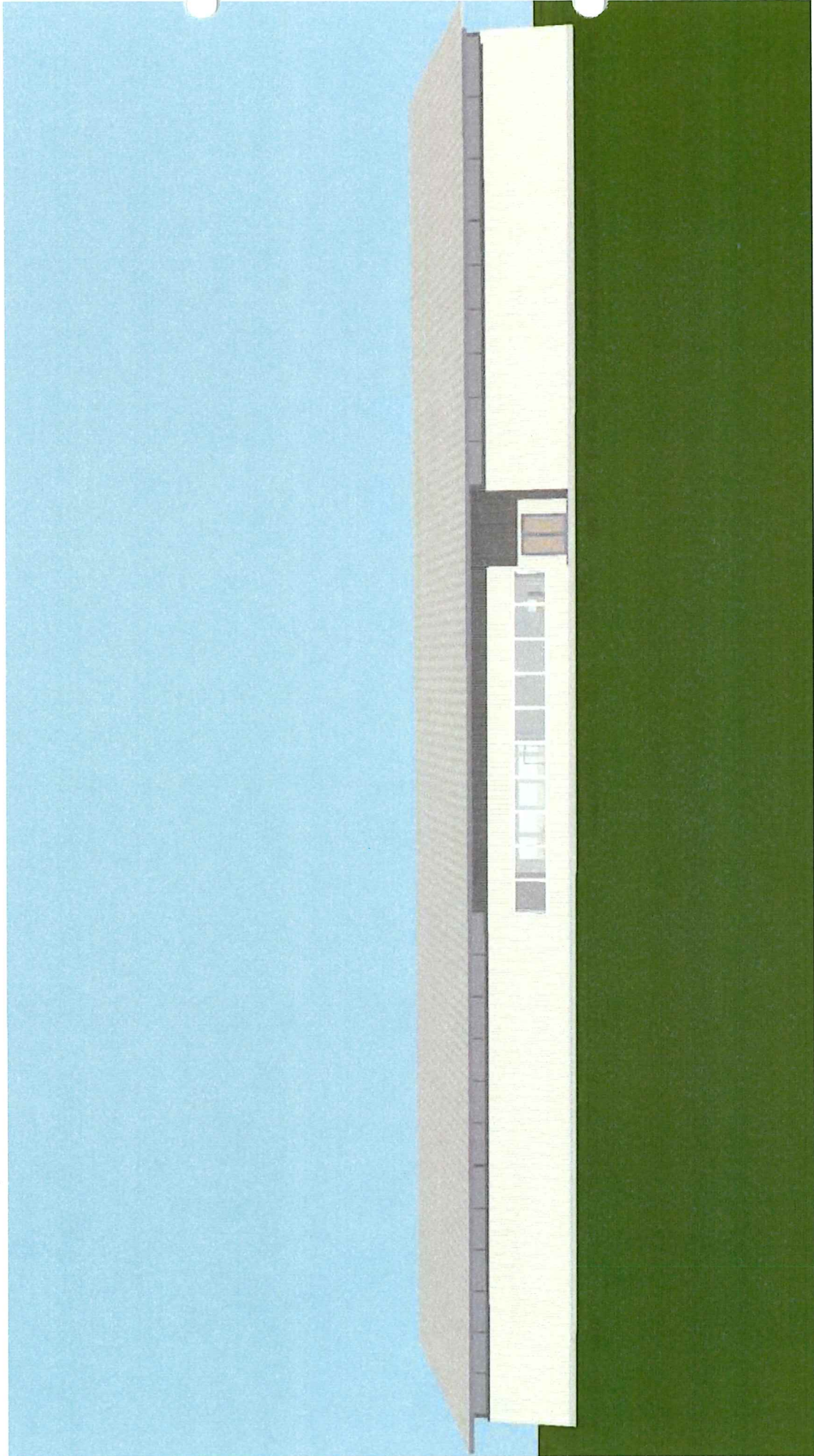


EXHIBIT A5 - TONY MARRON PARK

PARKING ASSESSMENT

Estimated Parking Demand

Peak parking demand was estimated based on park facilities and parking rates. Park facilities (size and associated parking group) are provided as **Table 1**.

Parking rates were assumed for each parking group to estimate parking demand. Peak parking demand, estimated at 200 spaces, is provided as **Table 2**.

Parking Required

50 off-street parking spaces are required per City of Houston code and lane use assumptions provided as **Table 2**.

Index	Project Area	Size (SF)	Parking Group
1	O & M Facility	224,706	West Section
2	Bayou Lawn	188,103	West Section
3	Underpass Plaza	8,455	Park (General)
4	Riparian Landscape	115,152	Unused
5	Butterfly Meadow	125,637	Park (General)
6	Sports Field	130,438	Soccer Field
7	Entry Garden	68,108	Park (General)
8	Existing Parking	39,043	Parking
9	Park Plaza	52,061	Park (General)
10	New Sports Field	132,340	Soccer Field
11	Play Area	132,432	Park (General)
12	Parking Area	53,317	Parking
13	Event Plaza	36,928	Event Space
14	Picnic Point	139,580	Event Space
15	Great Lawn	190,354	Park (General)
16	Stormwater Swale	150,478	Unused

Use	Rate	Unit	Intensity	Spaces
Park (over 10 acres)	$Y=0.1X+5$	X=Acre	50	10
Park pavilion	$Y=1X$	X=Picnic Table	20	20
Food truck (take-out restaurant)	$Y=4X$	X=1KSF	5	20
Required Parking				50

Parking Group	Size (SF)	Spaces	Parking Rate Assumption
West Section	412,809	0	Parking demand allocated to separate lot
Park (General)	577,047	73	5.5 spaces per acre
Unused	265,630	0	No parking demand
Soccer Field	262,778	100	50 spaces per field
Parking	92,360	0	No parking demand
Event Space	176,508	23	5.5 spaces per acre
Total Parking Demand (Spaces)	-	196	-

EXHIBIT A5 - TONY MARRON PARK

Marron Park Way



EXHIBIT A5 - JAPHET CREEK

PARK PROJECTS

-  JAPHET CREEK - PHASE I
-  JAPHET CREEK - PHASE II
-  JAPHET CREEK BRIDGE

SEPTEMBER 21, 2022

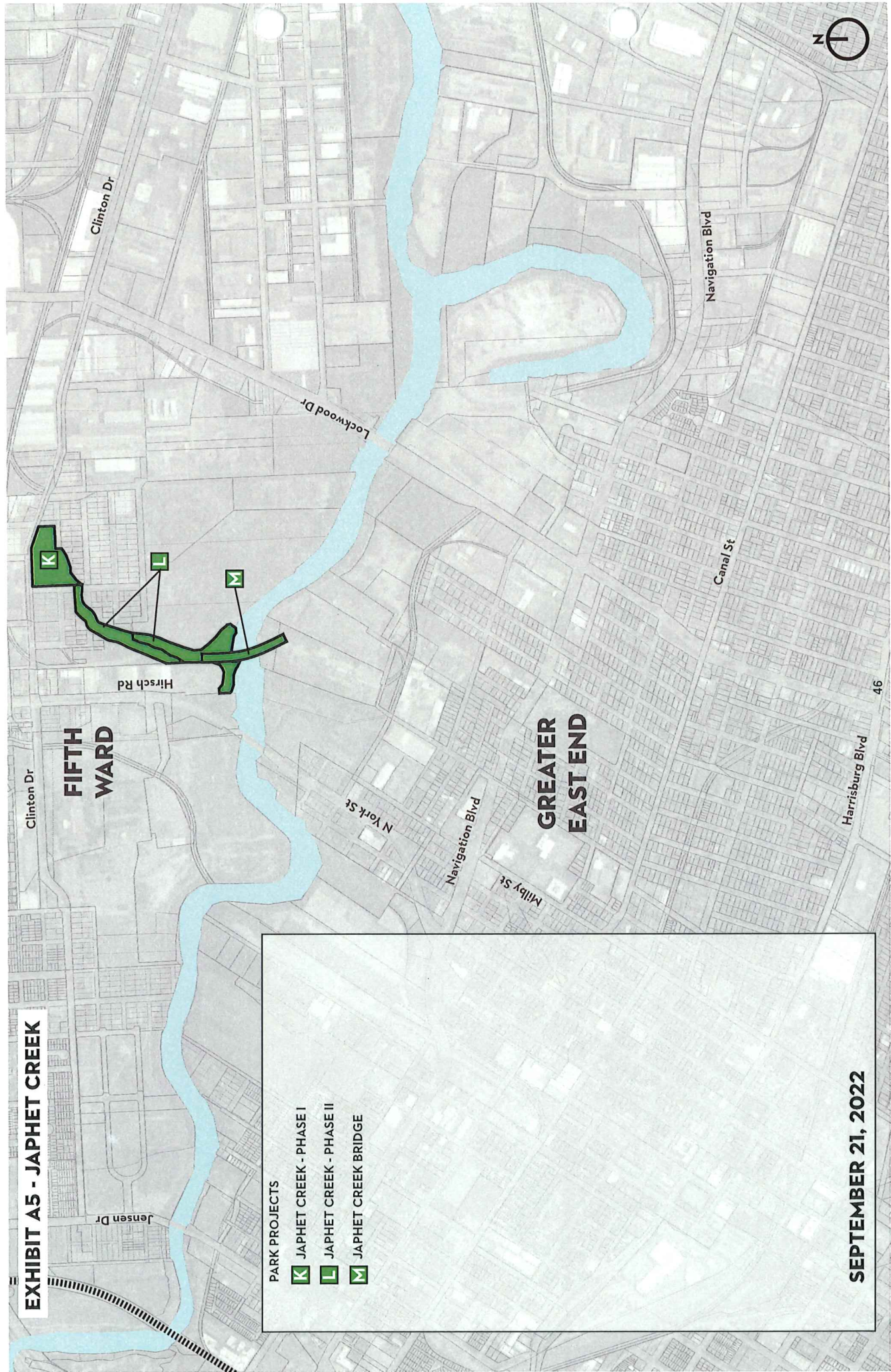


EXHIBIT A5 - JAPHET CREEK

Projects K, L, and M

Narrative Description

Project Budget – \$32,512,116
Project Manager – Buffalo Bayou Partnership

Japhet Creek is a historic small natural spring fed creek in the lower Fifth Ward. The scope of the project includes development of a park along Clinton Drive east of Emile Street, a nature trail that connects the pocket park to the bayou and restoration of the creek itself through the removal of invasive species and reintroduction of native vegetation. Site amenities will include: standard BBP trail lights; general site lighting; irrigation systems; water fountains; identity and wayfinding signage; and site furnishings. Japhet Creek will be developed in two phases: the park and the connecting nature trail and bridge.

Phase I - Project K

Phase I of Japhet Creek construction and restoration will occur on a roughly 4.4-acre parcel of land along the creek adjacent to Clinton Drive and Emile Street. The project will consist of two primary efforts - development of a park and restoration and stabilization of the creek. BBP originally acquired the park property and donated it to the City and BBP will deed the parcel south of Billy Street to the City as part of the Interdepartmental Transfer of the Right of Way dividing these parcels.

The park consists of several areas and features including: a softscape entry plaza and tree grove; wet meadows; dry meadows; landscape buffers; a demonstration garden; an outdoor gathering space; vegetated mounds; pedestrian trails, pathways and boardwalks; a site observation lookout; a nature play area; and general landscaped areas. Creek stabilization and restoration consists of concrete and other heavy debris removal from the creek bed; stabilization of the creek's banks potentially using salvaged concrete and heavy debris; and planting of new native species trees and vegetation.

Phase II - Project L

Phase II construction and restoration will occur along a roughly 4.9-acre portion of the creek bed itself between Emile Street and Buffalo Bayou and will largely remain below the creek's high banks consisting of an elevated trail and creek restoration and stabilization. The initial efforts require approximately 2.85 acres of land or easement acquisition from Sims (Proler Southwest) at the southern end connecting the existing City property, previously dedicated by BBP to the City, to the bayou to accommodate the bridge connection to Tony Marron Park.

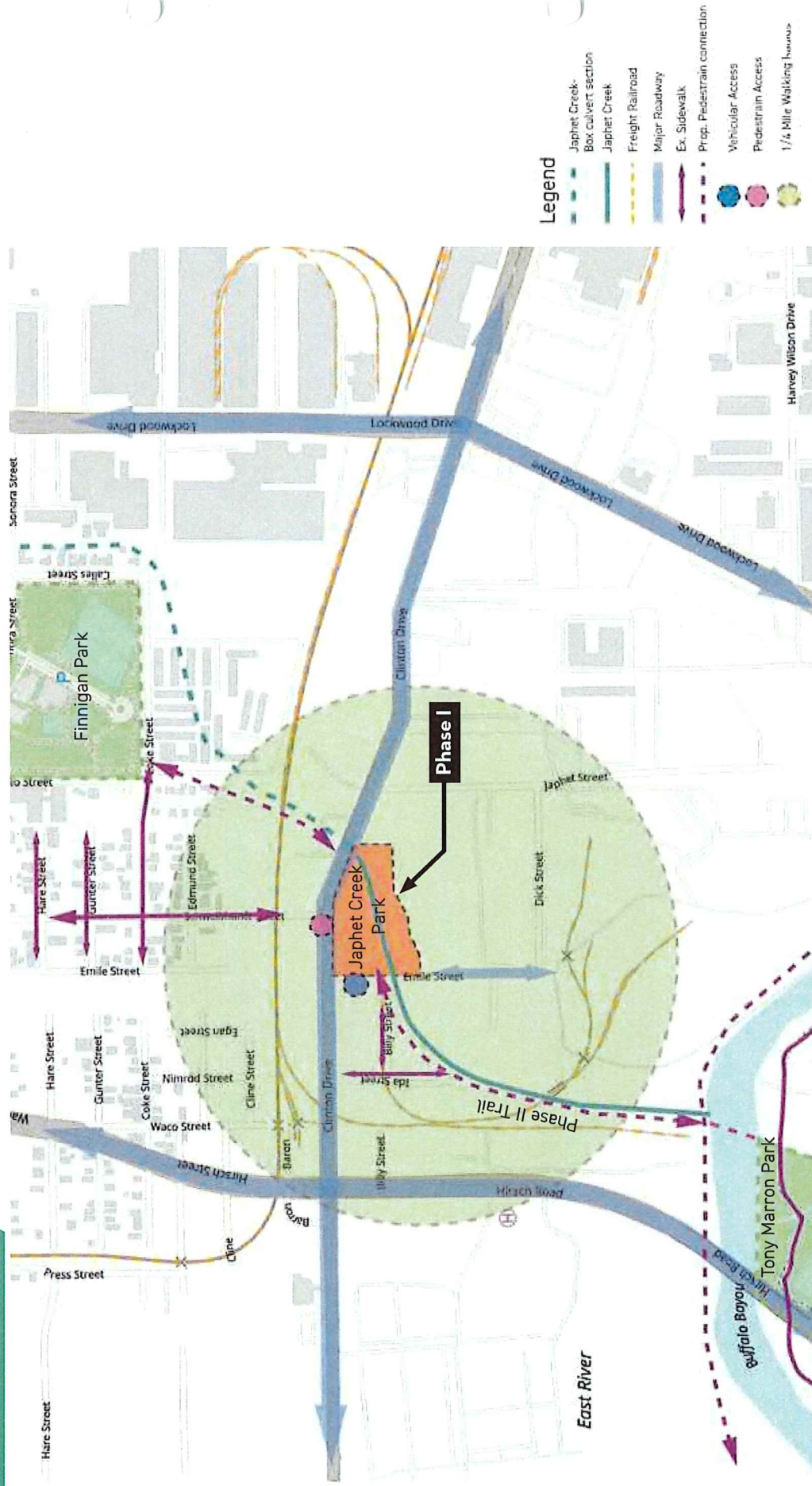
The elevated trail will extend the entire length of the creek from Emile Street to the bayou and will be located along the stream's banks. Fences or other safety barriers will be located along the upper banks adjacent to the active Sims recycling operation along the creek's upper banks. Creek stabilization and restoration will consist of concrete and other heavy debris removal from the creek bed; stabilization of the creek's banks potentially using salvaged concrete and heavy debris; removal of invasive species and trees in poor condition; and planting of new native trees and vegetation.

Japhet Creek Bridge - Project M

A pedestrian and bicycle bridge spanning the full width of Buffalo Bayou will connect Tony Marron Park to Japhet Creek. The bayou at this location is designated as a navigable waterway, therefore, the elevation of the bridge is anticipated to match that of the Lockwood Drive bridge further downstream. Given its expected length and height, it is anticipated that the bridge will be a suspension structure with significant structure required to accommodate the grade difference from trail to bridge.

EXHIBIT A5 - JAPHET CREEK

CONTEXT MAP



ASAKURA ROBINSON

EXHIBIT A5 - JAPHET CREEK

Phase I Concept Site Plan



ASAKURA ROBINSON

Phase 1 - Land Assemblage



EXHIBIT A5 - JAPHET CREEK

Phase I - Schematic Plan

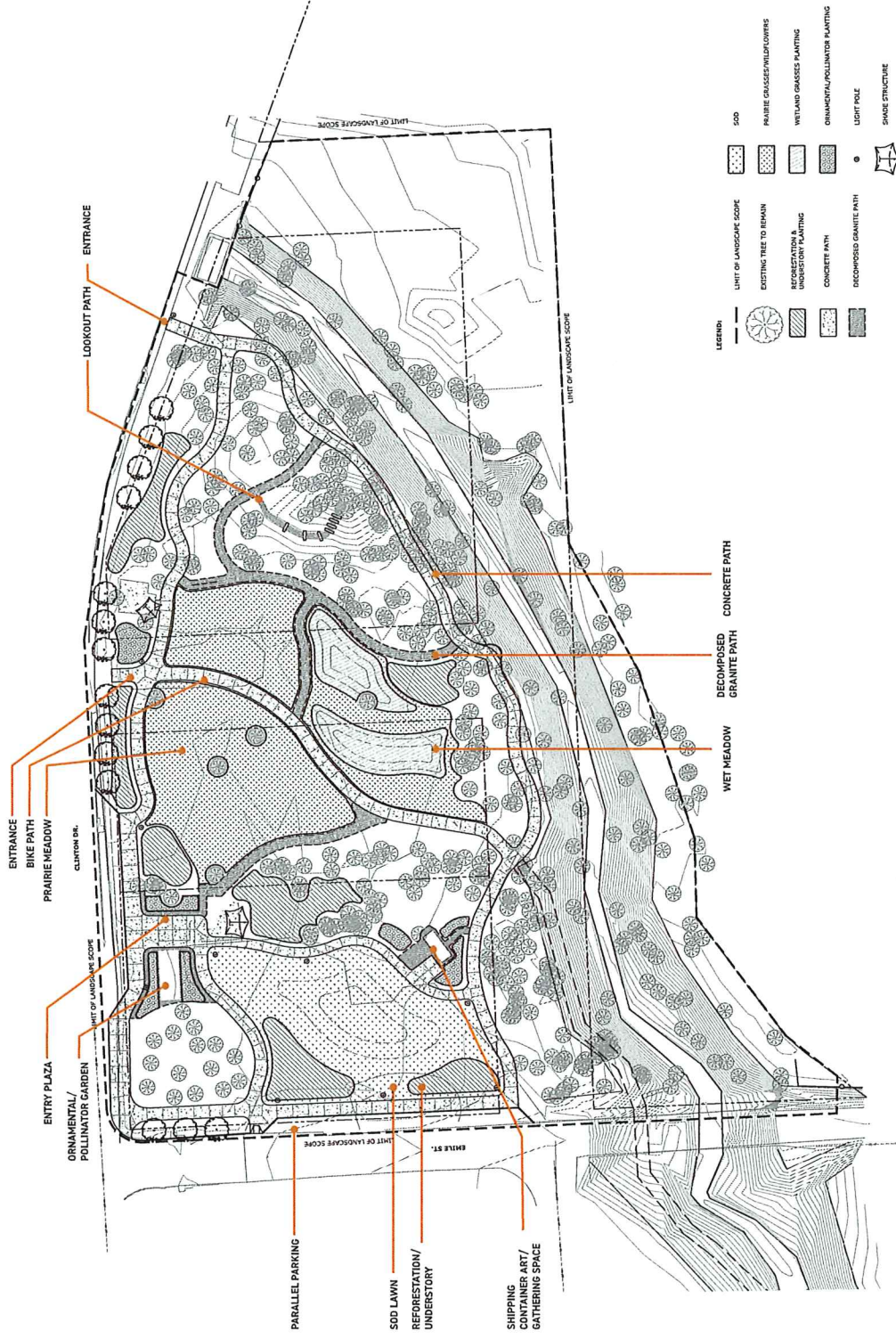
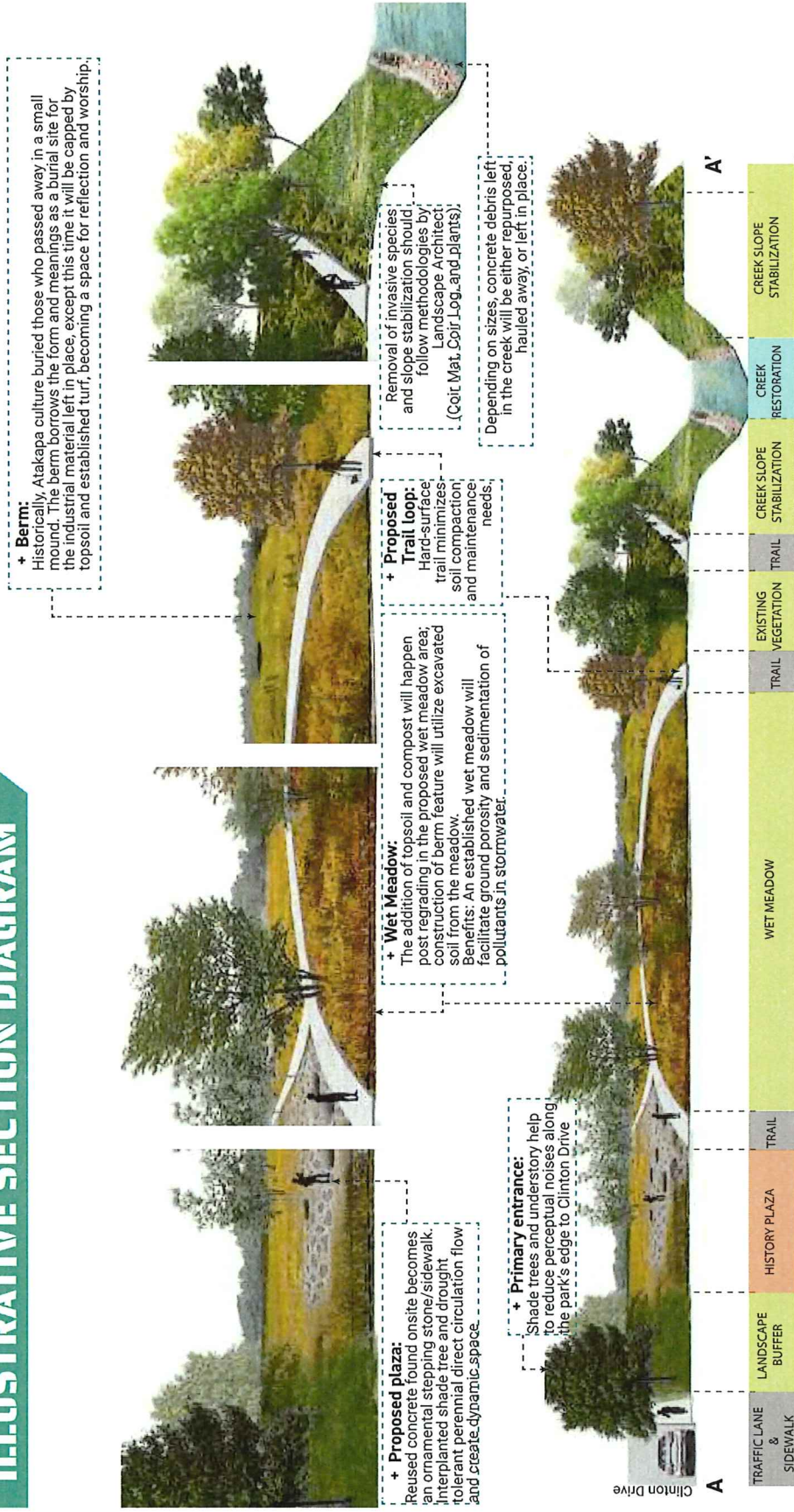


EXHIBIT A5 - JAPHET CREEK

Phase I

ILLUSTRATIVE SECTION DIAGRAM



JAPHET CREEK
LANDSCAPE CONCEPTS



ASAKURA ROBINSON

EXHIBIT A5 - JAPHET CREEK Phase I

CONCEPT RENDERING

A berm will be made out of the excavated material from cut material for detention ponds. Compared to its flat surrounding, this vertical landscape element is a conscious act to draw users' attention and give a sense of wonder to what's buried beneath. The inspiration comes from an existing mound of refuse material that exists on site.



JAPHET CREEK
LANDSCAPE CONCEPTS



ASAKURA ROBINSON

Proposed Plan - Phase II



EXHIBIT A5 - JAPHET CREEK
Phase II

Proposed Section

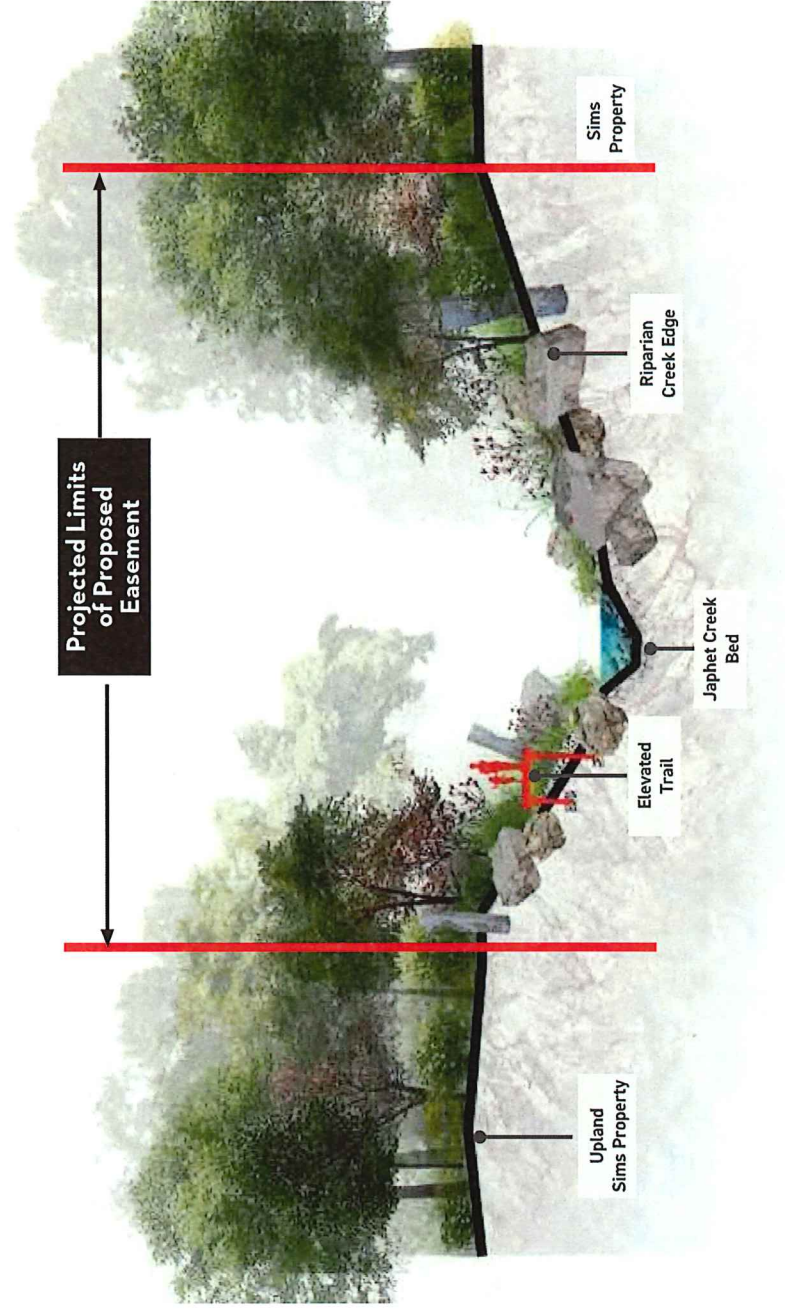


EXHIBIT A5 - JAPHET CREEK
Phase II Easement Requirements

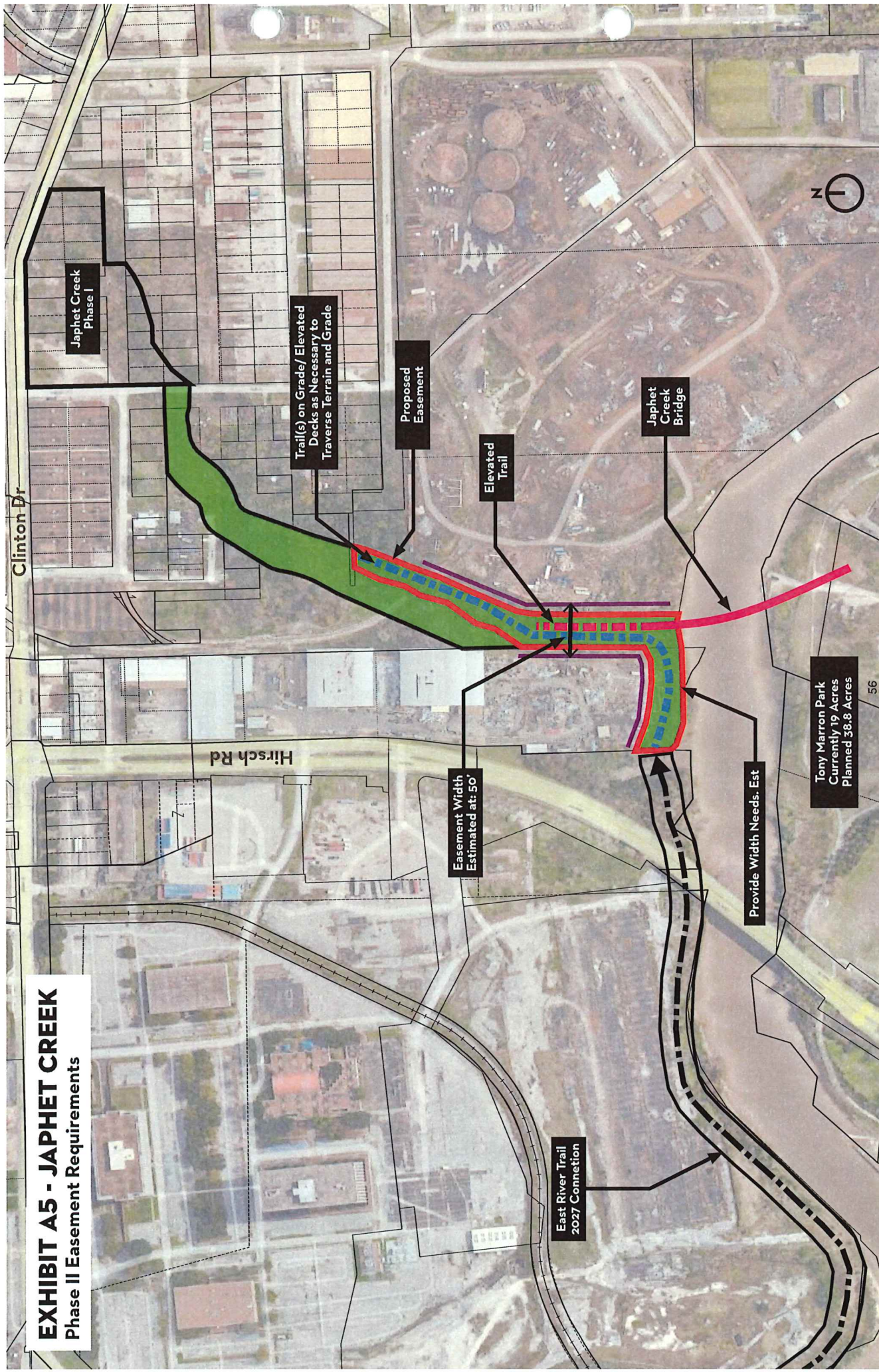
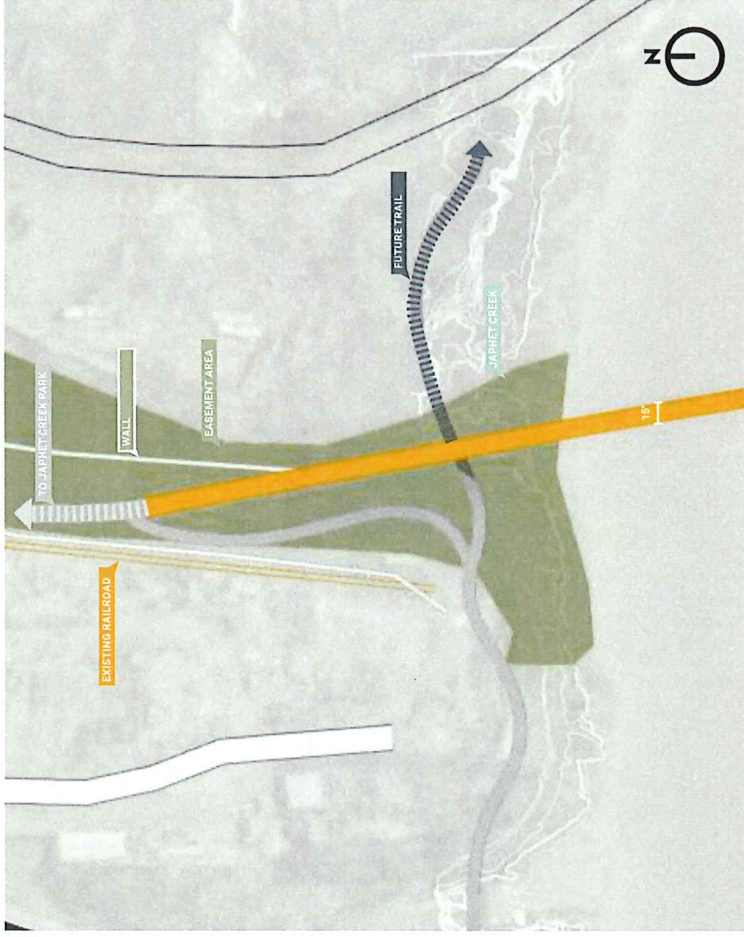


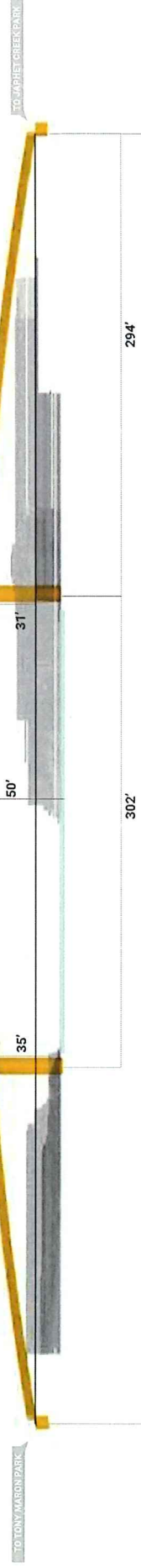
EXHIBIT A5 - JAPHET CREEK PEDESTRIAN BRIDGE Concept Alignment



Overall Alignment



North Bank Detail



ASAKURA ROBINSON

EXHIBIT A5 - LOCKWOOD PARK GREENSPACE

Clinton Dr

**FIFTH
WARD**

Jensen Dr

Hirsch Rd

PARK PROJECTS

N MARRON PARK WAY AT LOCKWOOD SOUTH

R LOCKWOOD SOUTH GREENSPACE

S MARRON PARK WAY / LOCKWOOD TRAILHEAD

Lockwood Dr

N York St

Navigation Blvd

Milby St

**GREATER
EAST END**

Navigation Blvd

Canal St

Harrisburg Blvd

58

SEPTEMBER 21, 2022



EXHIBIT A5 - LOCKWOOD PARK GREENSPACE

Projects N, R and S

Narrative Description

Project Budget – \$19,978,869

Project Manager – Buffalo Bayou Partnership

The Master Plan identified an 18-acre parcel along Buffalo Bayou east of Tony Marron Park as the location to provide affordable, workforce, and market rate housing in an area seeing a large influx of new residents. This space is envisioned to fully integrate publicly accessible green spaces into the development to feel like an extension of Tony Marron Park and a new neighborhood connector street, Marron Park Way, will also be constructed on the recently acquired rail property south of Lockwood Park connecting Lockwood to Drennan.

Lockwood Park and Greenfinger- Project R

Lockwood Park consists of approximately 11 acres of publicly accessible green space and parking surrounding residential housing. These green spaces will consist of lawns, multiuse bayou and park trails and landscaping. Site amenities will include standard BBP trail lights, general site lighting, irrigation, water fountains, identity and wayfinding signage and site furnishings.

A 1-acre linear “Greenfinger” located between Phase 1 and the future Phase 2 housing projects connects Marron Park Way to the bayou-fronting green spaces and is located on a Houston Parks Board easement. The remainder of Lockwood Park extends from Tony Marron Park, across the Dan Loc Easement connecting to the Lockwood South housing projects, the Lockwood Trailhead and Parking and includes a dog park and playground which will utilize the existing Tony Marron Park playground equipment and a dog park.

Marron Park Way - Project N

The Marron Park Way segment included in this phase, will commence at Drennan Street at Tony Marron Park, proceed along the rail lead property to the southern edge of Lockwood Park and terminate at a new intersection (Lockwood Park Circle) one block west of Lockwood Drive. The street will include two lanes of traffic, on street parking, utilities and stormwater, a shared use trail and general landscaping integrating with the park itself. This project may be constructed in 1 or 2 phases, with the priority of

connecting Phase 1 housing to Lockwood, with the segment from Phase 1 to Drennan following. The project will create improved neighborhood access and circulation with a goal of mitigating existing heavy commercial and freight traffic from residential streets and provide access to the large industrial tracts currently accessed from the disconnected existing street grid.

Marron Park Way is designed to be a minor collector road according to the City of Houston Infrastructure Design Manual roadway hierarchy. The roadway will be 22-foot-wide concrete, 11-foot lanes, curb and gutter. There will be a 6-foot-wide sidewalk along the south side of the road and a shared use path along the north side. Trees planted along Marron Park Way extend the tree canopy further into the neighborhood, providing places for birds to nest and shade for pedestrians and cyclists as well as mitigating heat island effects. Additionally, the City and BBP have been in coordinating with METRO to include a stop on the planned University BRT line identified in the METRONext plan at Marron Park Way and Lockwood.

Marron Park Way/Lockwood Trailhead - Project S

Project Manager – Harris County Engineering

Harris County had designed and will construct Marron Park Way from the Lockwood Park Circle intersection to Lockwood tying into the intersection being constructed as part of the Lockwood Drive CIP. Lockwood Park Circle will connect Marron Park Way to a new trailhead with public off-street parking located underneath the Lockwood Drive bridge. This segment also provides access to the County's parking to be accessed from Marron Park Way. This new driveway is required to provide access to existing parking due to the driveway from Lockwood Drive being lost per the requirements of adding the Lockwood intersection. Harris County's scope includes signalization of the Lockwood Marron Park Way intersection while the City Lockwood Drive CIP project will construct the physical Lockwood / Marron Park Way intersection.

Harris County will acquire the parcel of land dividing the two County parcels from BBP, which will also enhance redevelopment opportunities of the County site. BBP will deed a separate parcel to Harris County located at the southwest corner of the Lockwood Marron Park Way intersection.

EXHIBIT A5 - LOCKWOOD PARK GREENSPACE

Overall Plan

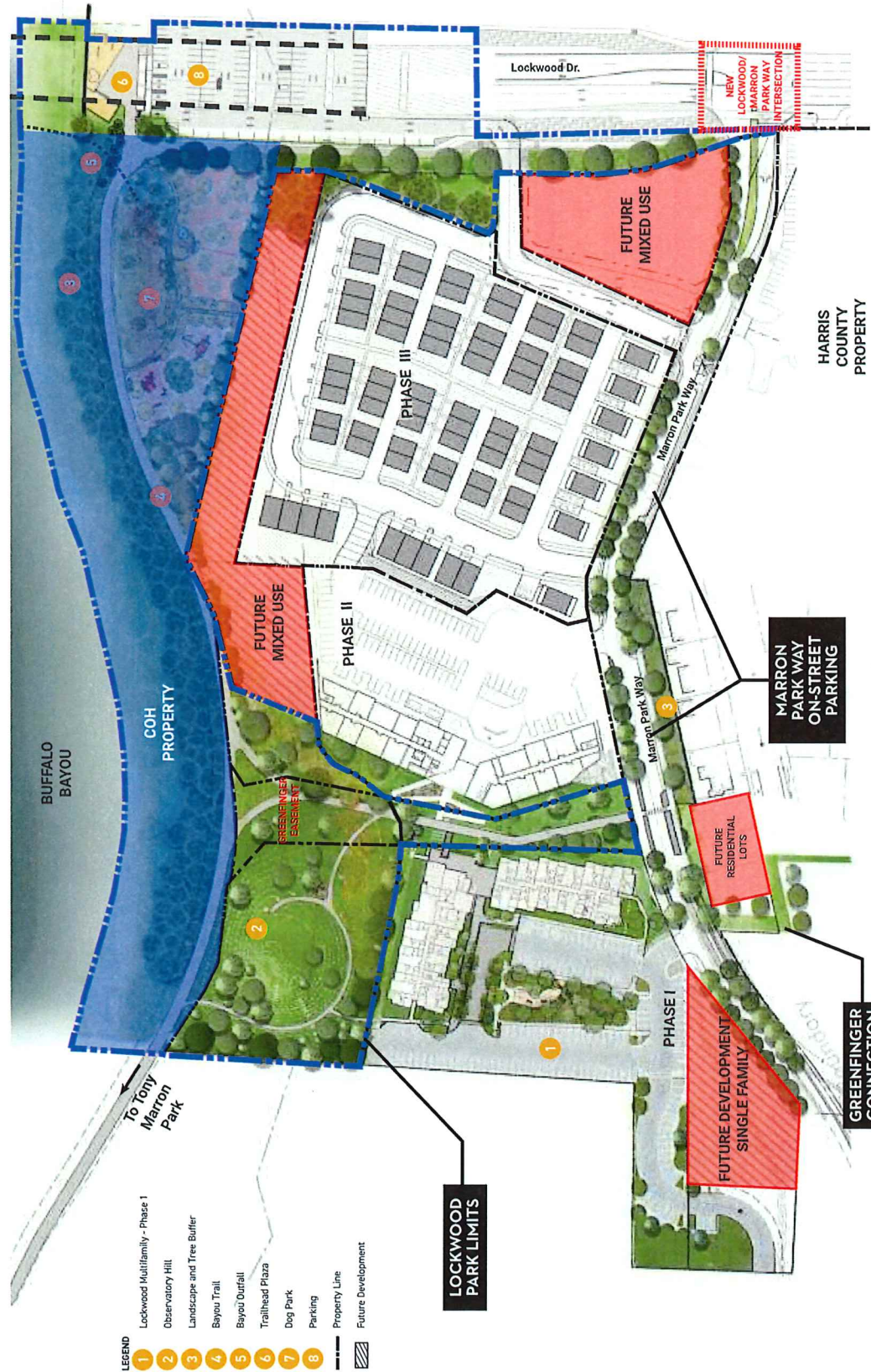


EXHIBIT A5 - LOCKWOOD PARK GREENSPACE

Greenfinger



ASAKURA ROBINSON
ISA ARCHITECTS

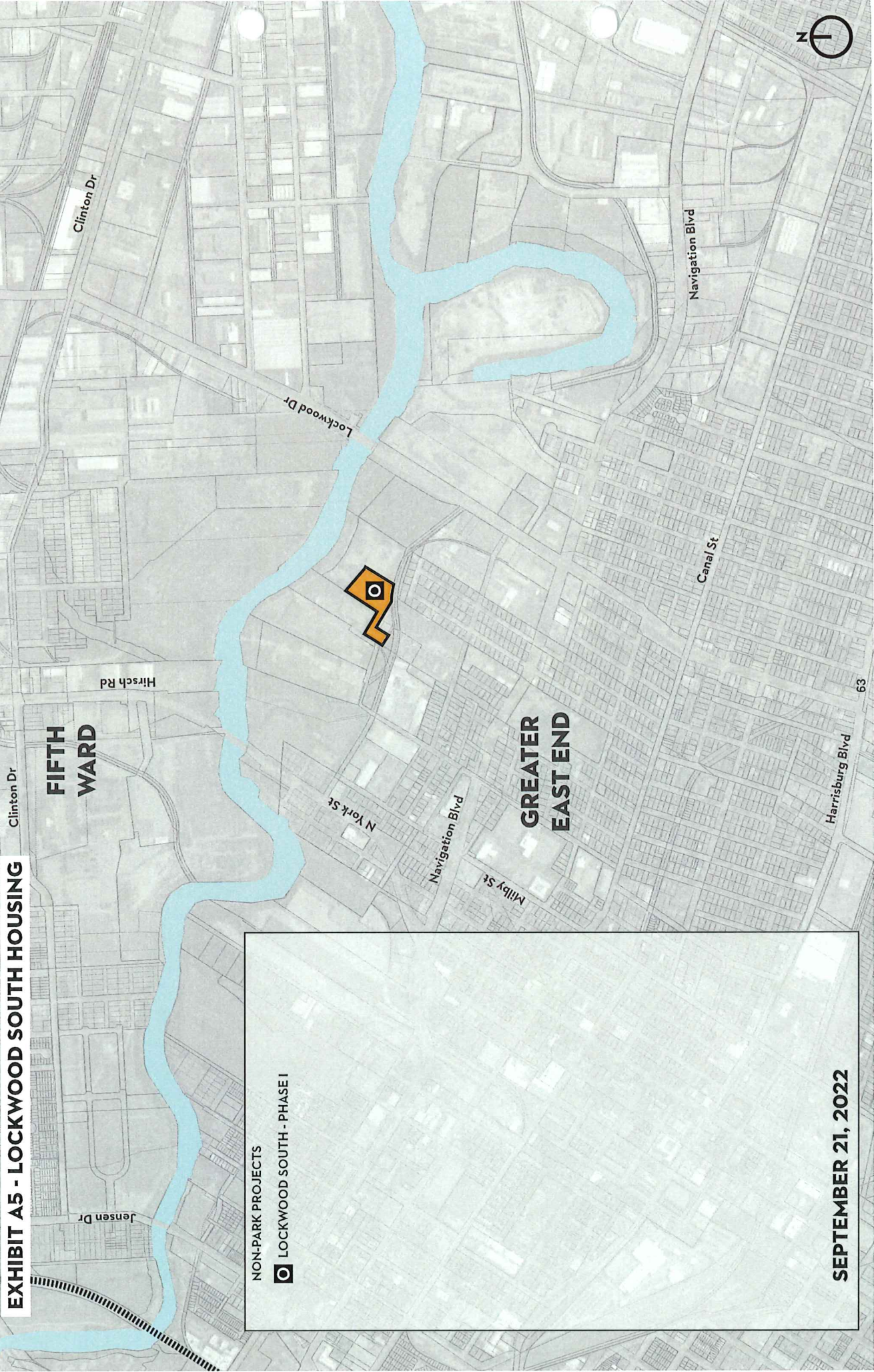
EXHIBIT A5 - LOCKWOOD PARK GREENSPACE

Marron Park Way Concept



HUMPHRIES PARTNERS ARCHITECTS

EXHIBIT A5 - LOCKWOOD SOUTH HOUSING



NON-PARK PROJECTS

 LOCKWOOD SOUTH - PHASE I

SEPTEMBER 21, 2022

EXHIBIT A5 - LOCKWOOD SOUTH HOUSING

Project O Narrative Description

Project Manager – Buffalo Bayou Partnership

A crucial goal of the 10-year plan for Buffalo Bayou East Master Plan is to provide affordable, and accessible market rate housing in an area seeing a large influx of new residents. To achieve this goal, an 18-acre parcel along Buffalo Bayou east of Tony Marron Park will become the location for a new community. Envisioned as a combination of mixed-use, for rent multifamily and single-family to own product, a key feature of this housing is to fully integrate publicly accessible green spaces into the development that feel as an extension of Tony Marron Park linked by a new local street, Marron Park Way, connecting N. York to Lockwood.

The Master Plan includes a diverse mix of income ranges, inter-generational housing options, and different housing types including lower density rental and potentially home-ownership options. The need for new housing in this neighborhood is not being met and the average age of housing units in the census tract is several decades old. Mix of income ranges from 30%-80% of Area Median Income (AMI) including unrestricted units.

To be constructed as three separate projects, the development is a joint effort between the City of Houston, Buffalo Bayou Partnership, and the non-profit organization Kinder Foundation (limited to onsite green space improvements of Lockwood Park). Buffalo Bayou Partnership and Brinshore Development are the housing developers.

Phase 1 - Project O - Phase I

Project Budget: \$31,786,415

The first phase of the development features two 4-story buildings connected by an open breezeway framing the western side of the Lockwood Park's Greenfinger. This multi-family development is comprised of 80 units, 72 designated as affordable, consisting of 1, 2 and 3-bedroom units. The building's materials, orientation, design, and landscaping are intended to amplify the natural beauty of the Buffalo Bayou trail and will receive National Green Building Standard certification. Building and community amenities include a private playground, gated entry, fitness center, community room, mailroom with package lockers, outdoor seating, business center, laundry facilities and access to the Bayou trail network.

Phase 2 - Phase II

(Not included in 10-Year plan budget and obligations)

The second Phase is envisioned to be 80 units of mixed-income senior housing. This senior housing will complete the high-density mixed-income portion of the project.

Phase 3 - Phase III

(Not included in 10-Year plan budget and obligations)

Will be a single-family home development at Lockwood South that will provide Houstonians with 76 new homes, 40 of which will be permanently affordable through the partnership with the City of Houston and Houston Community Land Trust. The development's home designs include a mix of 3-bedroom townhomes and bungalows that will be affordable to homeowners from 80%-120% of Area Median Income ("AMI").

EXHIBIT A5 - LOCKWOOD SOUTH HOUSING Overall Plan



EXHIBIT A5 - LOCKWOOD SOUTH HOUSING

Phase I

PROPOSED PLAN

LEGEND

- 1 Playground
- 2 Vegetated Swale
- 3 Raised Table Crossing
- 4 Plaza
- 5 Dog Walk
- 6 Buffalo Bayou Trail Connection



LOCKWOOD SOUTH
LANDSCAPE DESIGN CONCEPT - 6.30.2021
ASAKURA ROBINSON

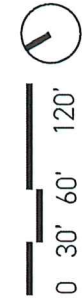


EXHIBIT A5 - LOCKWOOD SOUTH HOUSING

Phase I Rendering



HUMPHRIES PARTNERS ARCHITECTS

EXHIBIT A5 - LOCKWOOD SOUTH HOUSING-

Phase I Rendering



HUMPHRIES PARTNERS ARCHITECTS

**EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT
(HIGH COMFORT TRAILS)**

**FIFTH
WARD**

**GREATER
EAST END**

NON-PARK PROJECTS
T LOCKWOOD DRIVE CIP PROJECT
(HIGH COMFORT TRAILS)

SEPTEMBER 21, 2022

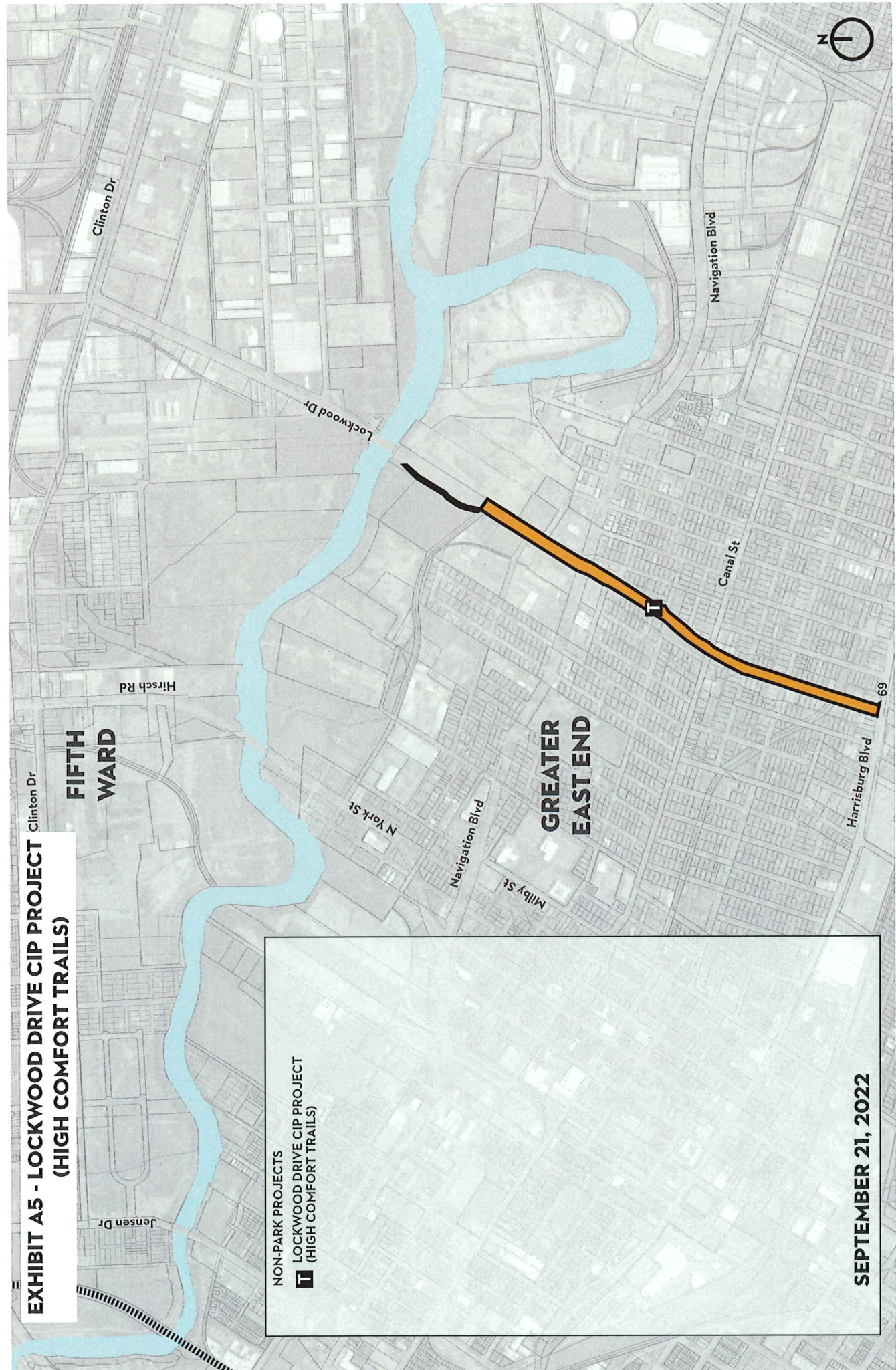


EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT

Narrative Description

Project Budget - \$17,382,000
Project Manager - City of Houston

The City has completed and approved engineering for the Lockwood Drive CIP Project, and the project is funded. The project is comprised of two phases:

- Subproject 1: S. Lockwood Paving & Drainage: Crites St to Suburban St/ WBS# N-100027-0001-3
 - The Foley / Lockwood Trailhead project will be coordinated as part of this phase
- Subproject 2: S. Lockwood Paving & Drainage: Suburban St to Harrisburg/ WBS# N-100027-0002-3

The project includes reconstruction of the existing deteriorating four- and six-lane, divided concrete roadway with curbs, storm sewer, sidewalks with ADA wheelchair ramps, driveways, street lighting, traffic control, and necessary underground utilities. The scope will also include upgrading and adding the necessary intersections, improvement of drainage, and upgrade of the existing roadway to Major Thoroughfare and Freeway Plan standards. This additionally includes medians, driveways, street lighting, traffic control, and other necessary underground utilities. The benefitted area of the project includes improved mobility, improved drainage, flooding control, and improved public utilities and will need to address any potential Petroleum Contaminated Areas (PPCA).

The project includes: construction of 10-foot sidewalks on S. Lockwood Drive and 6-foot sidewalks on Navigation Boulevard with wheelchair ramps throughout the entire length within the limits of the project; Construction of new 12-inch water line on S. Lockwood Drive from north of Suburban Street to north of Crites Street; Construction of new storm sewer system to replace the existing system. The existing storm sewer will be primarily removed, and a new storm sewer will be constructed in its place and new sanitary sewer lines installed within project limits.

Installation of new street lighting, permanent signage, pavement markings and landscaping, including street trees will complete the project.

The City is coordinating with METRO on the final design and schedule for this Project as it relates to METRO's proposed University Corridor Segment 4 Bus Rapid Transit (BRT) project.

EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT

Phase 1

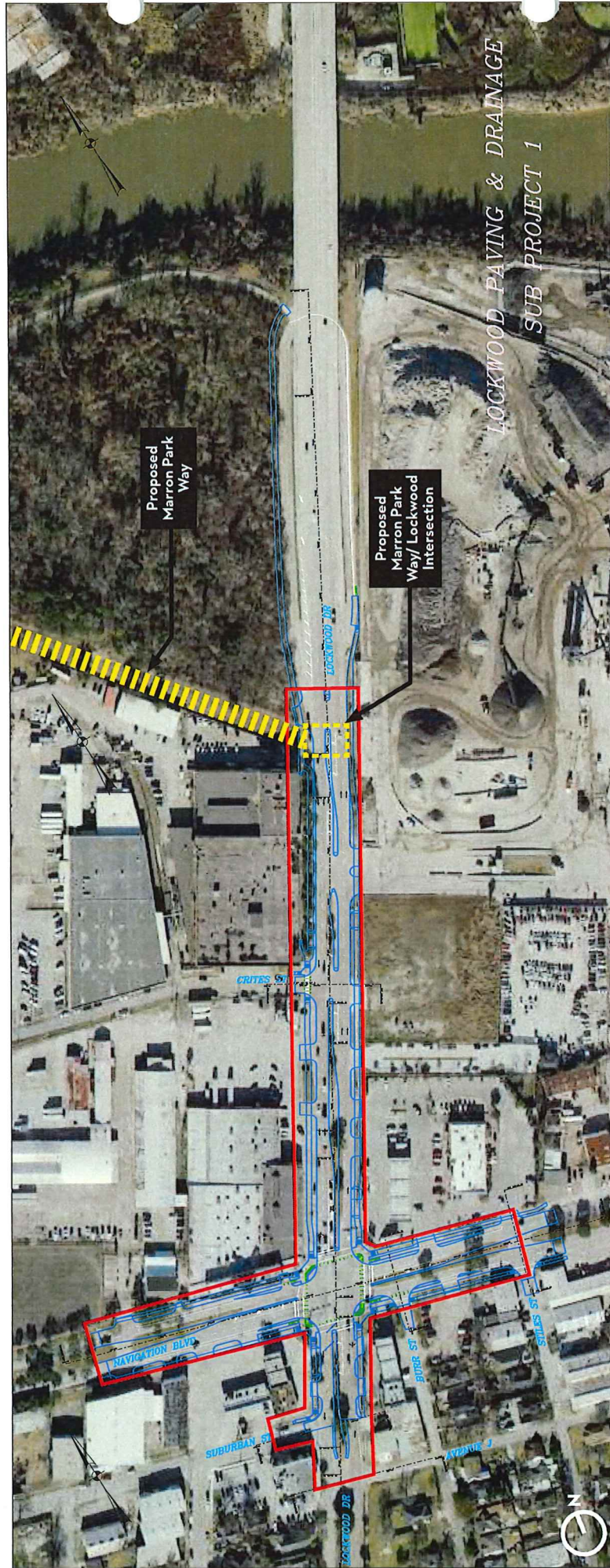
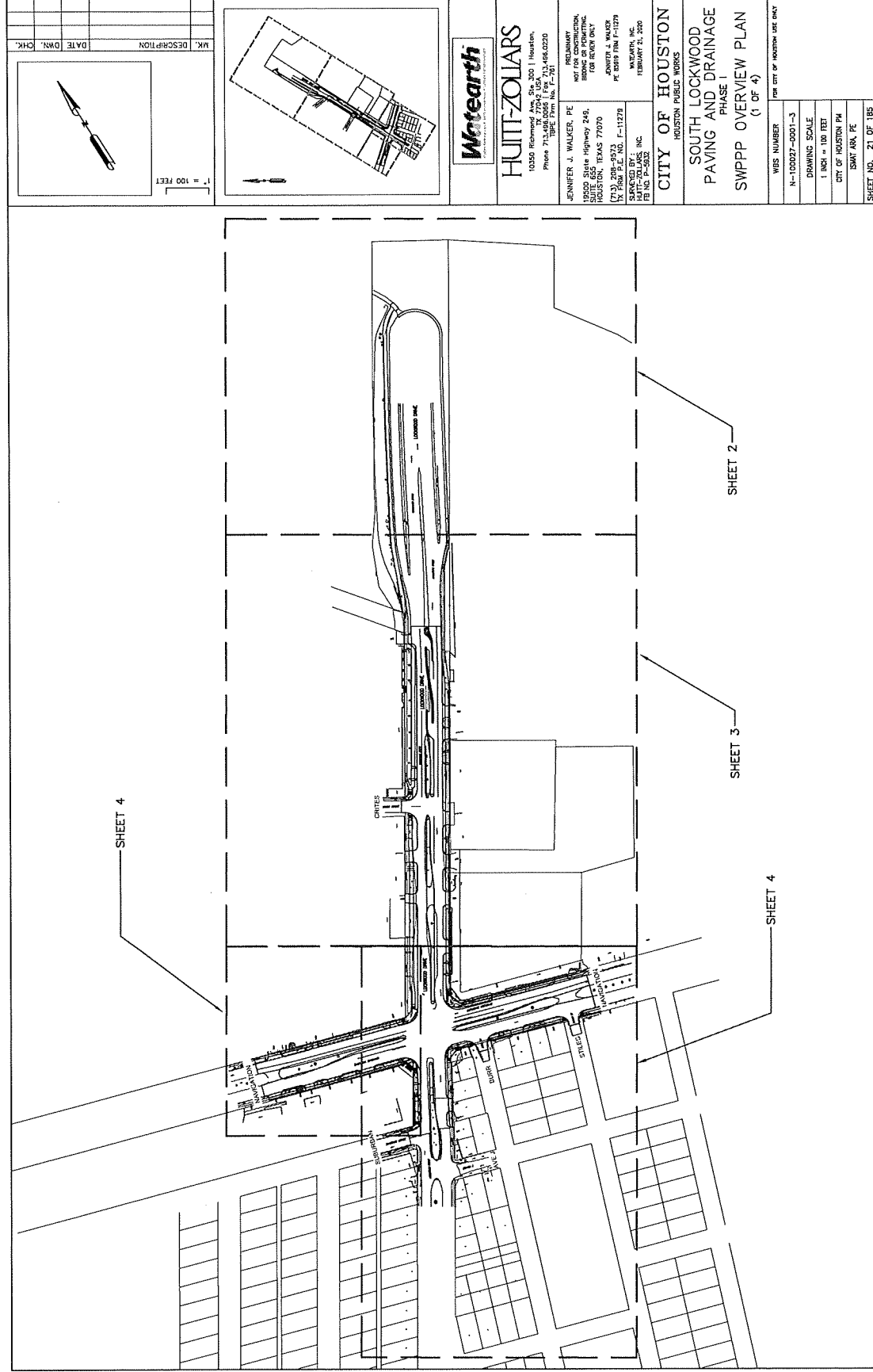


EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT

Phase 1



Phase 1

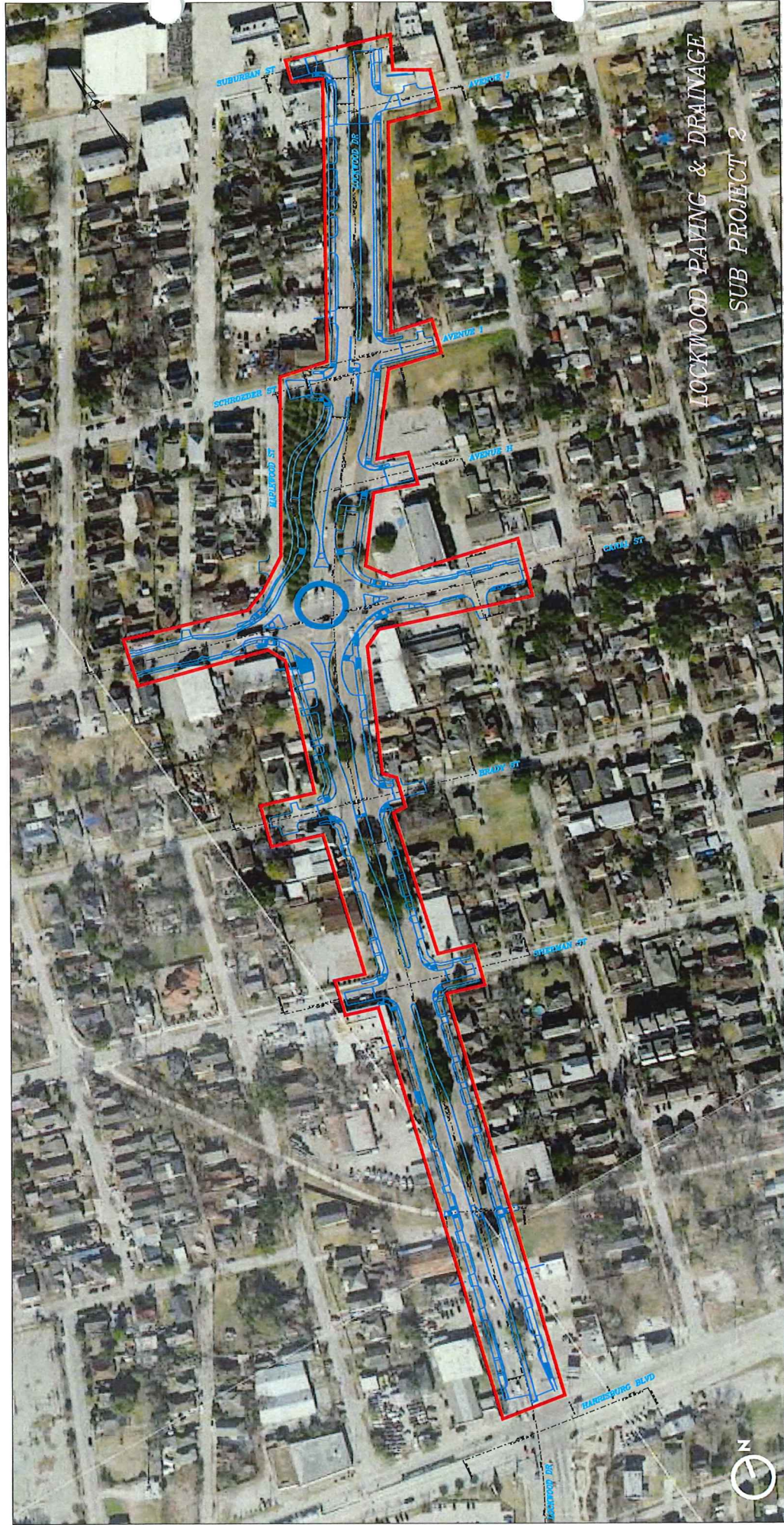


Phase 1



EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT

Phase 2



LOCKWOOD PAVING & DRAINAGE
SUB PROJECT 2

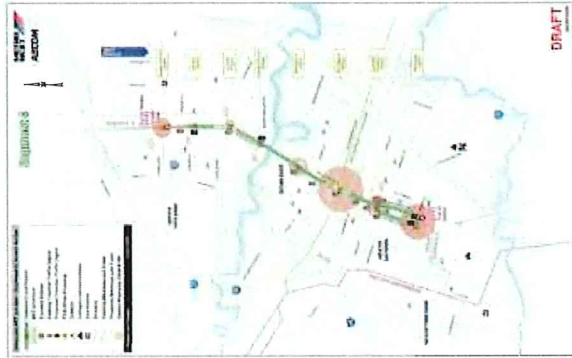
EXHIBIT A5 - LOCKWOOD DRIVE CIP PROJECT

METRORAPID University Corridor

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

METRORAPID UNIVERSITY CORRIDOR BUS RAPID TRANSIT
 CONTRACT NO. 7091000191
 DATE: 08/06/2020
 REFINED CONCEPT
 SEGMENT 4
 LIMITS: FROM SOUTH LOCKWOOD DR AT I-45 (EASTWOOD TRANSIT CENTER)
 TO LOCKWOOD DR AT MARGARITA ST

NO.	NO.	NO.	DESCRIPTION
1	CC-0001	A	CONVEYANCE
2	CC-0002	A	TYPICAL DRAINAGE
3	CC-0003	A	PROPOSED TYPICAL SECTION
4	CC-0004	A	PROPOSED TYPICAL SECTION
5	CC-0005	A	PROPOSED TYPICAL SECTION
6	CC-0006	A	PROPOSED TYPICAL SECTION
7	CC-0007	A	PROPOSED TYPICAL SECTION
8	CC-0008	A	PROPOSED TYPICAL SECTION
9	CC-0009	A	PROPOSED TYPICAL SECTION
10	CC-0010	A	PROPOSED TYPICAL SECTION
11	CC-0011	A	PROPOSED TYPICAL SECTION
12	CC-0012	A	PROPOSED TYPICAL SECTION
13	CC-0013	A	PROPOSED TYPICAL SECTION
14	CC-0014	A	PROPOSED TYPICAL SECTION
15	CC-0015	A	PROPOSED TYPICAL SECTION
16	CC-0016	A	PROPOSED TYPICAL SECTION
17	CC-0017	A	PROPOSED TYPICAL SECTION
18	CC-0018	A	PROPOSED TYPICAL SECTION
19	CC-0019	A	PROPOSED TYPICAL SECTION
20	CC-0020	A	PROPOSED TYPICAL SECTION
21	CC-0021	A	PROPOSED TYPICAL SECTION
22	CC-0022	A	PROPOSED TYPICAL SECTION
23	CC-0023	A	PROPOSED TYPICAL SECTION
24	CC-0024	A	PROPOSED TYPICAL SECTION
25	CC-0025	A	PROPOSED TYPICAL SECTION
26	CC-0026	A	PROPOSED TYPICAL SECTION
27	CC-0027	A	PROPOSED TYPICAL SECTION
28	CC-0028	A	PROPOSED TYPICAL SECTION
29	CC-0029	A	PROPOSED TYPICAL SECTION
30	CC-0030	A	PROPOSED TYPICAL SECTION



LOCATION MAP
 SCALE: NTS



VICINITY MAP
 SCALE: NTS

- NOTES:
- 1- ALL BEARINGS AND COORDINATES SHOWN ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM (NAD 83) (EPOCH 2011.0) USING THE HGN SMARTNET NETWORK AND STATIC GNSS OBSERVATIONS. ALL COORDINATES SHOWN ARE SURFACE AND MAY BE OFF BY UP TO 0.5 FEET. ALL PROJECT ELEVATIONS ARE BASED ON GPS OBSERVATIONS WITH THE HGN SMARTNET NETWORK AND STATIC GNSS OBSERVATIONS. REFERENCE TO AND BY: GEOID 16. ALL MEASUREMENTS ARE IN US SURVEY FEET.
 - 2- THE EXISTING GROUND SHOWN IN THE PROFILE VIEWS IS BASED ON 3 FT GRID DATA WITH AN ASSUMPTION OF 10% INCREASE TO THE 95TH PERCENTILE QUEUE LENGTHS FOR THE REFINED CONCEPT PHASE.
 - 3- THE PRELIMINARY TURN POCKET EVALUATION IS BASED ON EXISTING TRAFFIC DATA WITH AN ASSUMPTION OF 10% INCREASE TO THE 95TH PERCENTILE QUEUE LENGTHS FOR THE REFINED CONCEPT PHASE.

METROPOLITAN TRANSIT AUTHORITY BOARD OF DIRECTORS	
CHAIR (NAME, P.E.) BOB FRY CHRISTOPHER G. HOLLIS TERRY MOALES	VICE CHAIR (NAME, P.E.) LEX FREDEN
METRO APPROVAL: : _____ DATE _____ : _____ DATE _____ : _____ DATE _____	
PREPARED BY: : _____ DATE _____ : _____ DATE _____	

EXHIBIT A5 - NAVIGATION GREENWAY

NON-PARK PROJECTS
 NAVIGATION GREENWAY

SEPTEMBER 21, 2022

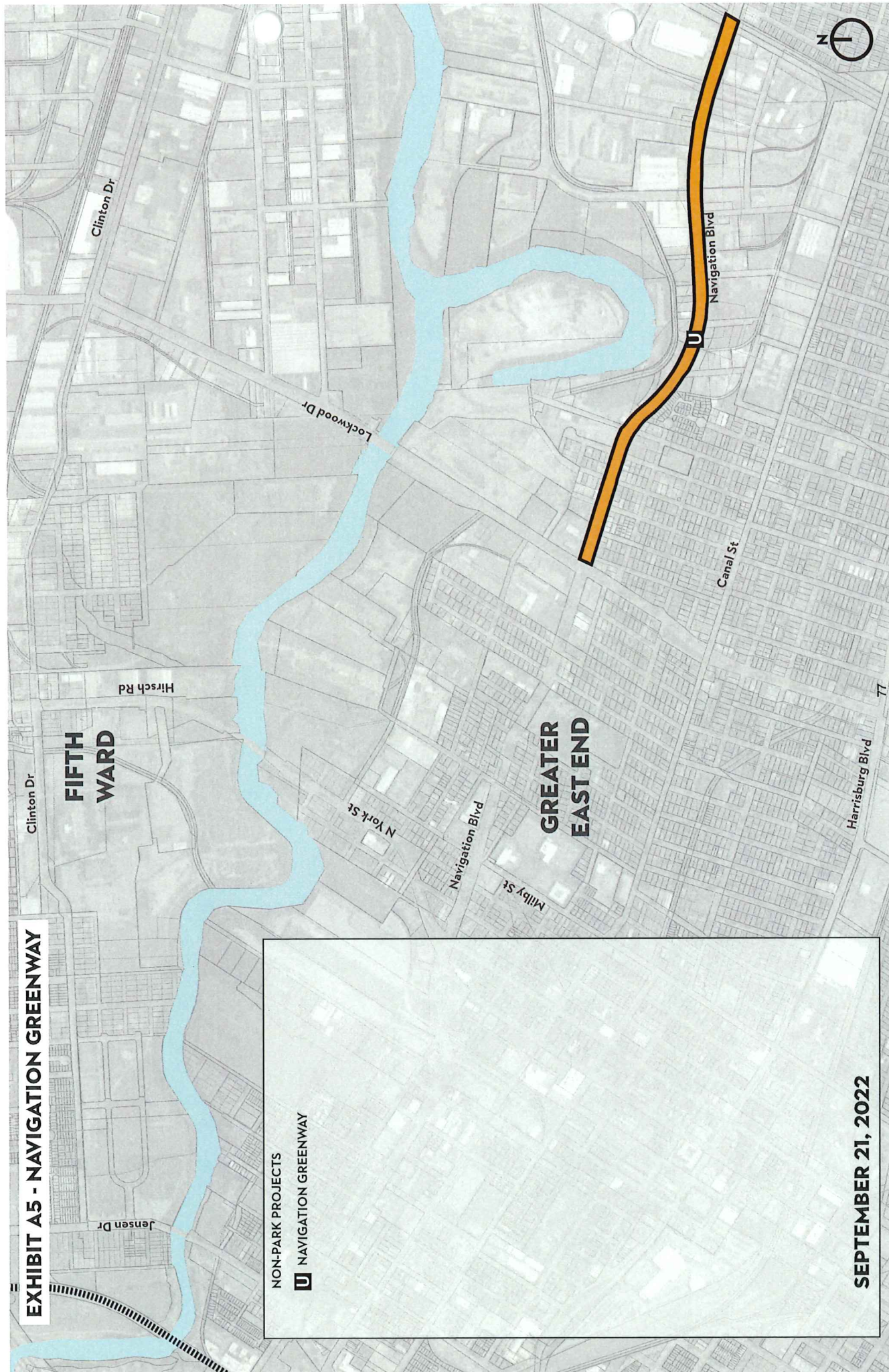


EXHIBIT A5 - NAVIGATION GREENWAY

Narrative Description

Project Budget - \$2,000,000
Project Manager - Harris County

The Navigation Realignment and Infrastructure Reuse Project is a transportation, park, and infrastructure project that envisions transforming Navigation Blvd. from Lockwood Drive to Harrisburg Boulevard into a multimodal mobility corridor by converting unused lane capacity into a new dedicated commuter bike route, pedestrian and trail amenities, and additional greenspace to create a linear park that spans the entire Greater East End. As Navigation Boulevard currently has excess capacity along its entire length, the reduction of 2-3 lanes will not effect the ability to handle traffic in both directions.

The project encompasses the lane transformation along the 1.03-mile segment of Navigation Boulevard from Lockwood Drive to Mack Street. In addition to creating a linear park that can serve and connect the entire community, there are significant properties - such as the 5910 Navigation (Harris County Facility) and 5705 Navigation (Buffalo Bayou Partnership) warehouse sites, as well as 6501 Navigation (East End Maker Hub) - which present opportunities to create public spaces for the community to use for festivals, events, and economic opportunities.

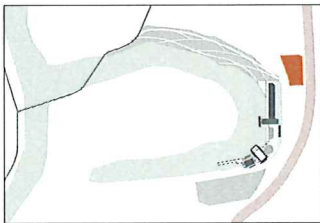
This project is coordinated with the improvements the East End District is planning to the Navigation Esplanade along with its Navigation Bikeway proposal along Navigation Boulevard from Palmer Street to Lockwood Drive. The project anticipates reconfiguration of the existing roadway, opportunities to upgrade and modify storm water, and other utility infrastructure along the project corridor will be investigated during the design process.

This project is a critical component of the Buffalo Bayou East Master Plan, as Buffalo Bayou's banks east of Lockwood Drive have active industrial sites that prevent building east-west connections along the waterway. While this stand-alone project does not depend on other components of BBP's Buffalo Bayou East Master Plan to be successfully implemented, it would significantly increase access to adjacent and nearby projects by creating enhanced connections to existing and future destinations in the Second Ward and beyond. Other segments of Navigation's realignment will be implemented as stand-alone phases.

This segment will connect two key projects BBP is currently developing: construction of Lockwood South, a planned 240-unit affordable and workforce housing development, and the rehabilitation and transformation of the 12-acre Turkey Bend wharf and warehouse complex into a public art, culture, boating and event center. This realignment project will connect to millions of dollars of existing and planned public and private projects.

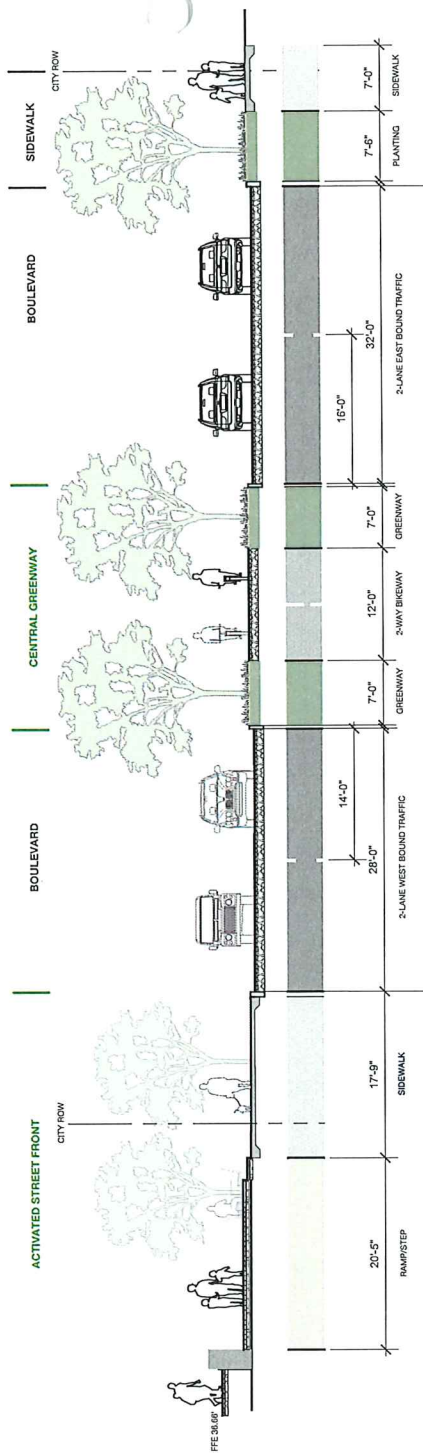
The project budget of \$2M funds planning and design funded with \$1M from a 2021 Harris County Precinct 2 Partnership Grant and \$1M from BBP. Construction funding will be sought through Federal Funding opportunities.

EXHIBIT A5 - NAVIGATION GREENWAY



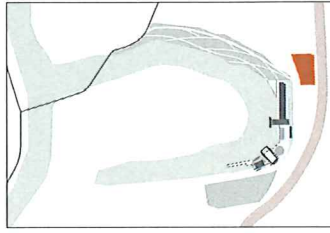
The Greenway is modified from the Master Plan's proposed location on the north edge of Navigation Blvd. The shift to a central median location maximizes safety for cyclist and streamlines industrial traffic patterns.

This will reinforce the proposed Hike & Bike trails on the Bayou, and a new plaza in front of the Warehouse can serve as a generous drop-off area for the gateway. The opening and canopy of the building frames the view and welcomes the public to the Bayou.



31

EXHIBIT A5 - NAVIGATION GREENWAY



Along Navigation Boulevard, a new bike trail, pedestrian friendly sidewalks, and allees of trees, to compose The Greenway.



VIEW OF NAVIGATION BOULEVARD GATEWAY

30

80

EXHIBIT A5 - TURKEY BEND

FIFTH WARD

GREATER EAST END

NON-PARK PROJECTS

V TURKEY BEND

- 1. Navigation Building
- 2. Wharf
- 3. CEMEX Parking Lot
- 4. Boating Center

SEPTEMBER 21, 2022

EXHIBIT A5 - TURKEY BEND

Narrative Description

Total Project Budget – \$62,530,180

Project V Budget - \$43,072,180

Project V Manager – Buffalo Bayou Partnership

Sitting on an oxbow in Buffalo Bayou East, formerly part of the original waterway, the industrial remnants at Turkey Bend invite the imagination to wander from the site's history as a bustling barge terminal to its future as a vibrant civic destination. The expansive wooden wharf at Turkey Bend provides a direct experience of the waterfront, unique along the Bayou, and preserve the raw and dramatic character of this place while integrating new uses and activities.

Buffalo Bayou Partnership has worked with stakeholders from the Houston Public Library, Rice University Crew Team, the Texas Dragon Boat Association, local neighborhood businesses, residents, and the design team to develop a robust programming strategy and Concept Plan for the reimagining of Turkey Bend. Building upon the guiding principles set forth in the visionary Buffalo Bayou East Master Plan, produced by Michael Van Valkenburgh Associates in 2019, the Concept Plan for Turkey Bend seeks to shape an authentic, connected, inclusive and resilient Bayou. New programs and facilities will serve both the local community and the region at large and has been guided by the intentions to PRESERVE the industrial legacy of the site, to RECONNECT the nearby neighborhood with the Bayou, as well as to make art and cultural EXPRESSIONS a cornerstone in the rebuilding of this unique place.

The project site is approximately 14 acres, including the Navigation Warehouse, Wharf, and West and East Banks. Separating the Navigation building from the rest of the site is an active rail spur which serves the CEMEX facility across Turkey Bend. The site traverses 30 feet of grade change from the Navigation warehouse to the water's edge. The existing Warehouse buildings on the Wharf sit within the 100-year flood plain, but the Navigation Warehouse sits above the 500-year flood plain.

The NAVIGATION GREENWAY (separate project) proposes to reinforce the existing Navigation Boulevard by adding trees and a multi-modal bike path in an enlarged median to further connect the East End to Magnolia Park and Downtown and connect to the new Trail along the waterfront through Turkey Bend.

Navigation Building

Navigation Boulevard runs virtually parallel to Buffalo Bayou, connecting Downtown Houston to the east, where the Bayou eventually connects to Galveston Bay. However, there are few, if any connections to the Bayou itself. The Warehouse at Turkey Bend offers the only opportunity: with the penetration of a public passage through its core, a new promenade connecting to Turkey Bend. The plaza created serves as a protected and

shaded public space, activated by storefronts to the west, and the Hispanic Research Center & Archives (HHRC) to the east. This breezy urban room is an ideal gateway to the waterfront and an appropriate way to create public outdoor space in the Houston climate. The character of the industrial warehouse, with its original spiral ramp down to the wharf, is preserved to reveal the site's maritime history as a key shipping terminal.

The former barge terminal warehouse provides direct access to the wharf via a tunnel that ramps down to the wharf from within the building that will be preserved as the primary access to the wharf.

Houston Public Library HHRC (at Navigation Building) – Project W
See COH Narrative

Wharf and Wharf Buildings

The Wharf, with its expansive views of the water, will become the civic heart of Turkey Bend. The robust wooden wharf will be restored and transformed into a public plaza serving a variety of functions. An arrival plaza and turnaround area will provide vehicular access from Navigation Boulevard and provides emergency vehicle access. A grove of trees in the center of the wharf, will shade outdoor events. An open deck under the Gantry crane will allow for water access and many other uses. A promenade on the waterfront will connect the full length of the Wharf. A bike route adjacent to the wharf will traverse the site from Navigation Boulevard to the Fifth Ward.

The Wharf can also be accessed by vehicles via an entry drive that passes underneath the active CEMEX rail line. There is a Warehouse Shed (22,000 SF) at wharf level once served by rail and a covered gantry remain and are supported by an expansive wooden wharf structure that extends over the water. A water retention and filtration garden with native vegetation will occupy the existing rail Spur and may become a wetland water feature and treatment of runoff.

Site circulation and trail connectivity extends through the wharf area. A strong network throughout the site will offer commuters direct access to the Bayou Hike & Bike trail network connecting the Navigation Greenway to a future bridge to Fifth Ward. This main trail alignment provides opportunities to explore other activities along the Wharf, the East Bank, or the Warehouse at

The PEDESTRIAN path at the wharf level, leads to a new floating dock for canoes & kayak launches on the west side and on the east side leaves the

wharf to explore the natural wooded east bank.

The site is envisioned to embrace the arts through several strategies for the display and creation of art. Through the preservation of several works of graffiti by local artists, highlighting the existing structures, community programming for different art events or partnerships with larger institutions to facilitate programming.

CEMEX Parking

The West Bank (4.5 acres) is a flat open parcel accessed today from Engel Street and bounded on the northeast by the CEMEX rail line. The West Bank sits on a bluff overlooking Turkey Bend and is proposed to serve as parking for the site, a neighborhood park and an arrival point for vehicular access. A grove of shade trees organizes the space and creates a shaded flexible space for public gatherings, parking, and other civic activities.

The ground slopes up gently to buffer the adjacent rail line, and creates a promenade for picnics, dog walks, and outdoor play. The West Bank is connected to the Wharf by the entry drive. We also propose a pedestrian bridge parallel to the rail bridge, to bring visitors directly along a rim trail to the Navigation Warehouse and connect the other buildings into the site.

CEMEX will retain ownership of the site to be used for parking with a long term donated ground lease to be finalized closer to development. BBP and CEMEX have executed an MOU which will be developed into the formal agreement.

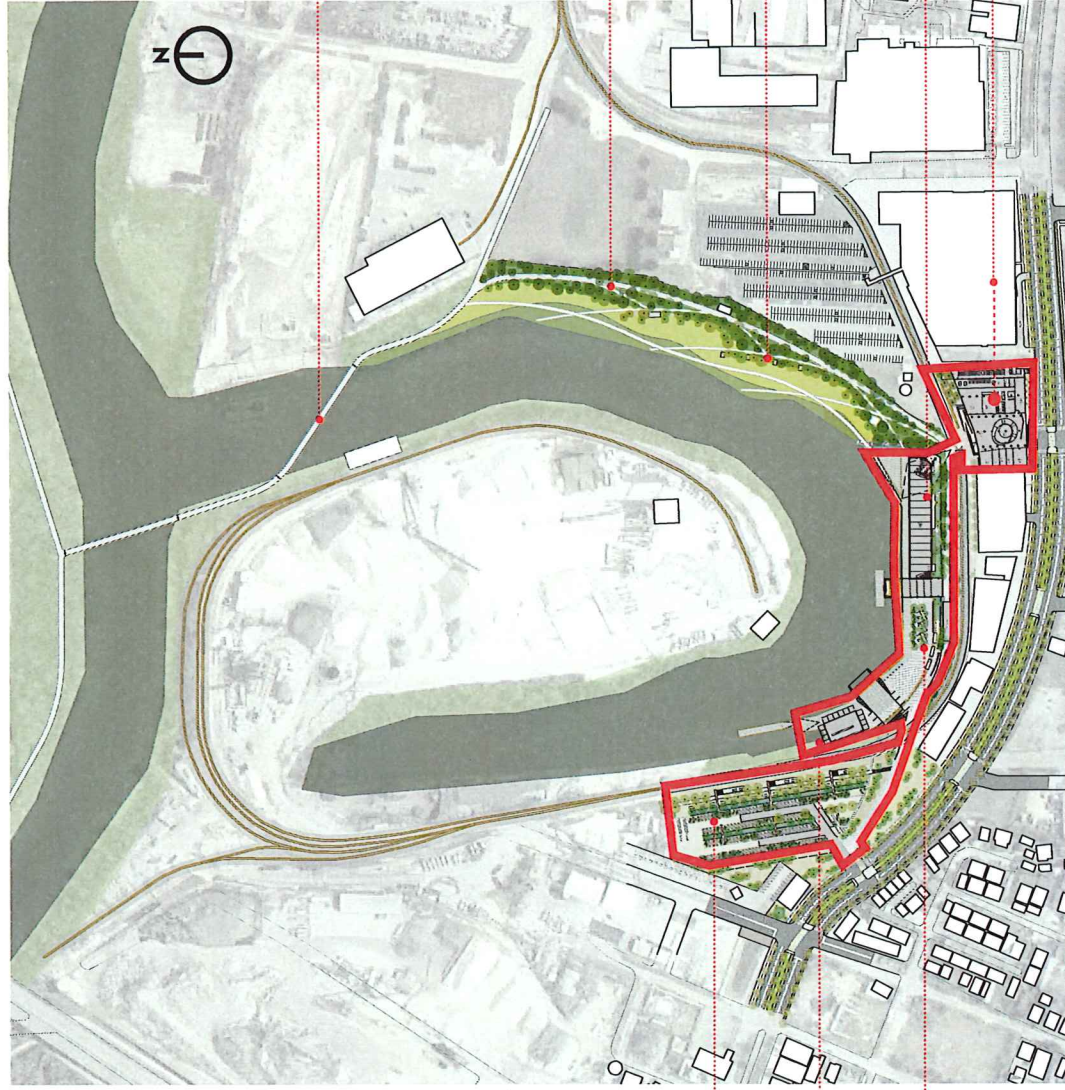
Boating Center

The existing gantry to the west of the wharf is a structure of monumental proportions, a testament to the industrial legacy of the site. The gantry is proposed to be re-purposed to load boats onto the water from the vehicular level. A new Boathouse facility is envisioned to the west, with ample storage for public boating, dragon boats as well as the Rice University crew team, linking them to the water by way of a large ramp and floating dock. The Boathouse is composed of a lower level on the water for dragon boats and at wharf level with public/crew boats.

The new boat structure will replace the dilapidated metal warehouse. The concept from the Turkey Bend Master Plan shows leasable space on an upper level, however, the 10-year plan only includes facilities for boating and no additional occupiable space above.

EXHIBIT A5 - TURKEY BEND

The 14+ acres of the Turkey Bend site were subdivided into different zones, according to varied existing conditions, be they infrastructural, programmatic, or topographic.



PEDESTRIAN BRIDGE
A new connection between the Northern Hike & Bike trails and Turkey Bend, and the Fifth and Second Wards
NOT INCLUDED IN 10-YEAR PLAN

HIKE & BIKE PATH
NOT INCLUDED IN 10-YEAR PLAN

EAST BANK
4.5 acres of restored natural wooded area site before industry
NOT INCLUDED IN 10-YEAR PLAN

WHARF BUILDING
The primary Event Space at the Wharf

WAREHOUSE
Renovated warehouse and gateway to the Wharf

WEST BANK
Create "Park & Parking"

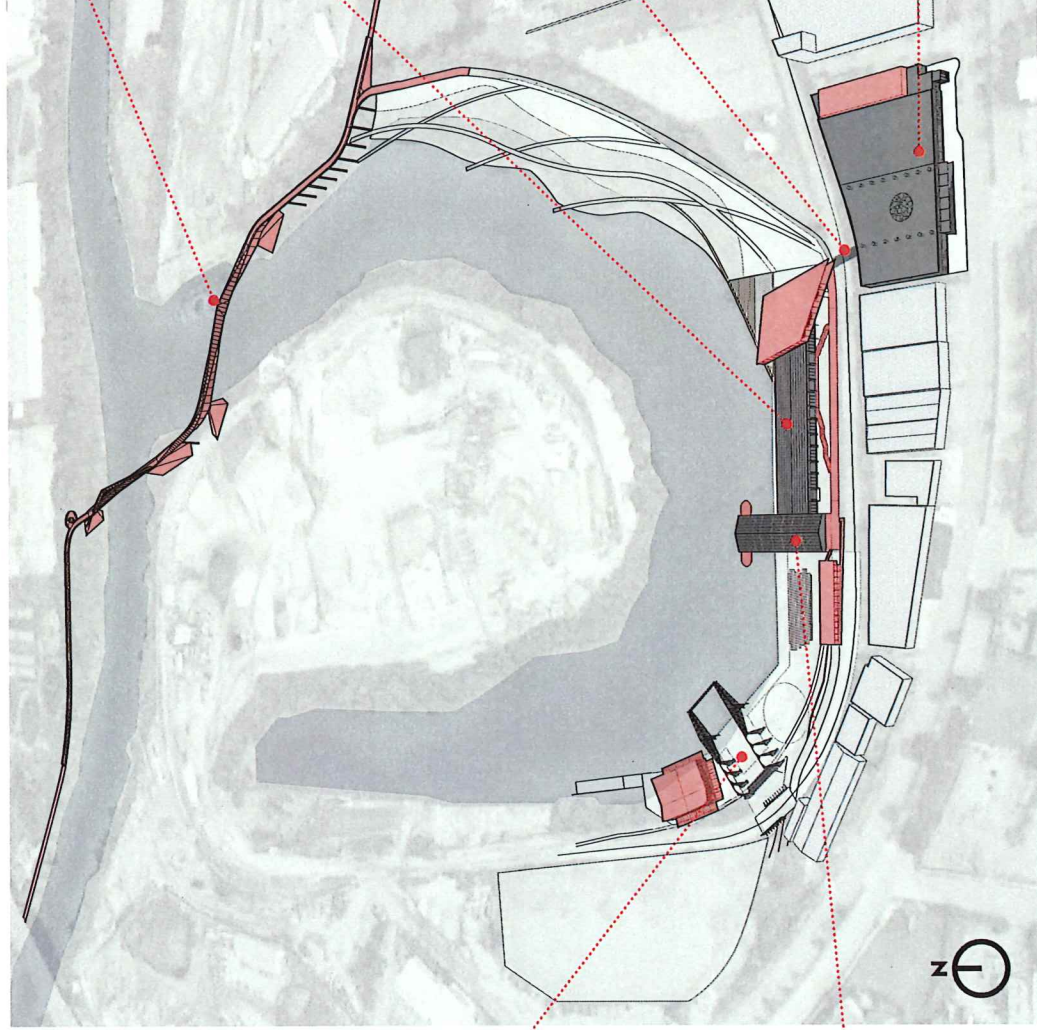
BOATING FACILITY
A new structure to house boating activities

WHARF PLAZA
Primary outdoor public space

EXHIBIT A5 - TURKEY BEND

INFRASTRUCTURE

To invite the public to fully occupy the site at Turkey Bend, a series of renovations and upgrades are required. Accessibility paths with ramps and elevators and public restroom facilities will be added, as well as a possible new boat house and restaurant.



GANTRY CRANE



COVERED GANTRY



PEDESTRIAN BRIDGE
NOT INCLUDED IN 10-YEAR PLAN



TUNNEL



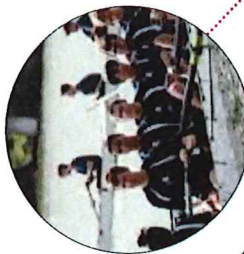
NAVIGATION WAREHOUSE

■ PROPOSED STRUCTURES
■ RENOVATED & PRESERVED EXISTING STRUCTURES

EXHIBIT A5 - TURKEY BEND

ACTIVATING THE BAYOU

Turkey Bend provides one of the few places along the Bayou that will allow safe access to the water. A variety of different programs are imagined to support this access, among them: boating, water festivals, water promenade, and other leisure activities related to the water.



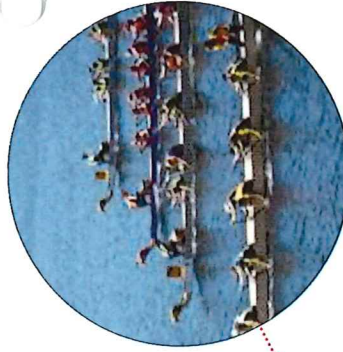
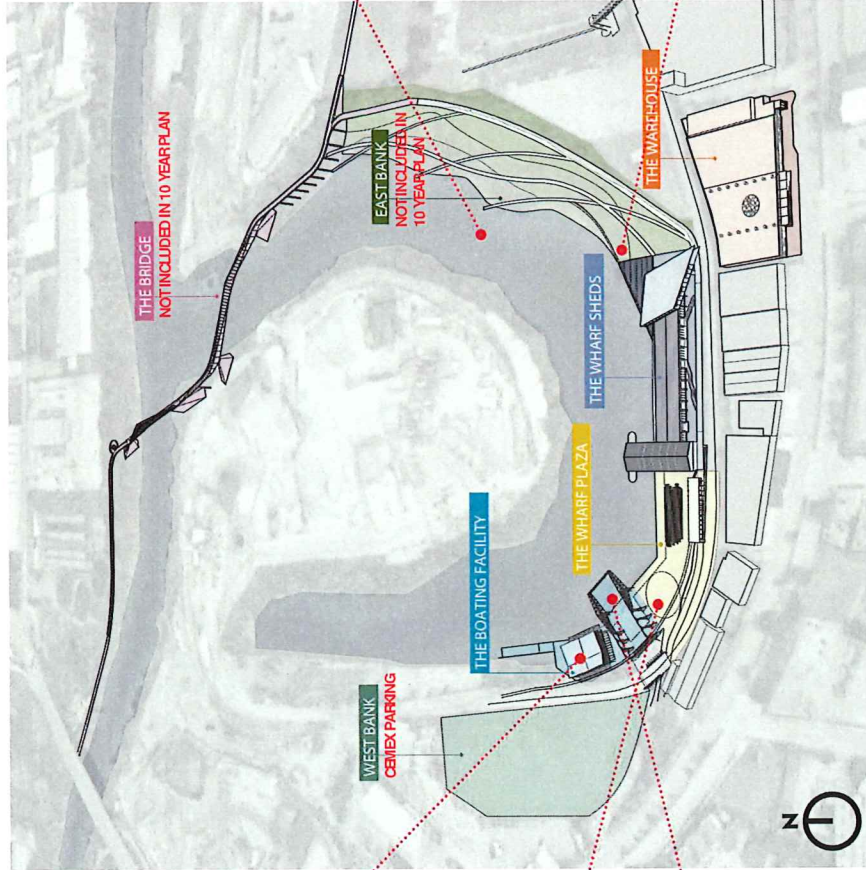
CREW AND
DRAGON BOAT



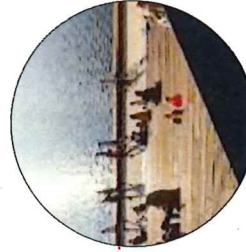
CULTURAL
FESTIVALS



BOATING



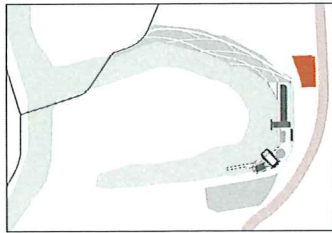
TEXAS DRAGON BOATS



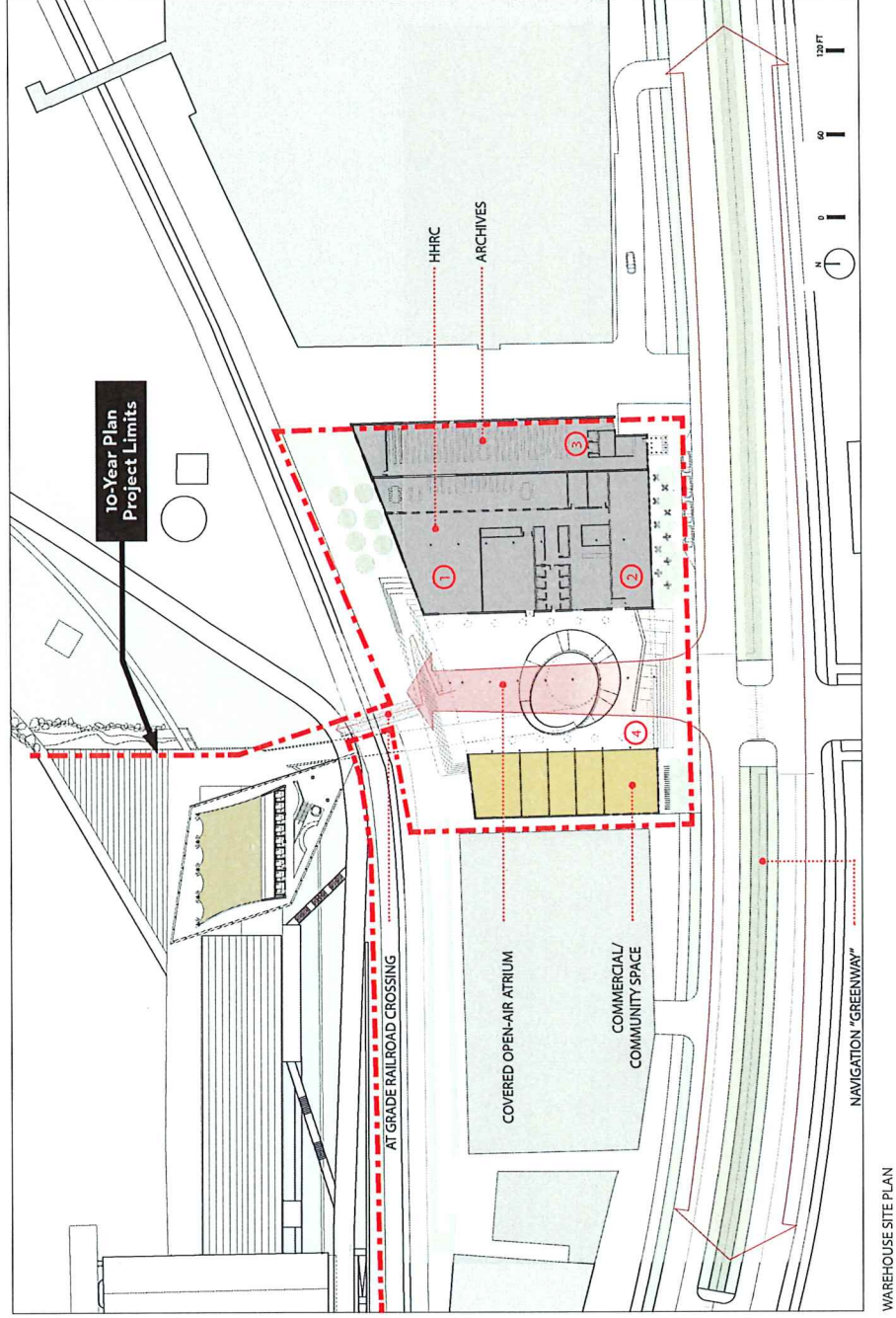
WATERFRONT
ACTIVATION

EXHIBIT A5 - TURKEY BEND

Navigation Building



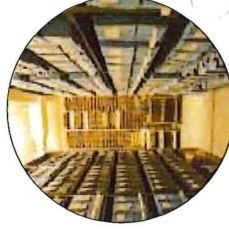
The Warehouse serves as the main public entrance to the Bayou. A new opening in the building provides a civic gateway, reinforced with varied public amenities to either side.



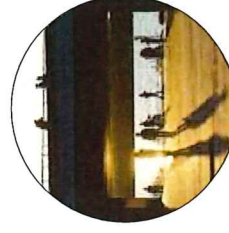
1. RESEARCH CENTER



2. EXHIBITION & GALLERY SPACE



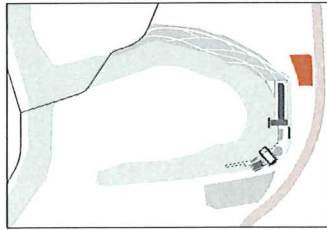
3. ARCHIVES



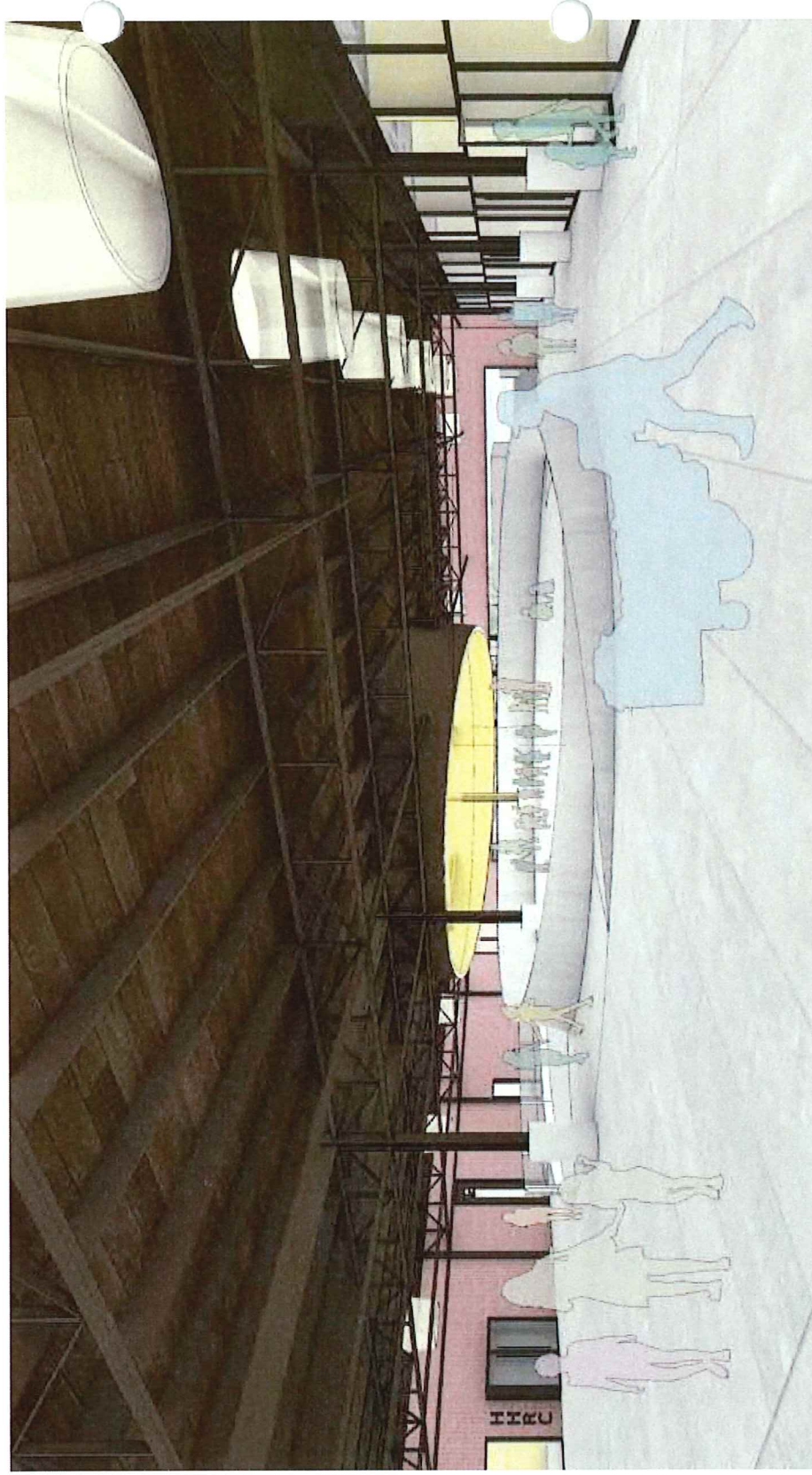
4. GATEWAY

EXHIBIT A5 - TURKEY BEND

Navigation Building



The central feature of the open-air atrium at the Warehouse is the existing circular ramp down to the Wharf. We propose extending the ramp up, creating a raised stage for events and community gatherings. While preserving the building structure and the wood roof, we also propose a central skylight over this space along with a series of smaller skylights that define and highlight the public retail on the edges. Generous in its dimensions, the atrium is large enough to accommodate local food carts and seating areas.

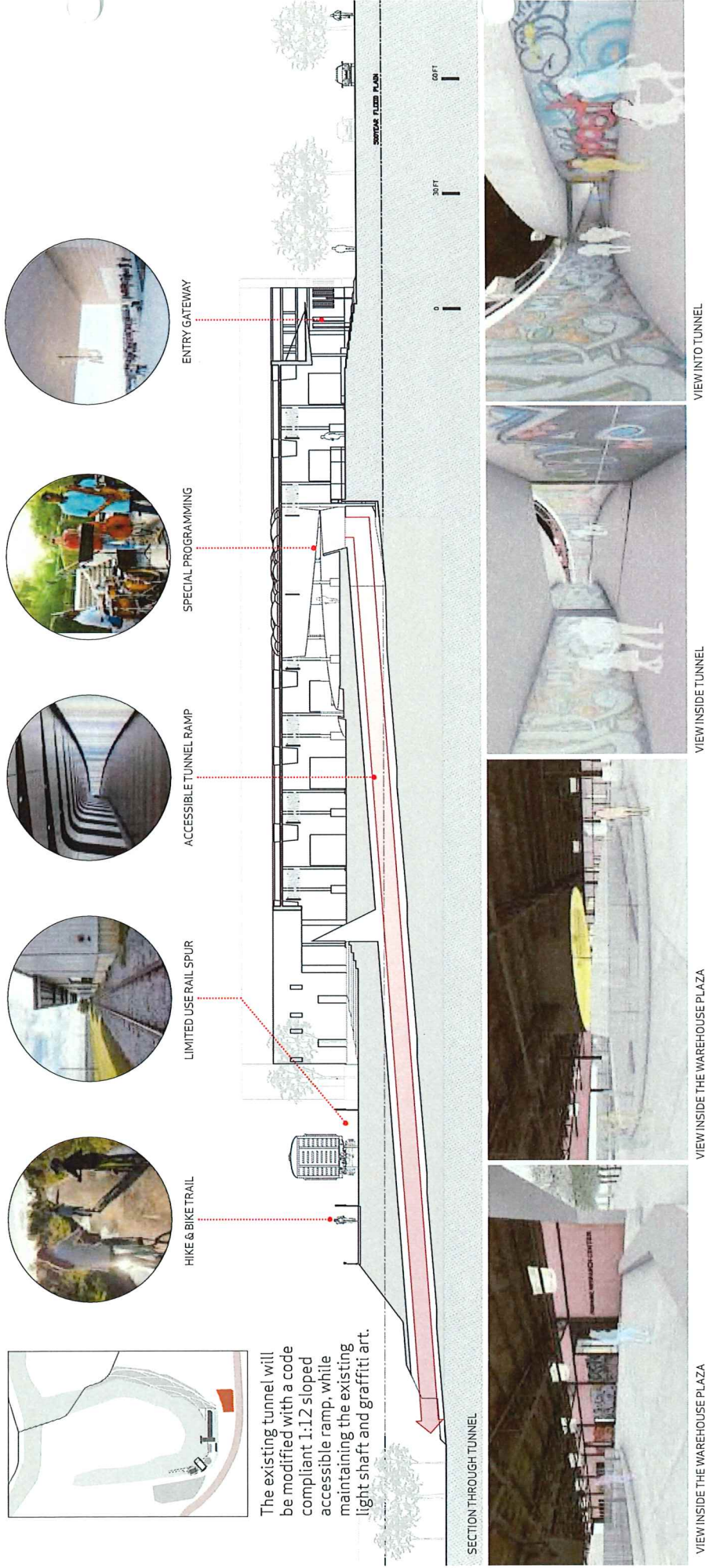


VIEW OF SPECIAL PUBLIC PROGRAMMING SPACE

NADAAA/Reed Hilderbrand

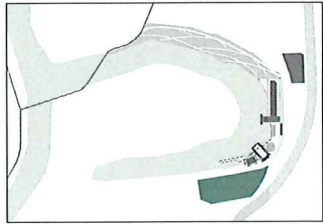
EXHIBIT A5 - TURKEY BEND

Navigation Building



NADAAA/Reed Hilderbrand

EXHIBIT A5 - TURKEY BEND CEMEX Parking Lot



The proposed programs for the Park include: picnic area with shade structures, an overlook promenade, parking, boat trailer storage area, and stair access to the entry drive.

The driveway to the Park is located on Navigation Blvd. as its own entry to accommodate the high frequency truck traffic to the CEMEX site on Engel Street.



35



1. BIO SWALES



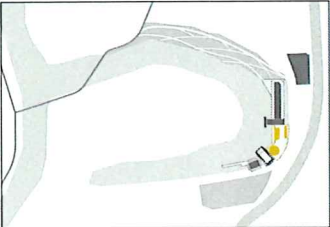
2. PARKING UNDER TREE CANOPY



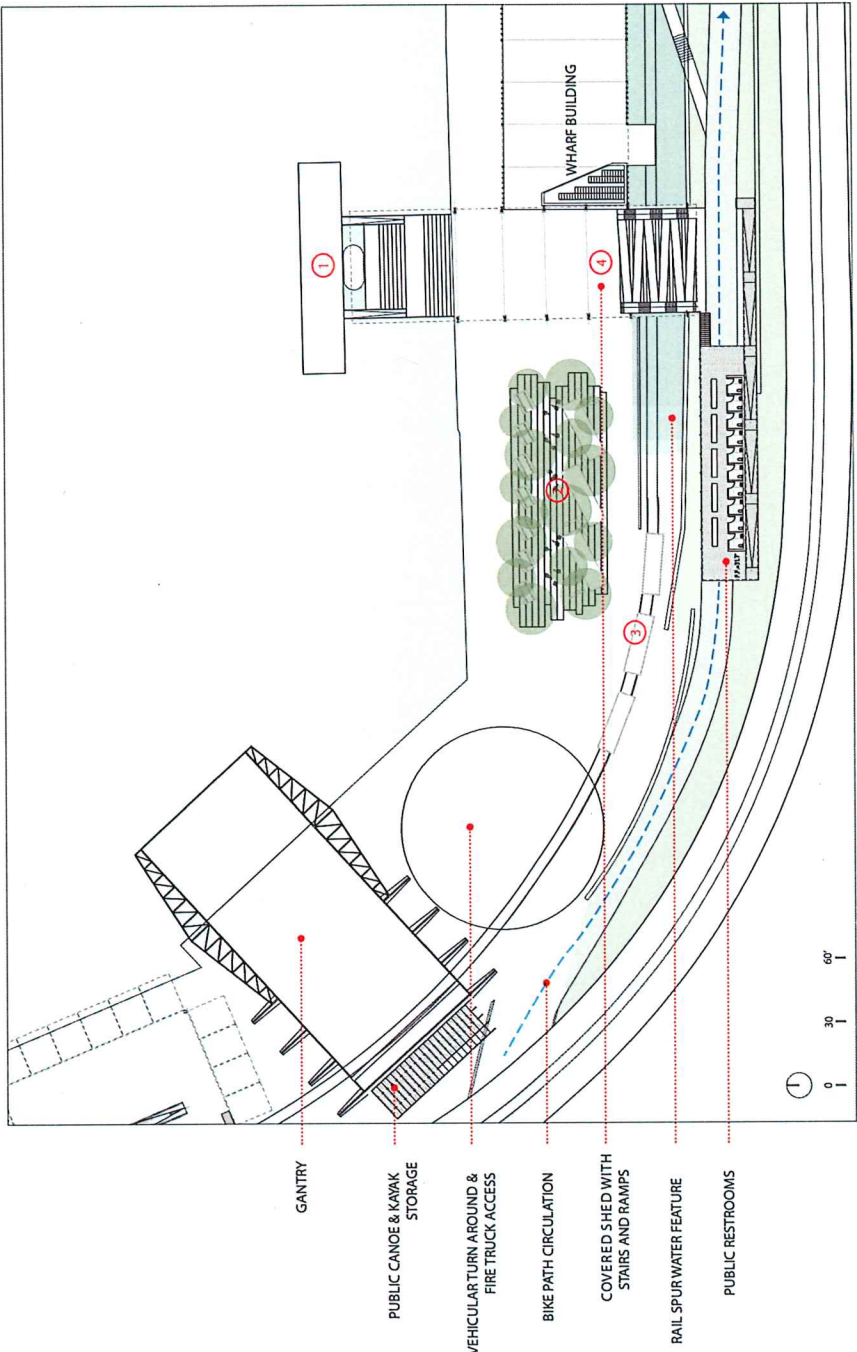
3. TURKEY BEND ENTRANCE

i i i i

EXHIBIT A5 - TURKEY BEND The Wharf



The Wharf Plaza is the largest outdoor public gathering space at Turkey Bend and as such, can have many different functions. First, it is the main entry and turnaround for food trucks, boat & event trailers, and emergency vehicles. The space also serves large outdoor public events, overlooking the many water activities happening on the Bayou. A proposed bosque of trees provides shade at the wharf. New public restrooms are proposed above the 500-year flood plain on the south side of the plaza. The covered Gantry to the east brackets the wharf plaza as a large flexible open air space and serves as a threshold into the wharf building.



1. BOAT LAUNCH



2. PARK

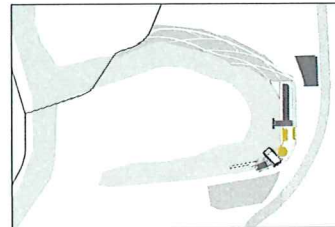


3. ACTIVATION

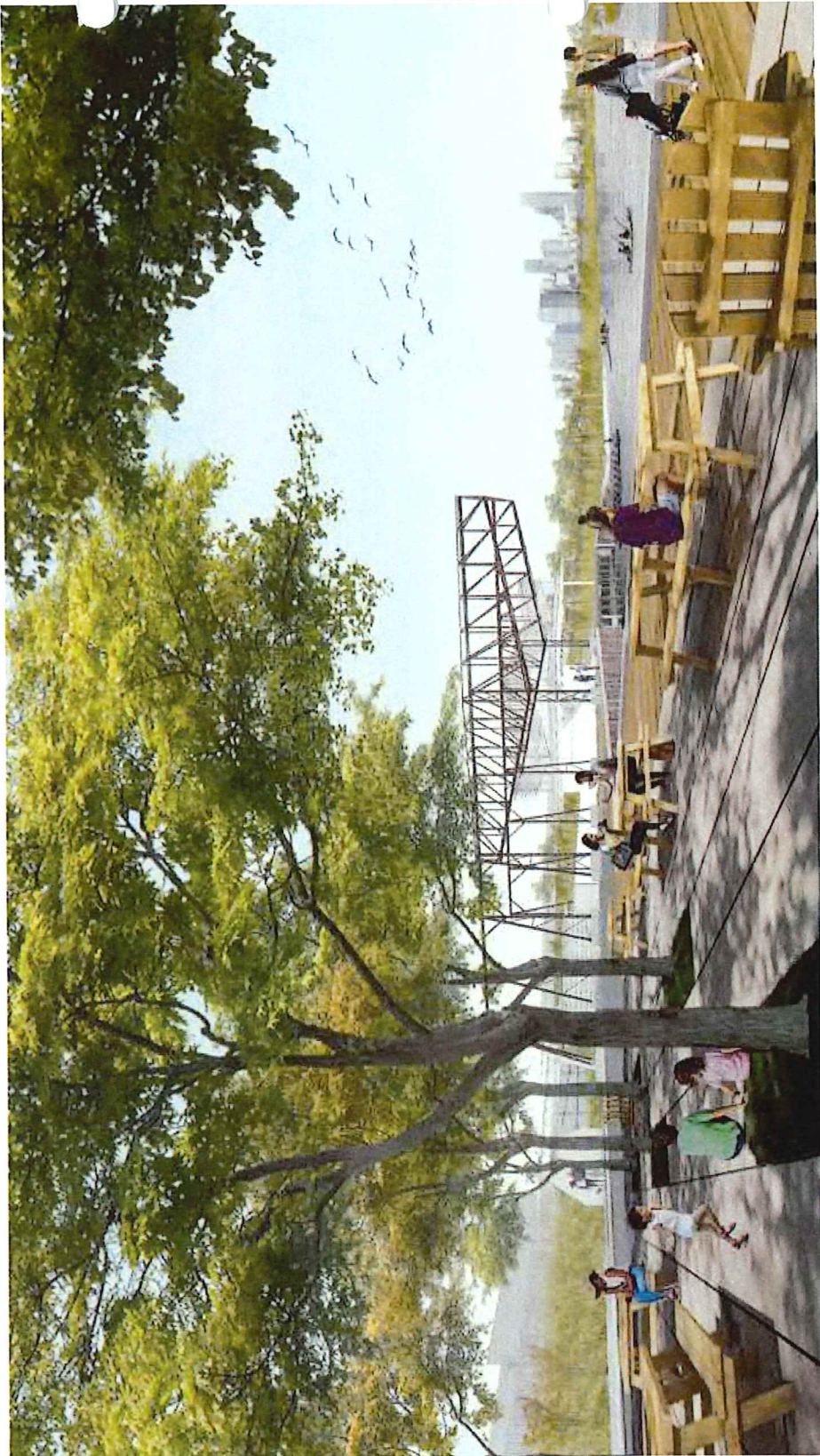


4. PUBLIC GATHERING SPACE

EXHIBIT A5 - TURKEY BEND The Wharf



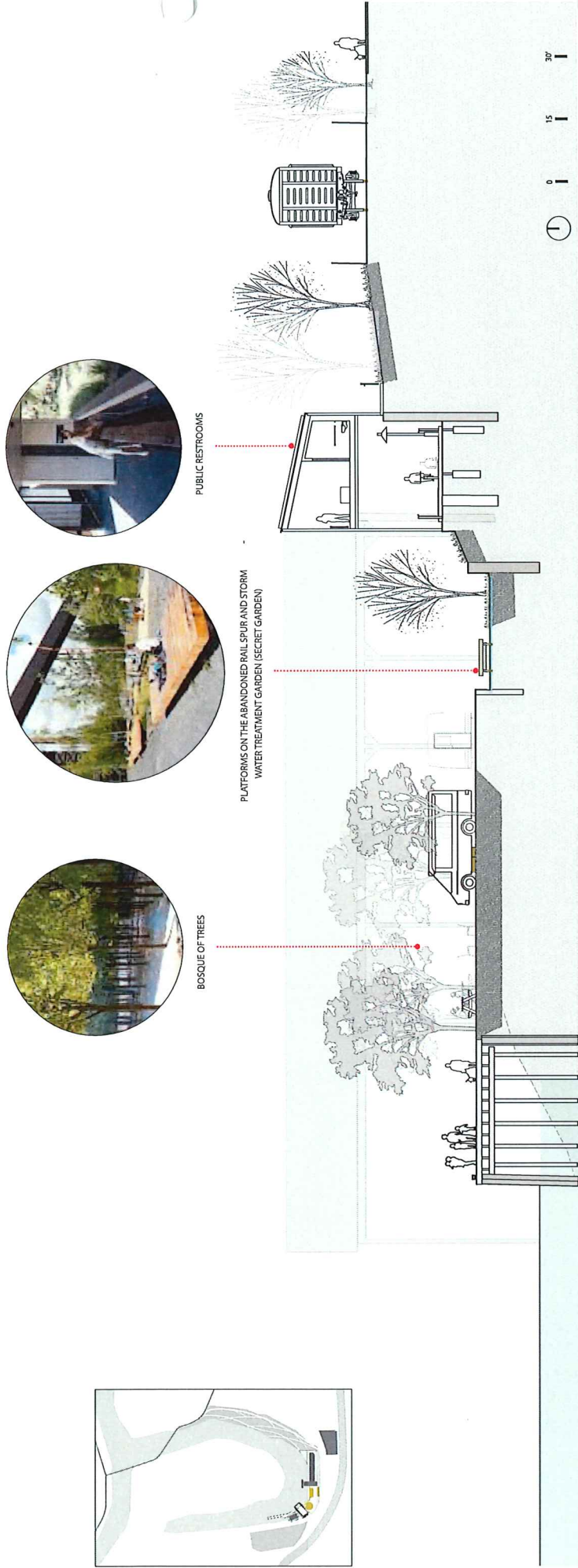
The Wharf Plaza is a unique waterfront park amenity in the city. A canopy of trees offers shade for the reconstructed wharf. The space can be used to sit and eat a meal from a local food truck, watch a boat race, or take a break while riding on the new Hike & Bike trails.



VIEW TOWARDS DOWNTOWN FROM THE BOSQUE AT THE WHARF

EXHIBIT A5 - TURKEY BEND

The Wharf



SECTION THROUGH WHARF & NEW PUBLIC RESTROOMS



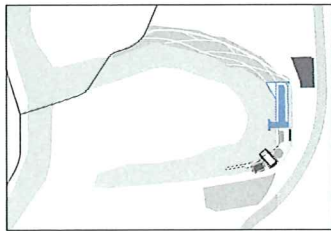
VIEW OF ADDED RAMP & STAIRS UNDER COVERED GANTRY



VIEW OF THE WHARF

EXHIBIT A5 - TURKEY BEND

The Wharf

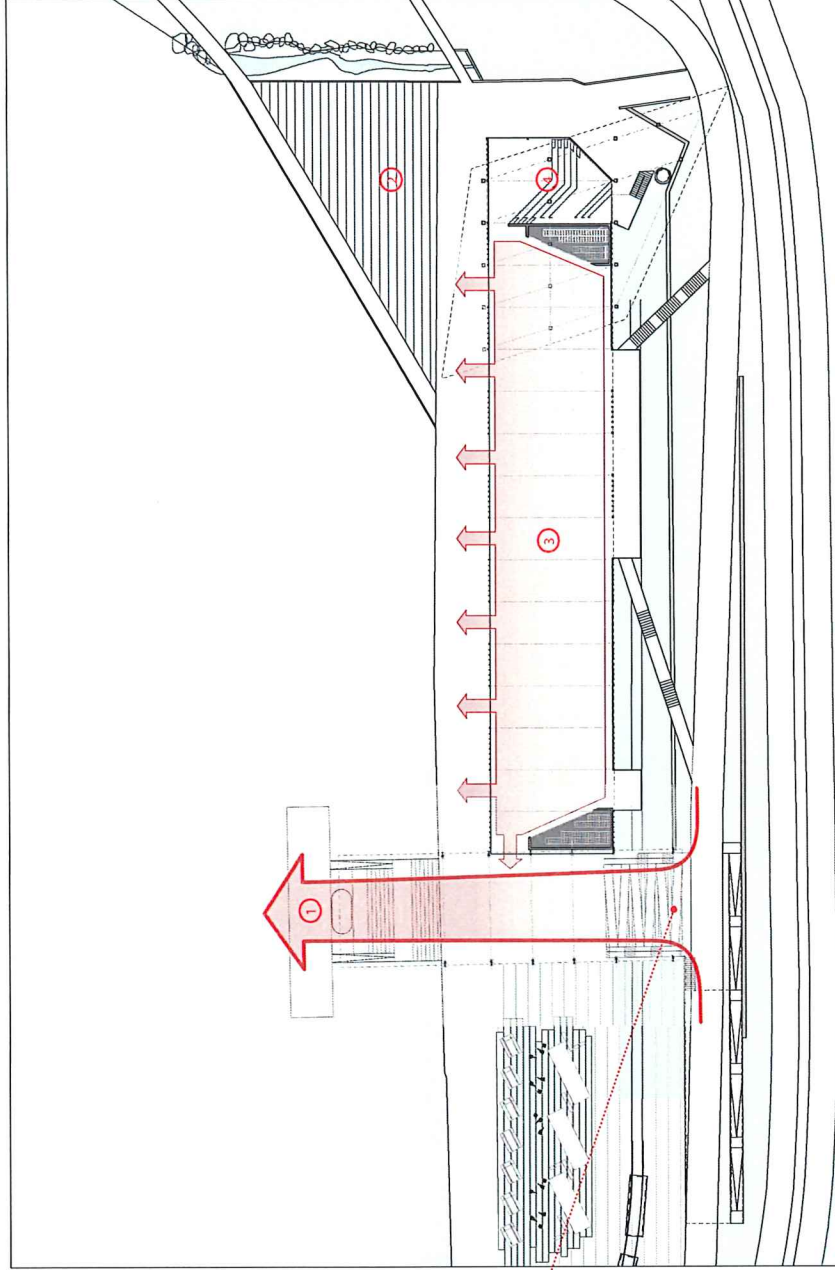


The two existing wharf shed structures will be renovated to become covered public space for a variety of uses.

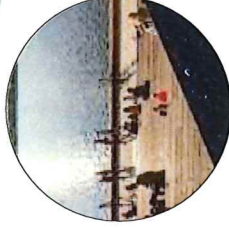
The Covered Shed receives a new set of stairs, bleachers and ramps to provide accessibility from the Hike & Bike path to the wharf level, and continuing down to the water.

The column free Wharf Building can accommodate a variety of uses such as:

- Rollerskating Rink
- Farmer's Market
- Art Exhibition
- Dance Night
- Car Show
- Banquet Hall
- Beer Hall
- Exercise Classes
- Storage



1. BOAT DOCK



2. WHARF PLAZA



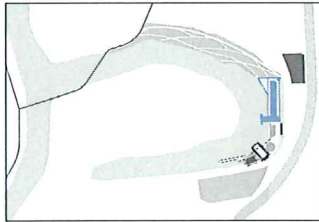
3. EVENT HALL



4. WHARF LOBBY

EXHIBIT A5 - TURKEY BEND

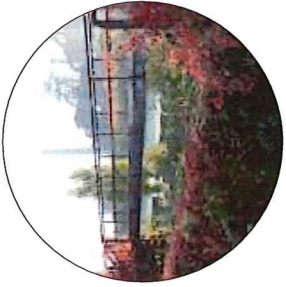
The Wharf



1. WATER FEATURE



2. PLATFORMS



3. PEDESTRIAN BRIDGES



4. HIKE & BIKE TRAIL

The rail spur on the south side of the wharf shed is a unique feature of the existing site that highlights its industrial legacy. It is conceived as a storm-water retention garden, which is crossed by two pedestrian bridges that connect to the Hike & Bike trail. The Secret Spur, thus becomes a new threshold to the waterfront.

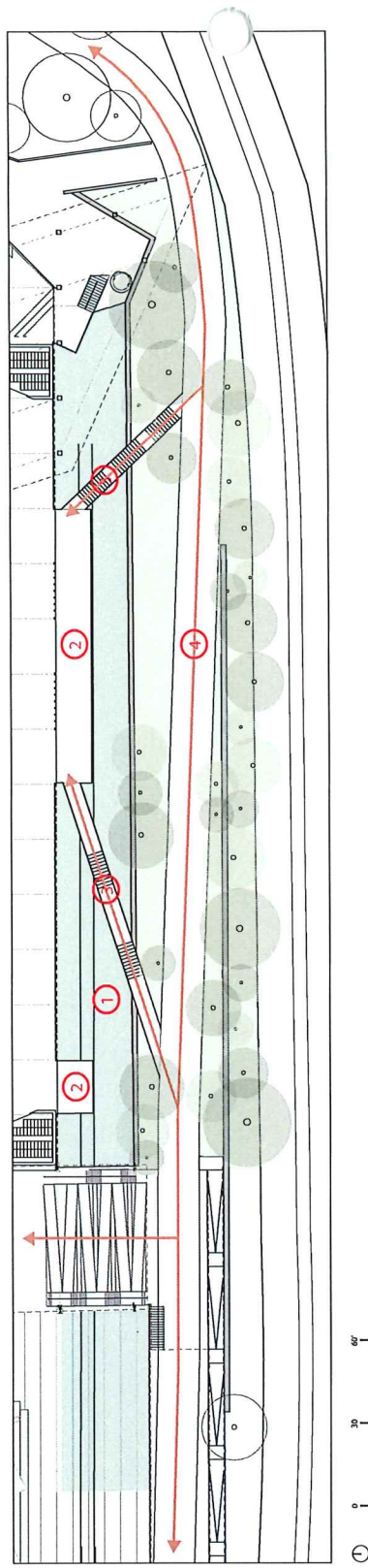
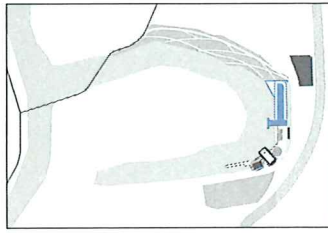


EXHIBIT A5 - TURKEY BEND

The Wharf

HIKE AND BIKE TRAIL



The construction of the Hike & Bike Trail above the proposed Secret Spur garden will require the construction of a series of retaining walls. The slope will be re-vegetated with native plantings, and a wetland garden over the former rail spur will filter stormwater and provide a cooling micro-climate to the Wharf Building. Two stepped bridges descend from the path, bridging across the rail spur into the Wharf Building. Safety fencing between the trail and the adjacent train tracks will be required.



VIEW OF SECRET SPUR FROM HIKE & BIKE TRAIL

NADAAA/Reed Hilderbrand

**EXHIBIT A5 - HISPANIC HISTORY
RESEARCH CENTER
(HHRC) AT TURKEY BEND**

**FIFTH
WARD**

**GREATER
EAST END**

NON-PARK PROJECTS

W HISPANIC HISTORY RESEARCH CENTER
(HHRC) AT TURKEY BEND

SEPTEMBER 21, 2022

EXHIBIT A5 - HISPANIC HISTORY RESEARCH CENTER (HHRC) AT TURKEY BEND

Narrative Description

Total Project Budget - \$62,530,180

Project W Budget - \$19,458,000

Project W Manager - City of Houston

The operations of the Houston Hispanic Research Center (HHRC) at Turkey Bend will join the three existing research centers operated by Houston Public Library (HPL) that house special collections and archives for subject-specific materials and resources: the Houston History Research Center, located in the Julia Ideson Building; the African American History Research Center, located at the Gregory School; and The Family History Research Center, located at the Clayton Library Campus.

The HHRC will allow the public to discover the rich Hispanic history and heritage of the Houston region through specialized databases, online collections, and items such as historic maps, documents, media, artifacts, and photographs. The HHRC will also collect materials and resources that represent the contributions and experiences of Hispanics in the Bayou City. A dedicated gallery will showcase the library's collections and will include an Oral Recording Studio and new space for exhibits and programs. The archived collection will be available to access on-site at the HHRC, with some materials also available online.

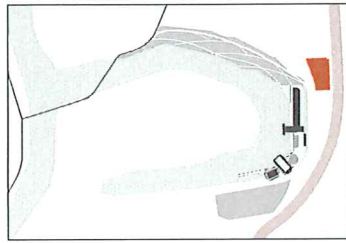
In addition to the HHRC, the approximately 25,000 square-feet of new library space at Turkey Bend will include an HPL Express. The HPL Express is an innovative library service model with a mission to deliver equitable access to technology services and bridge the information needs of a community. This vibrant, state-of-the-art facility will provide more technology per square foot than traditional print-focused library collections. Customers will have full access to the services, data, and collection of the entire HPL library system. The HPL Express will include specially trained staff that are committed to providing customers with a full range of programs, resources, technology, and services.

The City will acquire approximately 25,000 sf of the existing Navigation Warehouse building after BBP completes a core and shell renovation of the property per agreed to terms of the LOI. Upon acquisition, the City will proceed with design and construction of the new facility. Design and Construction are anticipated to take 12 months each.

The combination of the HHRC and the HPL Express will provide an invaluable repository for Hispanic heritage and access to technology, materials, and programming for all ages.

EXHIBIT A5 - HISPANIC HISTORY RESEARCH CENTER (HHRC) AT TURKEY BEND

Navigation Building



The covered open-air atrium has a raised platform with a large skylight above that can operate as a stage for year round public events.

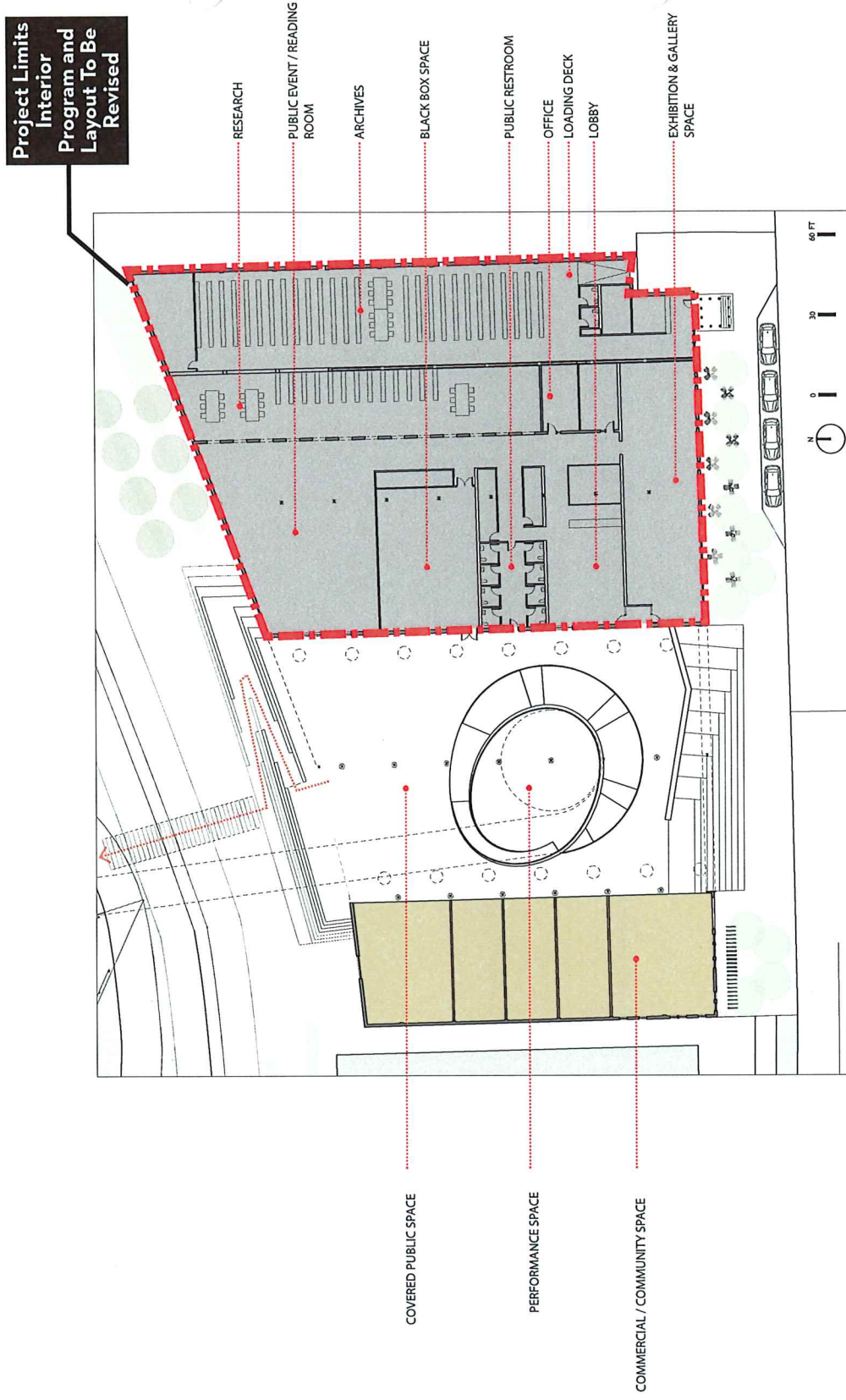
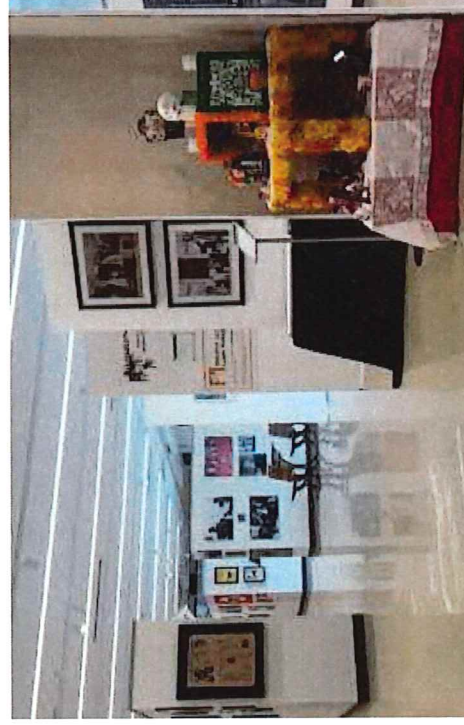


EXHIBIT A5 - HISPANIC HISTORY RESEARCH CENTER (HHRC) AT TURKEY BEND

Navigation Building

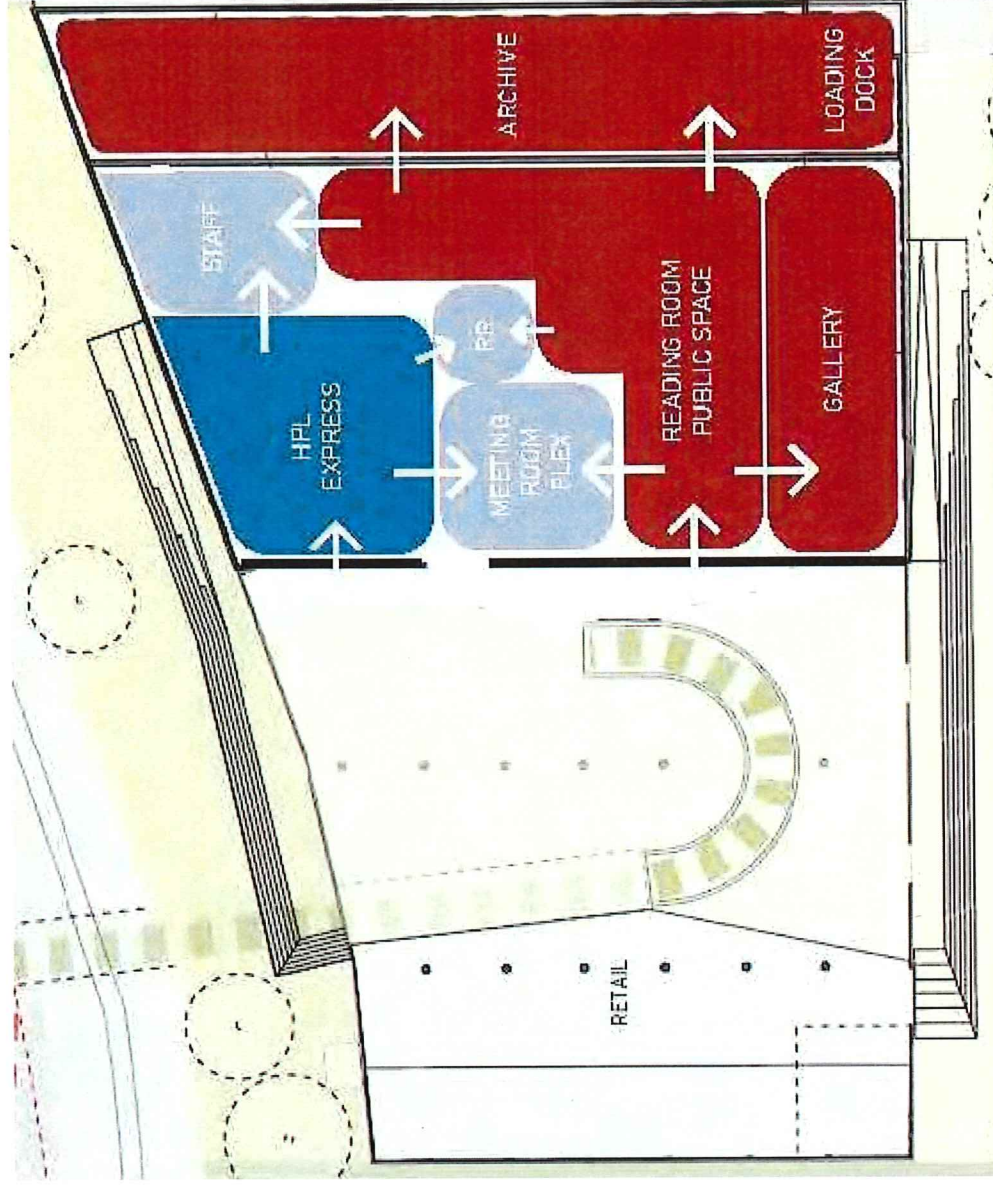


Archive Space Precedent Image



African American History Research Center

NADAAA/Reed Hilderbrand



HHRC Archives Space Program Concept

FINAL VERSION FOR APPROVAL

EXHIBIT B

GREENSPACE MAINTENANCE ANNUAL TARGET

[See attached.]

BBP PARK MAINTENANCE & OPERATIONS EXPENSE RAMP-UP SCHEDULE
(does not include Excluded Area - East River Trail and Gregg Street Bridge)

Costs are for only greenspace, building and structure maintenance and operations. Programming and events are excluded.

PARK PROJECT	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<i>All costs in 2022 dollars before escalation</i>											
Japhet Creek Phase 1		\$17,675	\$70,700	\$70,700	\$70,700	\$70,700	\$70,700	\$70,700	\$70,700	\$70,700	\$70,700
Downtown Gateway		\$1,598	\$10,655	\$10,655	\$10,655	\$10,655	\$10,655	\$10,655	\$10,655	\$10,655	\$10,655
Foley Street - Lockwood Park		\$7,671	\$15,342	\$15,342	\$15,342	\$15,342	\$15,342	\$15,342	\$15,342	\$15,342	\$15,342
South Bank Trail			\$27,945	\$83,834	\$111,779	\$111,779	\$111,779	\$111,779	\$111,779	\$111,779	\$111,779
Lockwood Park Greenfinger			\$24,929	\$24,929	\$24,929	\$24,929	\$24,929	\$24,929	\$24,929	\$24,929	\$24,929
Lockwood Park Phase 2 and Trailhead				\$94,175	\$141,263	\$141,263	\$141,263	\$141,263	\$141,263	\$141,263	\$141,263
Tony Marron Park Phase 1				\$127,989	\$255,978	\$255,978	\$255,978	\$255,978	\$255,978	\$255,978	\$255,978
Tony Marron Park Phase 2					\$89,406	\$596,042	\$596,042	\$596,042	\$596,042	\$596,042	\$596,042
Foley Street at Tony Marron Park					\$2,248	\$14,990	\$14,990	\$14,990	\$14,990	\$14,990	\$14,990
Japhet Creek Phase 2 & Bridge						\$8,748	\$58,322	\$58,322	\$58,322	\$58,322	\$58,322
TOTAL EXPENSES	\$0	\$26,944	\$149,571	\$427,625	\$722,301	\$1,250,426	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000

Pre-Central Maintenance Facility

\$0 \$6,736 \$37,393 \$53,453

BBP will incur 25% higher costs for remote dispatch until facility opens.

ADJUSTED TOTAL EXPENSES	\$0	\$33,681	\$186,964	\$481,078	\$722,301	\$1,250,426	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000
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MAINTENANCE FUNDING	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
BBP Funding due January 10th*	\$0	\$8,420	\$46,741	\$120,269	\$180,575	\$312,606	\$325,000	\$325,000	\$325,000	\$325,000	\$325,000
BBP Funding due June 1st	\$0	\$8,420	\$46,741	\$120,269	\$180,575	\$312,606	\$325,000	\$325,000	\$325,000	\$325,000	\$325,000
City Funding due January 10th*	\$0	\$4,210	\$23,370	\$60,135	\$90,288	\$156,303	\$162,500	\$162,500	\$162,500	\$162,500	\$162,500
City Funding due June 1st	\$0	\$4,210	\$23,370	\$60,135	\$90,288	\$156,303	\$162,500	\$162,500	\$162,500	\$162,500	\$162,500
County Funding due January 10th*	\$0	\$4,210	\$23,370	\$60,135	\$90,288	\$156,303	\$162,500	\$162,500	\$162,500	\$162,500	\$162,500
County Funding due June 1st	\$0	\$4,210	\$23,370	\$60,135	\$90,288	\$156,303	\$162,500	\$162,500	\$162,500	\$162,500	\$162,500
TOTAL REVENUE	\$0	\$33,681	\$186,964	\$481,078	\$722,301	\$1,250,426	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000

OTHER BBP FUNDS	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
BBP Endowment Fund	\$0	\$1,456,221	\$4,161,187	\$6,737,827	\$8,003,013	\$13,500,000	\$13,500,000	\$13,500,000	\$13,500,000	\$13,500,000	\$13,500,000
BBP Endowment Fund Contributions	\$0	\$1,456,221	\$2,704,965	\$2,576,640	\$1,265,186	\$5,496,987					
Capital Expenditure Fund						\$200,000	\$400,000	\$600,000	\$800,000	\$1,000,000	\$1,000,000
Capex Fund Contributions						\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Resilience Fund						\$100,000	\$200,000	\$300,000	\$400,000	\$500,000	\$500,000
Resilience Fund Contributions						\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
TOTAL BBP FUNDS CONTRIBUTED	\$0	\$1,456,221	\$2,704,965	\$2,576,640	\$1,265,186	\$5,796,987	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000

* Does not include "make-up funding" for unescalated prior June payment per Sections 7.03(c), 7.04(b) and 7.05(b).

EXHIBIT B DETAIL

	Japhet Creek		Tony Marron Park			Links to Downtown		Lockwood Park		Total
	Phase 1	Phase 2	Phase 1	Phase 2	Foley St	North Bank	South Bank	Greenspace	Foley St.	
Area without Excluded Area (Acres)	4.6	3.8	14.3	32.7	0.9	0.7	7.3	10.0	0.9	75.2
Expense										
Salaries and Wages	\$36,403	\$30,030	\$113,156	\$258,333	\$7,130	\$5,486	\$57,555	\$79,048	\$7,298	\$594,438
Park Operations	\$16,714	\$13,788	\$80,061	\$167,381	\$4,288	\$2,519	\$26,426	\$47,546	\$4,389	\$363,112
Insurance	\$3,115	\$2,569	\$9,682	\$22,104	\$610	\$469	\$4,925	\$6,764	\$624	\$50,863
Security	\$7,565	\$6,240	\$23,514	\$53,682	\$1,482	\$1,140	\$11,960	\$16,426	\$1,516	\$123,526
Contract Labor	\$1,312	\$1,082	\$5,529	\$12,622	\$348	\$198	\$2,074	\$3,862	\$357	\$27,384
Utilities	NA	NA	\$5,500	NA	NA	NA	NA	NA	NA	\$5,500
Equipment Maintenance	\$1,108	\$914	\$3,444	\$7,862	\$217	\$167	\$1,752	\$2,406	\$222	\$18,092
Supplies	\$1,730	\$1,427	\$5,378	\$12,277	\$339	\$261	\$2,735	\$3,757	\$347	\$28,251
Art Conservation	NA	NA	NA	\$39,229	NA	NA	NA	NA	NA	\$39,229
Copying & Printing	\$156	\$128	\$484	\$1,105	\$31	\$23	\$246	\$338	\$31	\$2,543
Internet	\$339	\$279	\$1,053	\$2,404	\$68	\$51	\$536	\$736	\$68	\$5,532
Expense Total (2021 \$)	\$68,442	\$56,459	\$247,801	\$577,001	\$14,511	\$10,314	\$108,208	\$160,883	\$14,852	\$1,258,470
Expense Total (2022 \$)	\$70,700	\$58,322	\$255,978	\$596,042	\$14,990	\$10,655	\$111,779	\$166,192	\$15,342	\$1,300,000

FINAL VERSION FOR APPROVAL

EXHIBIT C
OPERATIONS AND MAINTENANCE MANUAL

[See attached.]

EXHIBIT C

OPERATIONS & MAINTENANCE MANUAL

for

BUFFALO BAYOU EAST PARK

EDITION 1

City of Houston

Harris County

Buffalo Bayou Partnership

This document is subject to amendment by the
Buffalo Bayou East Park Standards Committee

TABLE OF CONTENTS

OWNERS MANUAL FOR BUFFALO BAYOU EAST PARK

Chapter I: General Information

- A. Purpose of Manual
- B. Brief Historical Overview
- C. Project Goals
- D. Park
- E. Parties
- F. Definitive Agreements
- G. Standards Committee
- H. Project Plans and Specifications
- I. Additional Improvements
- J. Definitions

Exhibit I-1 Project Area

Exhibit I-2 Park Dedications – Upon Completion of all Park Projects

Chapter II: General Access and Right of Entry

- A. General Access
- B. Right of Entry (non-Emergencies)
- C. Access Restrictions

Exhibit II-1 Designated Access Points and Routes

Chapter III: Maintenance and Repair

- A. General
- B. City of Houston (“City”)
- C. Harris County (“County”)
- D. Buffalo Bayou Partnership (“BBP”)
- E. Artwork

Exhibit III-1 Maintenance Areas

Exhibit III-2 Excluded Area

Exhibit III-3 Maintenance Standard

Exhibit III-4 Endangered Species in Harris County

Chapter IV: General Operations

- A. General
- B. City Operations
- C. County Operations
- D. BBP Operations
- E. Operations During Emergencies

Exhibit IV-1 BBP Operations Standards

Exhibit IV-2 Parking

Chapter V: Park Rules

- A. General
- B. Special Uses and Permits
- C. User Fees and Other Requirements

Exhibit V-1 Free Speech Areas and Facilities with Specific Rules

Exhibit V-2 Park Fee Schedule – Special Uses and Park Events

Exhibit V-3 Adjustments to Rules and Regulations approved by the Standards Committee

Exhibit V-4 Chapter 32 Amendments

Chapter VI: Special Events

- A. General
- B. Event Venues
- C. Event License Agreements
- D. Special Event Scheduling
- E. Use of Event Fee and User Fee Revenue

Exhibit VI-1 Event Venues

Exhibit VI-2 Event License Agreement Requirements

Exhibit VI-3 Park Fee Schedule – Special Events

Chapter VII: Concessions

- A. General
- B. Operating Standard
- C. Concession Areas
- D. Parking and Vehicle Staging
- E. Service Access
- F. Hours of Operation
- G. BBP Concession

Exhibit VII-1 Concessions

Chapter VIII: Additional Improvements

- A. General
- B. Notification and Review
- C. Other Requirements
- D. Emergency Work
- E. BBP Naming Rights Policy

Chapter IX: Administrative Provisions

- A. Contacts
- B. Amendments to the Manual
- C. Review of Changes to Landscapes and Facilities Proposed by BBP
- D. Interpretation and Reconciliation

Exhibit IX-1 Contact Information

Exhibit IX-2 Operating Contacts

RECORD OF AMENDMENTS

Edition 1 September 2022

CHAPTER I: GENERAL INFORMATION

A. Purpose of Manual

This Operations and Maintenance Manual (“Manual”) describes the maintenance and operation of Buffalo Bayou East Park (the “Park”) during its Operating Phase in accordance with the Maintenance and Operations Standard as established in the Development, Construction, Operations, Maintenance and Concession Agreement (the “Agreement”). The Manual also is included in Restrictive Covenants for the Park in accordance with the Memorandum of Restrictive Covenants. A companion document, Exhibit A of the Agreement, details allowable additional improvements that can occur in the Park without additional approvals as described in Part VIII of this Manual. Capitalized words are defined terms with the same meaning as in the Agreement, for which this Manual is Exhibit C.

B. Brief Historical Overview

With the Kinder Foundation serving as the catalyst and third-party beneficiary, the City, County and BBP (the “Parties”) entered into the Definitive Agreements governing the Project’s development and operating phases in the year 2022 to implement improvements to Buffalo Bayou East Park, to construct those improvements with a goal of completing the overall improvements by the end of 2027, and then to maintain and operate the Park. The Park is a major, but not the only component, of the Agreement’s “Ten-Year Plan” to implement the Buffalo Bayou East Master Plan announced in October 2019 through a series of improvements implemented and land acquisitions by the Parties (the “Park Projects”). The Ten-Year Plan also includes affordable housing at Lockwood South, on-street bicycle and pedestrian connections, and a variety of services and amenities requested by the community at Turkey Bend.

C. Project Goals

The Project’s goals were to:

1. Create a high-quality, connected park system centered on Buffalo Bayou serving the needs of the greater East End and Fifth Ward communities.
2. Match the benefits and quality of Buffalo Bayou Park west of downtown Houston.
3. Create the funding mechanisms and long-term public/private agreement to ensure the Park’s long-term maintenance and operation as established by the Maintenance and Operations Standard and to be overseen by the Standards Committee.

D. Park

The Park is described in **Exhibit I-1**, and its boundaries are the same as the boundaries shown in Exhibit D of the Agreement. The Park includes properties owned by the City, County and BBP as indicated in **Exhibit I-1** with ownership subject to change until land transactions are completed after development of all Park Projects. Ownership of some properties is in the form of recreation easements, which are not included in Restrictive Covenants as they apply to those

properties nor in the dedicated park. This Manual does not apply to public rights-of-way except for the non-roadway portions of Marron Park Way and the Lockwood Trailhead.

E. Parties

This Manual describes the Parties' roles and responsibilities for the operation and maintenance of the Project after initial construction is complete and for the duration of the Term. These roles are summarized as follows:

1. The City: Upon completion of certain Park Projects, the City will own much of the Park as described in **Exhibit I-1** and is obligated to (i) provide 25% of the budget for Greenspace Maintenance and Operations and (ii) maintain and operate the Excluded Area, as defined by the Agreement, all as required by the Agreement.
2. The County: Upon completion of certain Park Projects, the County (i) will own 4.5 acres of Tony Marron Park ("TMP") west of North York Street and possibly a portion of Japhet Creek (subject to the results of a land transaction) as described in **Exhibit I-1** and (ii) is obligated to provide 25% of the budget for Greenspace Maintenance and Operations, all as required by the Agreement.
3. BBP: Upon completion of certain Park Projects, BBP will own 5.5 acres abutting Tony Marron Park west of North York Street, including the Central Maintenance Facility, portions of the Silos and Velasco sites, and several recreation easements as described in **Exhibit I-1** and is obligated to (i) provide 50% of the budget for Greenspace Maintenance and Operations, (ii) fund Programs, and (iii) provide for the Capital Expenditure Fund and the Resilience Fund, all as required by the Agreement.

F. Definitive Agreements

The Manual is one of several Definitive Agreements that govern design, construction, maintenance and operation of the Park:

1. The Agreement, which was approved by the City, County and BBP in September 2022 for the Initial Term and for two 30-year Renewal Terms thereafter. The Kinder Foundation is a third-party beneficiary. The Agreement's exhibits may be amended by the Standards Committee, including Exhibit A, which describes the scope of each Park Project; Exhibit B, which describes funding for Greenspace Maintenance and Operations; and Exhibit C, which is this Manual.
2. The Manual as amended by the Standards Committee.
3. The Restrictive Covenants. This Manual and Agreement (including Exhibit A) comprise the Restrictive Covenants for the Park, a Memorandum of which will be recorded in the Official Records of Real Property of Harris County, Texas, upon completion of each area.

With regard to the Maintenance and Operations Standard, this Manual is intended to provide more detail than the Agreement in the event of any conflict; however, if a provision of this Manual is in direct conflict with the Agreement, the Agreement will prevail.

G. Standards Committee

To the extent specifically described in this Manual, the Standards Committee shall oversee amendments to, compliance with, approvals required by Section 3.05 of the Agreement, and

interpretations of the Manual for the Term in accordance with the rules and procedures adopted by the Standards Committee from time to time.

H. Project Plans and Specifications

In addition to files kept by various jurisdictions, BBP will maintain, at its main office or an office in the Park, a record set of all plans and specifications for the Park Projects that resulted in improvements in the Park. The City and County shall provide the plans and specifications for Park Projects they oversee as Project Managers. BBP also will maintain a file of the Park's general layout and major features to be made available to others while undertaking approved work in the Park.

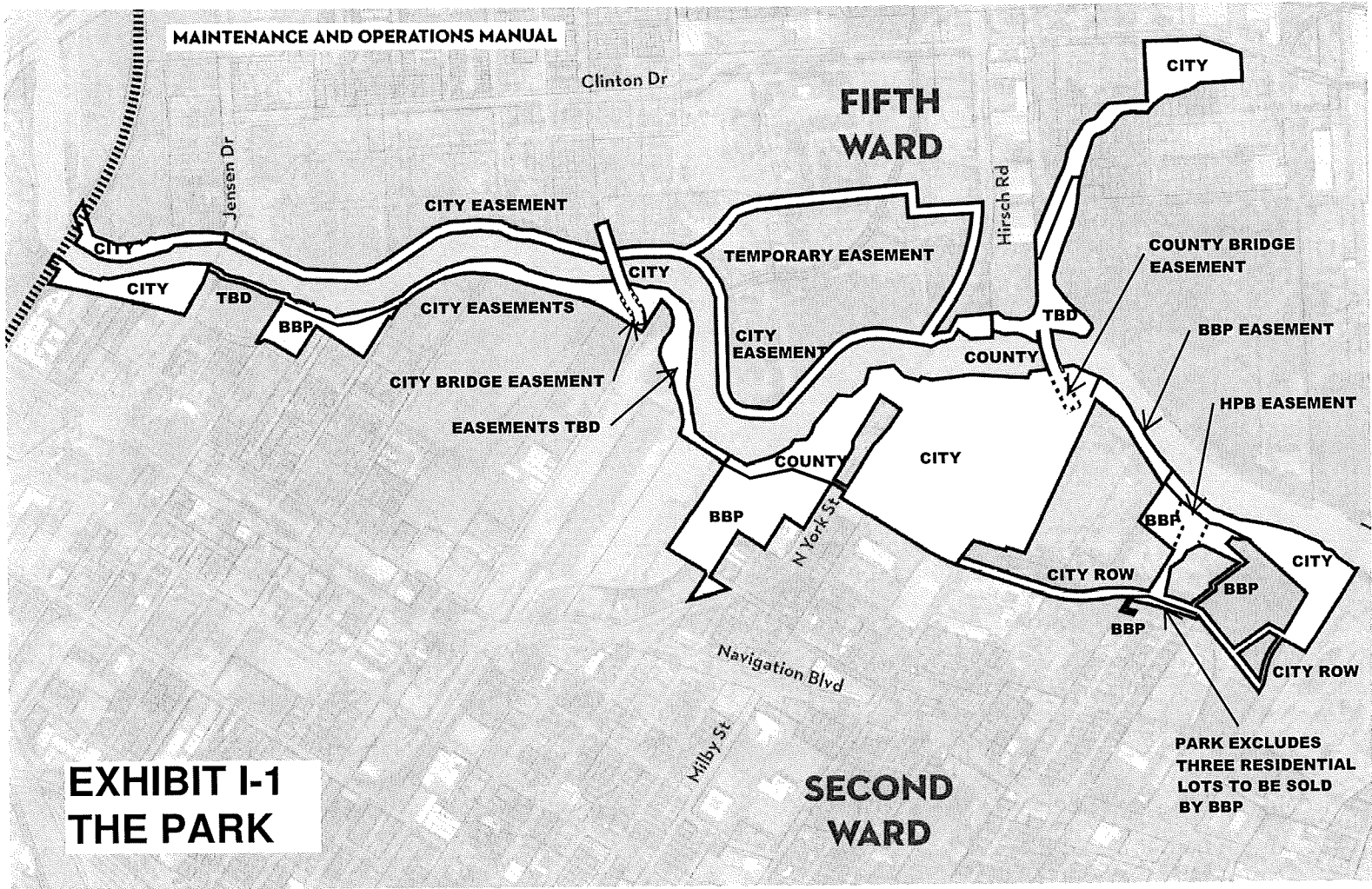
I. Additional Improvements

Exhibit A5 may describe certain improvements and features that are approved but not implemented because of funding constraints. These additional improvements may be implemented during the Term within the limitations described in the Agreement. Any other improvements must be approved by the Standards Committee and the designated representative of the owner of the affected property and the Kinder Foundation. There are approval exceptions for Emergencies and for public safety as described in Chapter VIII of this Manual.

J. Definitions

Capitalized words and phrases are generally defined in the Agreement, and when they are not, their definition is in the chapter of this Manual in which they are used.

MAINTENANCE AND OPERATIONS MANUAL



**EXHIBIT I-1
THE PARK**

CHAPTER II: GENERAL ACCESS AND RIGHT OF ENTRY

A. General Access

The Park is a public park and the public may enter the Park during Park hours for recreational purposes in accordance with the Park Rules, as identified in Chapter V, and the terms of this Manual.

1. Non-Discrimination: The Parties, in performing their respective obligations hereunder, shall not discriminate based on race, sex, religion, national or ethnic origin, age or disability in accommodating access, use and enjoyment of the Park by the public.
2. No Admission Charge: The Parties will not impose an admission charge in any area of the Park except for certain Special Uses, Park Events (see Chapter V) and Special Events (see Chapter VI), and those areas licensed for Concessions (see Chapter VII).
3. Trail Access: Except when closed as described in this paragraph and subject to the Park Rules, each trail providing access into the Park will remain open for entry by foot, bicycle or wheelchair by the public. Subject to the above, individual trails may be closed for maintenance, Special Events, Park Events and Special Uses in order to protect Park users from unsafe conditions and to prevent damage to the Park.
4. Areas Under Construction: The public may be denied access to certain areas while they are under construction, maintenance or repair.

B. Right of Entry (non-Emergencies)

1. Meaning: When the term is used in this Manual, Right of Entry refers to a right to enter the Park to conduct special activities and business beyond the general enjoyment and use of the Park as a recreational and natural amenity. Entry into the Park with any motorized vehicle outside of designated public drives and parking areas or entry into any area of the Park with mechanized equipment requires a Right of Entry. Right of Entry does not grant an entity any right to produce Special Events; schedule or permit Special Uses or Park Events; or install improvements, conduct maintenance or perform repair work except as specifically described in this Manual.
2. City: Subject to Section II(C), City officials, employees and contractors do not require a Right of Entry for City-owned areas of the Park. Except in Emergencies and in the Excluded Area, City shall endeavor to notify BBP one week in advance of entering the Park with any motorized vehicle or mechanized equipment or if the City intends to close an area or feature as part of its maintenance responsibilities described in Section III(B) or its operating responsibilities described in Section IV(B). In such cases where City will delegate work to contractors, City shall notify BBP three days in advance of its plans to do so and of its intent to comply with the Agreement. City shall comply with weight restrictions for trails, trail structures (boardwalks) and bridges.
3. BBP: BBP has been granted a Right of Entry to City property and County property in the Park except for the Excluded Area, and it may license its staff, contractors, licensees, volunteers, other unpaid staff and permittees to carry out BBP's maintenance responsibilities as outlined in Chapter III, operations responsibilities as described in Chapters V - VII, and implementation of additional improvements as described in Chapter VIII. BBP may enter the Excluded Area with motorized vehicles or equipment at the

written request of the City or upon City's approval with three days advance notification. BBP shall coordinate with the City and/or County to allow access to the Japhet Creek Bridge and Gregg Street Bridge respectively in compliance with this Chapter's restrictions when the City or County must perform scheduled maintenance, work on Capital Expenditure Projects, and/or work on repairs after Casualty.

4. County: Subject to Section II(C), County officials, employees and contractors do not require a Right of Entry for County-owned areas of the Park. Except in Emergencies, County shall endeavor to notify BBP one week in advance of entering the Park with any motorized vehicle or mechanized equipment or if the County intends to close an area or feature as part of its maintenance responsibilities described in Section III(C) or its operating responsibilities described in Section IV(C). In cases where County will delegate work to contractors, County shall notify BBP one week in advance of its plans to do so and of its intent to comply with the Agreement. County shall comply with weight restrictions for trails, trail structures (boardwalks) and bridges.
5. City Franchisees: To the extent allowed by Applicable Laws, or by the applicable franchise agreement, City franchisees have a Right of Entry only to specific areas of the Park consisting of (i) public rights of way subject to a City franchise agreement or (ii) private easements granted prior to the Effective Date of the Agreement, and in the case of street lighting along perimeter roadways, a 10-foot wide area as measured from the face of curb along those roadways. The City shall cause its franchisees to comply with their franchise agreements in the restoration to their full Aesthetic and Horticultural Condition and Functionality of areas damaged as a result of their entry into the Park. The City shall use best efforts to review any proposal to grant access or usage rights within existing rights-of-way or easements in the Park to proposed franchisees with the Standards Committee at least three months prior to granting such rights.
6. "Full Aesthetic and Horticultural Condition and Functionality" means restoration of an impacted area that includes (i) repair of built elements and pavements, including restoration of their long-term structural integrity and their finishes to their condition prior to the impact, (ii) restoration of landscape areas, including contours, grades, irrigation, drainage and replacement of plant materials and lawns that are either materially damaged or killed, (iii) electrical, lighting and other plumbing, and (iv) a return to conditions that allow for the impacted area to be used in the same manner as before the impact.

C. Access Restrictions

1. Designated Access Points and Routes: Except in areas designated for public parking and on public streets and park drives, operation of motorized vehicles in the Park is generally prohibited, and operation of mechanized equipment is generally prohibited throughout the Park. Authorized motorized vehicles and equipment shall enter the Park only as described in **Exhibit II-1** and traverse the Park on routes approved by BBP or the City in the Excluded Area, all subject to restrictions described in Section II(B).
2. Temporary Roads and Routes: Except during Emergencies described in Section IV(E) and in the Excluded Area, temporary roads and routes are prohibited under all circumstances, with or without a Right of Entry, without the express prior written approval of BBP, which it may grant at its sole and absolute discretion.

3. Insurance and Indemnification: All entities, other than officers or employees of the City or County, entering the Park, with or without a Right of Entry, shall comply with the insurance and indemnification requirements of the Agreement to the extent permitted by law.
4. Repairs: As described in Section II(B)(6), if an entity damages any portion of the Park, with or without a Right of Entry, that entity shall be responsible for the repair and restoration of the damaged area or features to its full Aesthetic and Horticultural Condition and Functionality as it existed prior to the entity's entry into the Park. Entities that do not comply with this requirement may have their Right of Entry revoked or modified by BBP, and as the entity responsible for maintaining the Park, BBP also may take other appropriate actions as it deems necessary.

MAINTENANCE AND OPERATIONS MANUAL

Clinton Dr

**FIFTH
WARD**

Jensen Dr

Hirsch Rd

N York St

Navigation Blvd

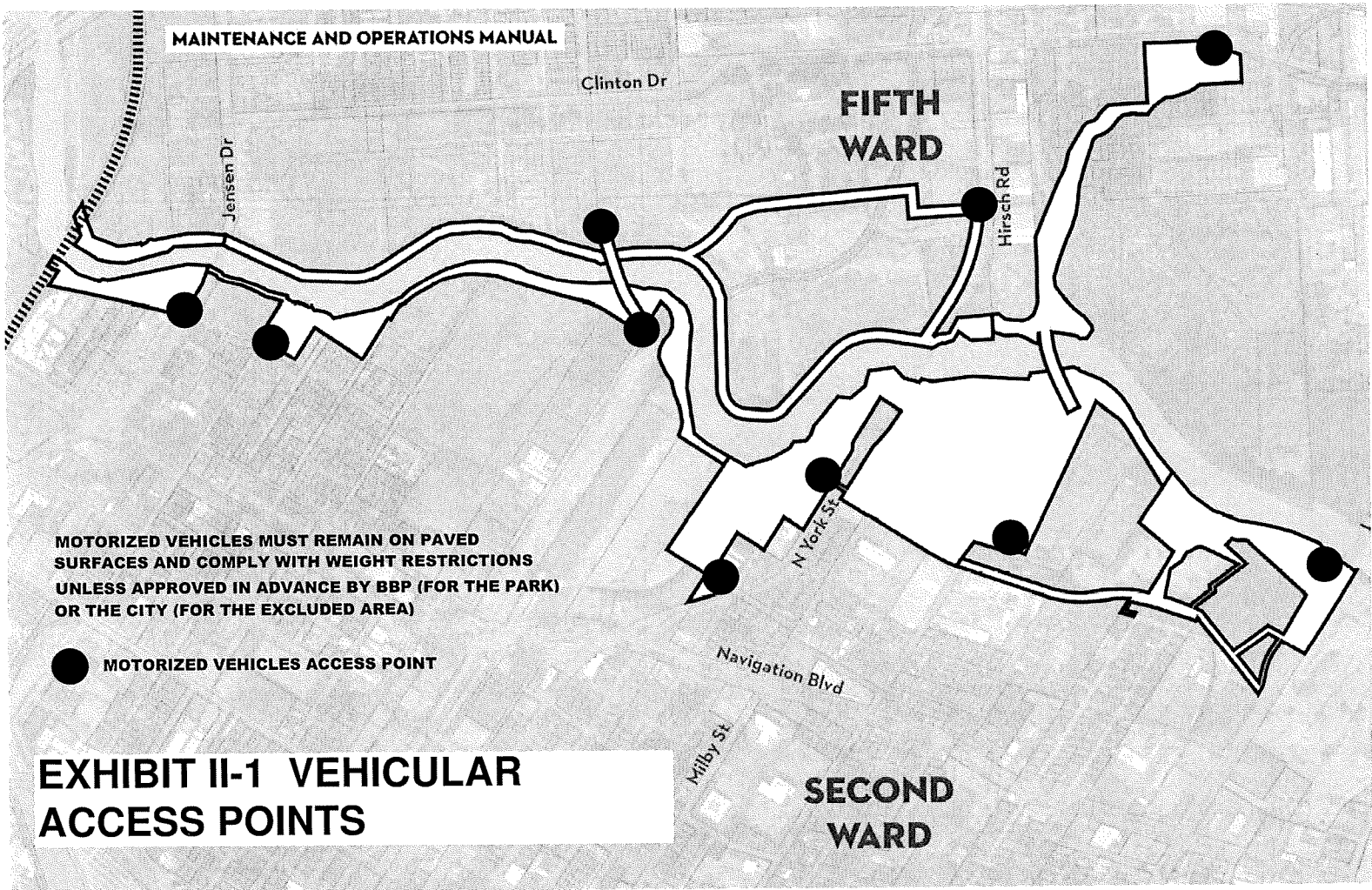
Milby St

**SECOND
WARD**

**MOTORIZED VEHICLES MUST REMAIN ON PAVED
SURFACES AND COMPLY WITH WEIGHT RESTRICTIONS
UNLESS APPROVED IN ADVANCE BY BBP (FOR THE PARK)
OR THE CITY (FOR THE EXCLUDED AREA)**

● **MOTORIZED VEHICLES ACCESS POINT**

**EXHIBIT II-1 VEHICULAR
ACCESS POINTS**



CHAPTER III: MAINTENANCE AND REPAIRS

A. General

1. Maintenance Standard: The Park's general level of maintenance of landscapes, built features and artworks shall comply with the Maintenance and Operations Standard as described in this Chapter III. If no specific requirements are provided, the Maintenance and Operations Standard shall be as described in the Agreement. The Maintenance and Operations Standard applies to all maintenance responsibilities of all Parties within the Park except as described below.

See **Exhibit III-1** for locations of certain areas and features.

2. Safety: All Parties and their employees, licensees, and contractors shall comply with applicable OSHA regulations and any requirements for insurance coverage of property damage, injuries, deaths or other incidents that may be required by the Agreement.
3. Environmental Controls:
 - a. Removal of Sediment: Sediment deposited during and immediately after a flood may not be returned to the Bayou's water except in compliance with Texas Pollutant Discharge Elimination System Permit No. WQ0004685000, or any successor permit held by either HCFCD or City ("Stormwater Permit"), and the Bacteria Implementation Plan, as submitted to Texas Commission of Environmental Quality ("TCEQ") in 2011, in each case as amended or replaced.
 - b. Endangered Species: Habitat of endangered species listed in Exhibit III-4 shall not be disturbed until after consulting with the Texas Parks and Wildlife Department ("TPWD").
 - c. No Party shall apply pesticides, herbicides or fertilizer in the Park except in strict compliance with the Texas Department of Agriculture and Applicable Laws.
 - d. Underground Environmental Conditions: If, during maintenance or repair activities 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 owner of the property (City, County or BBP) shall address the contaminated soil or groundwater in order to comply with Applicable Laws.
4. Vandalism: Vandalism is a maintenance issue, but because its prevention is most often integrated into Park Rules enforcement and security initiatives, prevention of vandalism is addressed in Chapter IV.

B. City of Houston (City)

1. Utilities: City shall provide utilities in accordance with Section 6.06 of the Agreement.
2. Excluded Area: City shall maintain the Excluded Area, as defined by the Agreement, including any related amenities therein, in accordance with Section 6.02(a) of the Agreement and in compliance with the Maintenance and Operations Standard in **Exhibit III-3**, as it applies to trail areas only. If there are insufficient funds to conduct a needed Capital Expenditure Project or restoration after a Casualty event, the City may close the trail until sufficient funds are secured. As part of its operating budget review described in Section 3.05(e)(7) of the Agreement, Standards Committee approval of a timeline for implementing

the Capital Expenditure Project is required for any closure that extends into a subsequent City fiscal year.

3. Bank Stability: To ensure the safety and stability of the trails within the Excluded Area, the City is responsible for the stability of banks therein, and has flexibility in addressing them to ensure they are safe for use. In such cases, the required work will be considered a Capital Expenditure Project. For the avoidance of doubt, this section does not assign the City responsibility for any bank stability work within the Excluded Area beyond the work necessary to stabilize the trails and/or the trail facilities.
4. Changes to Facilities in Excluded Area: City may proceed with Capital Expenditure Projects and technical upgrades to lighting and other facilities in the Excluded Area without Standards Committee review and approval.
5. Other City-owned Areas of the Park: City shall be responsible for maintenance of other City-owned areas of the Park in accordance with Section 6.02(b) of the Agreement.
6. Houston Public Works ("HPW"): While HPW does not have any responsibility for maintaining parks, HPW shall be responsible for maintenance in compliance with Section 6.02(c) of the Agreement. HPW shall also comply with the Maintenance and Operations Standard and maintain, repair and reconstruct affected Park areas and facilities to their full Aesthetic and Horticultural Condition and Functionality.
7. Mayor's Office of Special Events ("MOSE"): MOSE shall promptly return any affected Park areas and facilities to their full Aesthetic and Horticultural Condition and Functionality after each MOSE Special Event.

C. Harris County (County)

1. Utilities: County shall provide utilities in accordance with Section 6.06 of the Agreement.
2. Other Areas of the Park: County shall be responsible for maintenance of other areas of the Park in accordance with Section 6.03 of the Agreement. If there are insufficient funds to conduct a needed Capital Expenditure Project or restoration after a Casualty event, the County may close the area or facility until sufficient funds are secured. As part of its operating budget review described in Section 3.05(e)(7) of the Agreement, Standards Committee approval of a timeline for implementing the Capital Expenditure Project is required for any closure that extends into a subsequent County fiscal year.

D. Buffalo Bayou Partnership (BBP)

Other than as described in Chapter III(B) and III(C), BBP is responsible for Greenspace Maintenance in the Park. BBP's Maintenance and Operations Standard is as described in this Chapter III and detailed in **Exhibits III-1 and III-3**. The application of the Maintenance and Operations Standard to any maintenance responsibility of BBP shall be subject to Sections 7.02(c) and 7.06 of the Agreement.

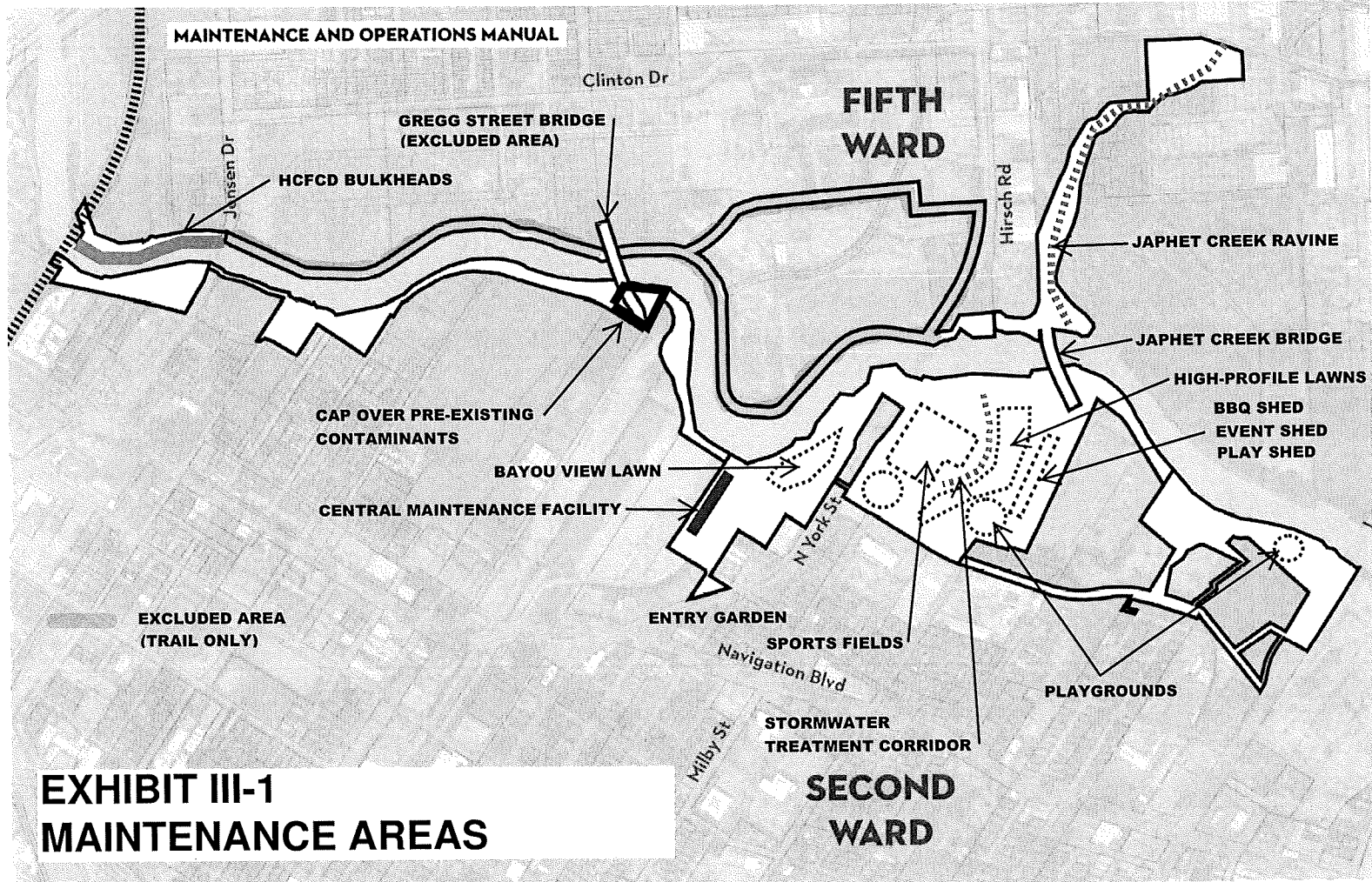
1. Utilities: BBP shall provide utilities in accordance with Section 6.06 of the Agreement.

2. High Profile Areas: BBP shall maintain the following lawn areas (locations are depicted in **Exhibit III-1**) at a higher level than other areas of the Park as described in **Exhibit III-3**:
 - a. Tony Marron Park play and event lawns,
 - b. Tony Marron Park sports fields
 - c. Tony Marron Park bayou view lawn
3. Annual or Routine Maintenance: Maintenance shall conform to **Exhibit III-3**.
4. Changes to Landscapes and Facilities: BBP may propose changes to landscapes, plant types, irrigation systems, facility designs or facility materials in order to reduce maintenance costs and to improve performance, functionality, environmental qualities and aesthetics. The Standards Committee must approve any such proposed changes except replacement of individual plant types and changes to irrigation. BBP may proceed with Capital Expenditure Projects and technical upgrades to lighting and other facilities without Standards Committee review and approval.
5. Bank Stability: BBP is responsible for the stability of banks, except in the Excluded Area, and has flexibility in addressing the banks except when safe use of a main trail is negatively impacted. In such cases, the required work will be considered a Capital Expenditure Project. BBP may delegate this responsibility to others. For the avoidance of doubt, this section does not assign BBP responsibility for any bank stability work beyond the work necessary to stabilize the trails and/or the trail facilities.
6. Other Maintenance: BBP shall be responsible for the following:
 - a. Capital Expenditure Projects in accordance with Section 6.01(b)(7) of the Agreement. If the Capital Expenditure Reserve Fund is inadequate to cover the cost of such replacement or major repairs, BBP may close the affected area or facility until sufficient funds are secured. As part of its operating budget review described in Section 3.05(e)(7) of the Agreement, Standards Committee approval of a timeline for implementing the Capital Expenditure Project is required for any closure that extends into a subsequent BBP fiscal year.
 - b. Extraordinary Maintenance: In coordination with the City and County, and except in the Excluded Area, Japhet Creek Bridge, and other areas of the Park maintained by other entities, BBP shall perform major clean-up following a Casualty event, complete repairs due to vandalism, complete general repairs, and perform other maintenance activities not described in **Exhibit III-3** in accordance with Section 6.01(b)(8) of the Agreement. If the Resilience Fund is inadequate to cover the cost of such work, BBP may close the affected area or facility until sufficient funds are secured. The City and County may assist in Extraordinary Maintenance. Lighting outages may exceed the 48-hour maximum in **Exhibit III-3** when lighting was submerged during high water events. In such cases, BBP will endeavor to restore most lighting within two weeks.
 - c. Optional Maintenance Activities: BBP may opt to conduct additional maintenance activities not required by the Agreement or this Manual. If BBP chooses to do so, BBP may raise private funds by offering naming opportunities in accordance with Naming Rights Policy described in Chapter VIII.

E. Artwork

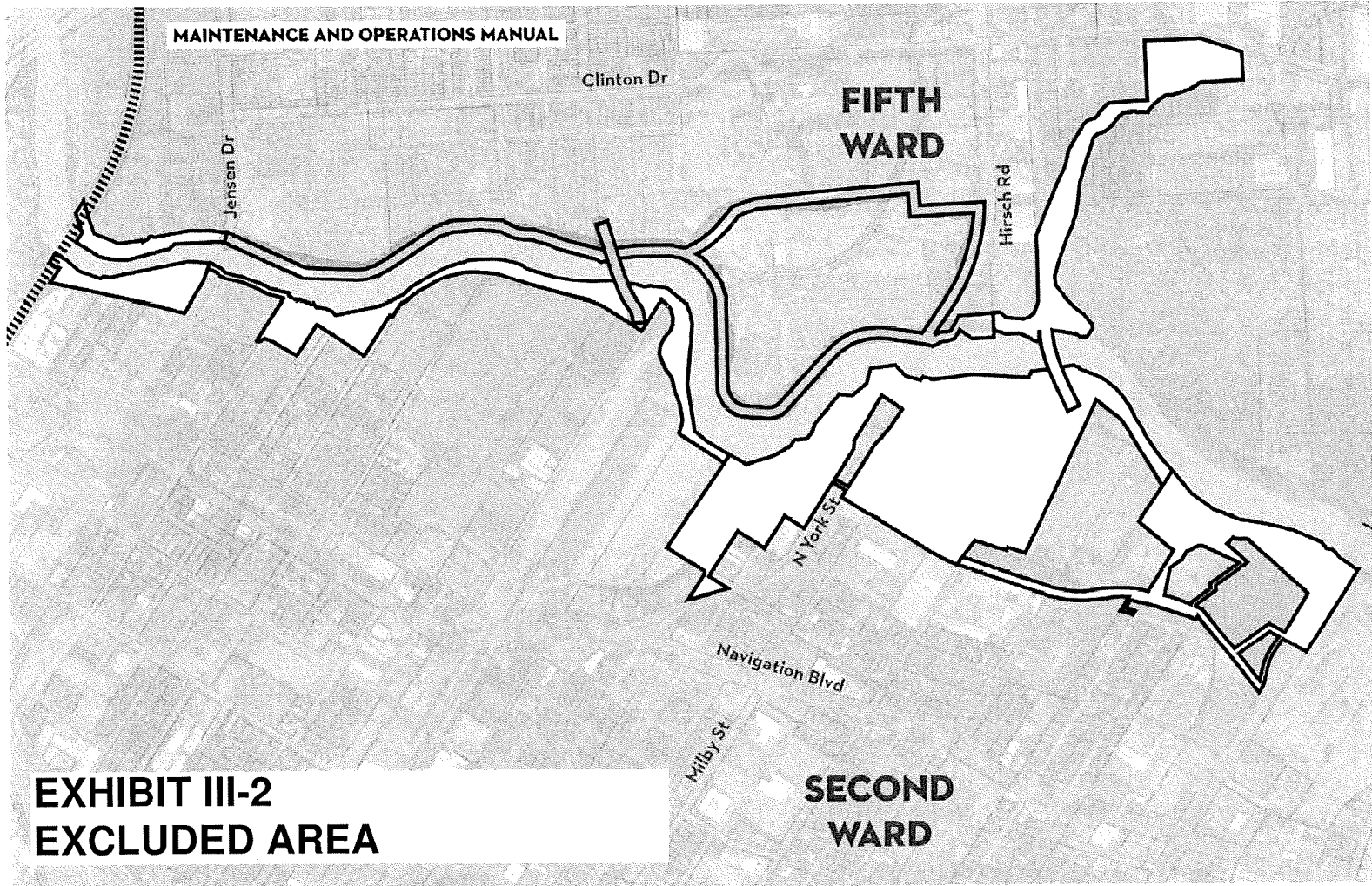
Conservation of artworks implemented subsequent to the Effective Date of the Definitive Agreements shall be funded by a restricted account established by BBP as part of its budget for the artwork. Notwithstanding the above provisions, BBP is authorized to use the Greenspace Maintenance Fund to perform routine, non-conservation maintenance on artworks. For the avoidance of doubt, any artwork BBP adds to City-owned areas of the Park shall not be considered part of the City's permanent art collection without BBP first obtaining City Council approval pursuant to the City's Civic Art Program requirements. As such, BBP shall remain responsible for the maintenance of artwork added to the City-owned areas of the Park.

MAINTENANCE AND OPERATIONS MANUAL



**EXHIBIT III-1
MAINTENANCE AREAS**

MAINTENANCE AND OPERATIONS MANUAL



**EXHIBIT III-2
EXCLUDED AREA**

Exhibit III-3

* Estimated Tasks and Frequency represent the projected workload and may be more or less work/frequency than the actual work required to maintain the Maintenance Standard.
Various factors will cause tasks and frequency to vary from day to day, season to season or year to year, including weather, intensity of usage, vandalism, infestations and other Acts of God.

FEATURE TYPE	CATEGORY	General Maintenance Standard	Estimated Tasks and Frequency*	Comments
Grasses and Lawns	High-Profile	Photogenic except after floods and during very dry weather; usable for Special Events at Event Venues/free speech areas except after floods.	Mow every 7 days spring-fall (38x/year); irrigate; aerate 1x/year; fertilize 2x/year.	
	All Other Areas (Low-Profile)	Usable for recreation except after floods; worn footpaths OK	Mow every 14 days in growing season (19x/year); irrigate; aerate and fertilize only as needed.	BBP will endeavor to minimize worn footpaths.
Meadows & Slopes	Native Grass	Natural look up to 24" high with some seed heads higher; grass may brown during dry periods and out of season. BBP endeavors to control trailblazing by joggers, bikers, dogs and hikers.	Cut 1x/year; irrigate only during establishment period (about 3-5 years); fertilize 1x/year (about 3-5 years). Weed control conducted monthly. Rodent, bird, & pest control monitored as needed. Temporary fencing to prevent trailblazing.	Owner Manual assumes Park Rules will prohibit walking or riding in tall grass areas.
Woodlands	Urban Woodland	After establishment, maintain visibility zone from 40" to 90" above grade; trees and groundcover are healthy and no vines. BBP endeavors to control trailblazing by joggers, bikers, dogs and hikers. Prevent encampments.	Grounds to be maintained (weeding, invasive species removal, etc.) on a monthly basis. Some trees to be pruned once a year. Seasonal infill planting subject to funding. Temporary fencing to prevent trailblazing. General monitoring daily for encampments.	Owner Manual assumes Park Rules will prohibit walking or riding in tall grass areas.
	Native Woodland	Natural look with healthy trees, natural forest floor, controlled vines and limited sight lines. BBP endeavors to control trailblazing by joggers, bikers, dogs and hikers. Prevent encampments.	Grounds to be maintained (weeding, invasive species removal, etc.) on a monthly basis. Limited tree maintenance. Temporary fencing to prevent trailblazing. General monitoring weekly or as reported for encampments.	Owner Manual assumes Park Rules will prohibit walking or riding in tall grass areas.
	Ramble	Wild look with no sight lines in some areas; vines do not choke trees. BBP endeavors to control trailblazing by joggers, bikers, dogs and hikers. Prevent encampments.	Grounds to be maintained (weeding, invasive species removal, etc.) on a monthly basis. Tree maintenance minimal except dead limbs. Annual infill planting subject to funding. Temporary fencing to prevent trailblazing. General monitoring weekly or as reported for encampments.	Owner Manual assumes Park Rules will prohibit walking or riding in tall grass areas.
Riparian Zones	Wetland Plants	Natural look with minimal visible litter. Plants to be healthy and few vines/ invasive species.	Monitor invasive species once per week (52x/year) with removal as needed to control growth and in-depth vine management once per year.	Park Rules prohibit swimming or boating.
	Tributary Banks	Natural look with minimal visible litter, except after floods. Plants to be healthy and no vines/ invasive species. BBP endeavors to prevent trailblazing by hikers, joggers, dogs and cyclists.	Monitor invasive species once per week (52x/year) with removal as needed to control growth and in-depth vine management once a year. Temporary fencing to prevent trailblazing.	
	Bayou Channel Edge	Natural look with minimal visible litter, except after floods. No vines/ invasive species. Ground covers to be healthy subject to water releases from dams. Fence off areas to prevent trailblazing by hikers, joggers, dogs and cyclists.	Monitor invasive species once per week (52x/year) with removal as needed to control growth. Temporary fencing to prevent trailblazing.	

Exhibit III-3

Gardens	Native Perennial	High standard of maintenance. Debris may be present after floods. Fence off areas to prevent trailblazing by hikers, joggers, dogs and cyclists.	Grounds will be maintained twice a month (with inspection for pests and rodents) with additional weeding 1x/month. Other plant materials will be maintained and replaced as needed. Annual remulching and topdressing during spring. Seasonal prep and cleanup will occur twice (spring and fall) a year.	Park Rules prohibit entering gardens.
	Other	High Standards of maintenance. Debris may be present after floods. Fence off areas to prevent trailblazing by hikers, joggers, dogs and cyclists.	Grounds will be maintained twice a month (with inspection for pests and rodents) with additional weeding 1x/month. Non-native bedding plants replaced seasonally, and other plant materials will be maintained and replaced as needed. Annual remulching and topdressing during spring. Seasonal prep and cleanup will occur twice (spring and fall) a year.	Park Rules prohibit entering gardens.
Water Features	Fountains and Jets	Properly operating fountains and fountains jets that maintain a high aesthetic value. Mostly clear water except when connected to natural water bodies.	All mechanical systems to be maintained and repaired as indicated by equipment supplier. Fountains drained and powerwashed annually. Filters should be backwashed weekly.	No fountains maintained by BBP except water jets at Lost Lake and dog pond.
	Water Treatment Areas	Functioning water circulation system. Water quality is that of source bayou water with goal being to aerate in cascade.	All mechanical systems to be maintained and repaired as indicated by equipment supplier.	
	Natural Tributaries and Outfalls	Water of same quality as bayou with no smells.	Check for general water quality problems (limited to visual and smell only).	Report water quality problems to the HPW to investigate and address.
Irrigation Systems	Water Wells	Not in scope.	Not in scope.	
	Temporary Systems	Properly operating systems that provide proper water needs to plant material and minimize wastage of water.	Inspections to match permanent system for its intended life and then turn off valves and discontinue use of the temporary section.	
	Permanent Systems	Address leaks within 24 hours or turn off station. If rotary heads are available, all rotary heads need to be working. Irrigation system should irrigate areas that it is designed to cover.	Monitor controls almost daily. System will be inspected on a monthly basis, along with cleaning, repair broken heads and other components. Additional repair will be conducted on an as needed basis. Control system should be checked weekly to ensure it is working properly.	

Exhibit III-3

Site Utilities	Drainage Systems	Drainage system is functionally properly with minimal ponding, leaks or erosion due to clogged or non-functioning system.	Open covers and check for silt and other problems annually and when reported.	
	Water and Sanitary Sewer	Pipes and equipment work with no leaks and no back-ups.	Inspect on an as-needed basis and after major flooding events or storms.	
	Electrical Systems	Electrical systems meet code with no unsafe conditions.	Annual inspection of circuit breakers and major equipment.	
Pavements	Trails, Footpaths & Landings	Usable trails, footpaths and landings that adequately and safely meet park user needs.	Clean major debris that creates tripping hazards daily; clear trails of leaf litter during fall weekly.	Paint restriping and sign replacement to match HPARD's and County's standard for other trails.
	High-Profile Paved Plazas (non-decomposed granite areas)	Aesthetically attractive plazas that meet the needs of park users except immediately after park events and weather events. Areas should remain litter free. No overspilling trash receptacles.	Clean weekly and maintain on an as-needed basis, repairs will be done when reported. Require event producers to clean up quickly.	
	High-Profile Paved Plazas (with decomposed granite areas)	Aesthetically attractive plazas that meet the needs of park users except immediately after park events and weather events. Areas should remain litter free. No overspilling trash receptacles.	Bi-weekly raking and leveling required. Major renovation (filling, leveling) done twice a year.	
	Parking Lots, Drives, Under Bridges and Maintenance Yard Vehicular Paving	Usable for everyday use except after flood; no debris that interferes with driving. Prevent encampments under bridges.	Graffiti and debris removal on an as-needed basis. Daily inspection for encampments. Park Rangers and HPD when needed.	
	Decomposed granite/ gravel areas (Low profile)	Usable for everyday use except after flood and heavy rain. Slight wearing & erosion acceptable.	Monthly raking and leveling. Major renovation (filling, leveling) required once a year.	Will not be used on slopes and in areas subject to flooding.
Structures	Pedestrian/Cycling Bridges	Bridges to serve their park purpose with minimal negative visual or functional impact on the park and long-term structural stability.	Surfaces to be powerwashed 2x per year. Graffiti and/or stickers removal when necessary. Annual structural inspection.	
	Buildings	Buildings to serve their park purpose with minimal negative visual or functional impact on the park. Long-term functionality of building systems to be maintained.	Exterior surfaces to be powerwashed 2x per year. Graffiti and/or stickers removal when necessary. Rodent, bird, and pest control on monthly basis. Air-conditioning filters replaced per equipment supplier and roofs inspected annually.	
	Pavilions and Shelters	Attractive and maintained for use by park users.	Surfaces to be powerwashed once a month, twice during busier months. Graffiti and/or stickers removal when necessary. Rodent, bird, and pest control on monthly basis.	
	Site Features and Playground	Site features to be visually attractive with no negative visual impact on the park.	Site features will be cleaned and maintained on a monthly basis. Repair and replacement will take place when necessary. Weekly and as-needed inspection of playground equipment with damaged features closed immediately.	
	Artworks	Artworks to be well maintained and presentable to maintain aesthetic role in the landscape.	BBP performs routine maintenance per artist guidelines, not major conservation.	Restricted account for major conservation managed by BBP.

Exhibit III-3

Lighting	Trail Lighting	Lighting adequately maintained to promote safe environment for park users. May have some bulbs out but no long stretches of light to be inoperable.	Pole and housing maintenance to be minimal, with occasional spot painting, graffiti and/or stickers removal (when present). 3+ light bulbs in a row to be replaced within 48 hours and a single bulb within one week.	BBP to close trail segments at night if system problems prevent immediate repair.
	Other Site Lighting	Minimal burnt out bulbs in high profile areas. Other areas may have some bulbs out but no long stretches of security light to be inoperable.	Pole and housing maintenance to be minimal, with occasional spot painting, graffiti and/or stickers removal when present. Light bulbs to be replaced within 48 hours when area used at night is dark. Lights in high profile areas to be cleaned/ wiped down during annual maintenance with other park components.	BBP to close area at night if system problems prevent immediate repair.
	Lunar Cycle Lighting (non-trail)	Overall aesthetic effect is maintained, but individual lighting of features may be off periodically.	Quarterly night inspection of timing controls and lights to confirm system is operating properly. Adjust controls and replace lamps accordingly within 1 week unless specialized engineering or parts required.	
Site Furniture	Trash Receptacles and Recycling Containers	Clean, free of graffiti and stickers. Emptied regularly (see Litter Removal).	To be inspected on a monthly basis and, if required, cleaned, repaired, and painted (when necessary). High-profile areas addressed quickly.	
	Benches and Bike Racks	Clean, free of graffiti and stickers. Repairs made quickly to ensure public use.	To be inspected on a monthly basis or when reported.	
	Drinking Fountains	To be free of debris and litter at all times. Repairs made within one week except when parts needed.	To be cleaned weekly and inspected for maintenance on a monthly basis and when reported. Turn off water during hard freezes.	
Litter Removal	High-Profile Areas	Litter generally not visible except a minimal amount during times of heavy use. Litter removed quickly and not left on the ground.	Trash receptacles emptied and area delittered 2x/day during heavy use and 1x/day other times.	
	Trail and Footpaths	Minimal litter visible.	Trash receptacles emptied and pavement delittered daily.	
	Low-Profile Lawns	Minimal litter visible.	Spot delittering 4x/week and one delittering sweep each Monday.	
	Woodlands and Meadows	Minimal litter visible.	Spot delittering 3x/week and one delittering sweep each Monday.	
	Bodies of Water, Ravines and Water Treatment Areas	No high concentrations of floating litter	Water surface cleared of major floating litter 2x/day.	
	Channel Area, Riparian Areas & Rambles	Minimal litter visible.	Areas delittered during sweep on Mondays and when reported.	
Dumpsters	Maintenance Yard	Trash is not visible at top of dumpster and area around dumpster is kept clean.	Dumpster emptied twice per week.	
	Restaurants	Trash kept in rolling carts in an air-conditioned or air-tight service area. Excess trash is bagged.	Rolling dumpsters emptied once per day	

Exhibit III-3

Post-Flood Sediment & Debris Removal	High-Profile Area	Heavy sediment and debris removed within 3 days after water recedes, minimal visible evidence left after 1 week.	Equipment used to remove debris along trails and at landings does not damage high-end surfaces. Some areas will be done with hand tools. Hardscapes and site features will be powerwashed if necessary.	Standards for all areas do not apply for floods greater than 10-year frequency.
	Primary Trails	Heavy sediment and debris completely removed within 1 week after water recedes to ensure main trail is useable. Trail completely cleared within 3 weeks.	Equipment (such as front end loader and/or bobcat) will be used to remove silt and debris and will be powerwashed if necessary.	
	Secondary Trails	Heavy debris removed within 10 days after water recedes. All footpaths completely cleared within 3 weeks.	Small equipment (such as front end loader and/or bobcat) will be used to remove silt and debris.	
	Woodlands	Heavy debris removed within 10 days after water recedes. Silt deposits may remain due to tree roots. Ground covers may be abandoned.	Methods to protect tree roots. Subject to funding, replant ground covers and understory where appropriate. Accumulation of exposed silt to approximately 6" .	
	Other Landscapes excluding Channel Edges (see Section III(D)3)	Sediment and debris is removed to the extent possible without damaging plants. Silt removed only when maximum depth is reached. Minor debris acceptable. Patches of silt in grass areas is acceptable.	Except in grass areas, silt removal done with small equipment hand tools to minimize damage done to landscapes and plantings or the area is replanted. Dead vegetation and other debris to be collected and removed. Accumulation of exposed silt to approximately 2" - 6" depending on plants.	Subject to funding availability, overall silt coverage is to be kept below a level that smothers the plantings.
Vandalism	Graffiti	Graffiti removed within 24 hours.	Graffiti, gum, and stickers should be removed within 24 hours. Task to be done when necessary. Park Rangers and HPD when needed.	
	Structures	Properly maintained to ensure public use. Repairs to be sympathetic with structure design and detailing.	Repairs made to structures as soon as possible to ensure usability and safety. May be closed or fenced-off temporarily while waiting materials or crew. Park Rangers and HPD when needed.	
	Landscapes	Properly maintained to maintain aesthetics, public use and proper functioning of other park systems, drainage, stormwater runoff, etc. Plants subject to constant abuse may be changed.	Damaged areas may be closed or fenced-off temporarily. Replanting subject to extent of damage, funding and season. Park Rangers and HPD when needed.	
Public Restrooms	Janitorial	Maintain clean and usable restrooms with adequate supplies	To be cleaned and restocked 2x/day during heavy use, 1x/day other times and when reported. Park Rangers and HPD when needed.	
	Fixtures and Plumbing	Fixtures and plumbing maintained and operable with no overflow or running water.	To be inspected on a monthly basis. Additional maintenance and repair required when reported.	

EXHIBIT III-4

ENDANGERED SPECIES/WILDLIFE

Federally listed species that may occur in Harris County are found using RTEST (<https://tpwd.texas.gov/gis/rtest/>). Also see the attached file. The bayou and riparian zone are alive with a diversity of wildlife, some rare. Swallow-tailed kites are a state-listed threatened raptor that is becoming habituated and nesting (in suitable areas) in the vicinity of Buffalo Bayou and other parts of the county. Sizes of effective buffer zones vary for species. However, for diurnal raptors (excepting eagles) "rule of thumb" is a 100 m (radius) buffer around an active nest. Bald eagles are no longer considered a state-listed species, nor are they under the ESA...they do still receive protections under the "Bald and Golden Eagle Protection Act", for which the USFWS has put out Guidelines to assist in management and compliance. Nest buffers for BAEG are recommended to be in the neighborhood of 200 m for some urban areas, but our TPWD published guidance states "750 -1,500 feet." Link to the guidelines: (<https://www.fws.gov/media/national-bald-eagle-management-guidelines-0>)

See listing for Harris County on following pages.

Last Update: 3/17/2022

HARRIS COUNTY

AMPHIBIANS

Houston toad *Anaxyrus houstonensis*

Terrestrial and aquatic: Primary terrestrial habitat is forests with deep sandy soils. Juveniles and adults are presumed to move through areas of less suitable soils using riparian corridors. Aquatic habitats can include any water body from a tire rut to a large lake.

Federal Status: LE	State Status: E	SGCN: Y
Endemic: Y	Global Rank: G1	State Rank: S1

southern crawfish frog *Lithobates areolatus areolatus*

Terrestrial and aquatic: The terrestrial habitat is primarily grassland and can vary from pasture to intact prairie; it can also include small prairies in the middle of large forested areas. Aquatic habitat is any body of water but preferred habitat is ephemeral wetlands.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4T4	State Rank: S3

spotted dusky salamander *Desmognathus conanti*

This species occurs in association with aquatic habitats in forested areas. Small, clear, spring fed streams with sandy substrate bordered with ferns and moss as well as murky, stagnant water bodies in cypress swamps, baygalls, and flood plains in bottomland forests support populations of this species.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S1

Strecker's chorus frog *Pseudacris streckeri*

Terrestrial and aquatic: Wooded floodplains and flats, prairies, cultivated fields and marshes. Likes sandy substrates.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3

Woodhouse's toad *Anaxyrus woodhousii*

Terrestrial and aquatic: A wide variety of terrestrial habitats are used by this species, including forests, grasslands, and barrier island sand dunes. Aquatic habitats are equally varied.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: SU

BIRDS

bald eagle *Haliaeetus leucocephalus*

Found primarily near rivers and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3B,S3N

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HARRIS COUNTY

BIRDS

black rail *Laterallus jamaicensis*

Salt, brackish, and freshwater marshes, pond borders, wet meadows, and grassy swamps; nests in or along edge of marsh, sometimes on damp ground, but usually on mat of previous years dead grasses; nest usually hidden in marsh grass or at base of *Salicornia*

Federal Status: LT	State Status: T	SGCN: Y
Endemic: N	Global Rank: G3	State Rank: S2

Franklin's gull *Leucophaeus pipixcan*

This species is only a spring and fall migrant throughout Texas. It does not breed in or near Texas. Winter records are unusual consisting of one or a few individuals at a given site (especially along the Gulf coastline). During migration, these gulls fly during daylight hours but often come down to wetlands, lake shore, or islands to roost for the night.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S2N

mountain plover *Charadrius montanus*

Breeding: nests on high plains or shortgrass prairie, on ground in shallow depression; nonbreeding: shortgrass plains and bare, dirt (plowed) fields; primarily insectivorous

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G3	State Rank: S2

piping plover *Charadrius melodus*

Beaches, sandflats, and dunes along Gulf Coast beaches and adjacent offshore islands. Also spoil islands in the Intracoastal Waterway. Based on the November 30, 1992 Section 6 Job No. 9.1, Piping Plover and Snowy Plover Winter Habitat Status Survey, algal flats appear to be the highest quality habitat. Some of the most important aspects of algal flats are their relative inaccessibility and their continuous availability throughout all tidal conditions. Sand flats often appear to be preferred over algal flats when both are available, but large portions of sand flats along the Texas coast are available only during low-very low tides and are often completely unavailable during extreme high tides or strong north winds. Beaches appear to serve as a secondary habitat to the flats associated with the primary bays, lagoons, and inter-island passes. Beaches are rarely used on the southern Texas coast, where bayside habitat is always available, and are abandoned as bayside habitats become available on the central and northern coast. However, beaches are probably a vital habitat along the central and northern coast (i.e. north of Padre Island) during periods of extreme high tides that cover the flats. Optimal site characteristics appear to be large in area, sparsely vegetated, continuously available or in close proximity to secondary habitat, and with limited human disturbance.

Federal Status: LT	State Status: T	SGCN: Y
Endemic: N	Global Rank: G3	State Rank: S2N

red-cockaded woodpecker *Dryobates borealis*

Cavity nests in older pine (60+ years); forages in younger pine (30+ years); prefers longleaf, shortleaf, and loblolly

Federal Status: LE	State Status: E	SGCN: Y
Endemic: N	Global Rank: G3	State Rank: S2

reddish egret *Egretta rufescens*

Resident of the Texas Gulf Coast; brackish marshes and shallow salt ponds and tidal flats; nests on ground or in trees or bushes, on dry coastal islands in brushy thickets of yucca and prickly pear

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S2B

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HARRIS COUNTY

BIRDS

rufa red knot

Calidris canutus rufa

Habitat: Primarily seacoasts on tidal flats and beaches, herbaceous wetland, and Tidal flat/shore. Bolivar Flats in Galveston County, sandy beaches Mustang Island, few on outer coastal and barrier beaches, tidal mudflats and salt marshes

Federal Status: LT

State Status: T

SGCN: Y

Endemic: N

Global Rank: G4T2

State Rank: S2N

swallow-tailed kite

Elanoides forficatus

Lowland forested regions, especially swampy areas, ranging into open woodland; marshes, along rivers, lakes, and ponds; nests high in tall tree in clearing or on forest woodland edge, usually in pine, cypress, or various deciduous trees

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: G5

State Rank: S2B

western burrowing owl

Athene cunicularia hypugaea

Open grasslands, especially prairie, plains, and savanna, sometimes in open areas such as vacant lots near human habitation or airports; nests and roosts in abandoned burrows

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G4T4

State Rank: S2

white-faced ibis

Plegadis chihi

Prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; currently confined to near-coastal rookeries in so-called hog-wallow prairies. Nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats.

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: G5

State Rank: S4B

white-tailed hawk

Buteo albicaudatus

Near coast on prairies, cordgrass flats, and scrub-live oak; further inland on prairies, mesquite and oak savannas, and mixed savanna-chaparral; breeding March-May

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: G4G5

State Rank: S4B

whooping crane

Grus americana

Small ponds, marshes, and flooded grain fields for both roosting and foraging. Potential migrant via plains throughout most of state to coast; winters in coastal marshes of Aransas, Calhoun, and Refugio counties.

Federal Status: LE

State Status: E

SGCN: Y

Endemic: N

Global Rank: G1

State Rank: S1S2N

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HARRIS COUNTY

BIRDS

wood stork *Mycteria americana*

Prefers to nest in large tracts of baldcypress (*Taxodium distichum*) or red mangrove (*Rhizophora mangle*); forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: SHB,S2N

CRUSTACEANS

Houston burrowing crayfish *Fallicambarus houstonensis*

All species in the genus *Fallicambarus* are primary burrowers (Guiasu, 2007). It is clearly a primary burrower with 100% of adult and subadult specimens known from excavated burrows. Large numbers of juveniles were collected from Temporary pools (October through February) (Johnson, 2008).

Federal Status:	State Status:	SGCN: Y
Endemic:	Global Rank: G2	State Rank: S3

FISH

alligator gar *Atractosteus spatula*

From the Red River to the Rio Grande (Hubbs et al. 2008); occurs in the Trinity River upstream of Lake Livingston. Found in rivers, streams, lakes, swamps, bayous, bays and estuaries typically in pools and backwater habitats. Floodplains inundated with flood waters provide spawning and nursery habitats.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S4

Mississippi silvery minnow *Hybognathus nuchalis*

Found in eastern Texas streams, from the Brazos River eastward and northward to the Red River; found in moderate current; silty, muddy, or rocky substrate. In Texas, adults likely to inhabit smaller tributary streams.

Federal Status:	State Status:	SGCN: Y
Endemic:	Global Rank: G5	State Rank: S4

oceanic whitetip shark *Carcharhinus longimanus*

Habitat description is not available at this time.

Federal Status: LT	State Status: T	SGCN: Y
Endemic: N	Global Rank: GNR	State Rank: S2

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HARRIS COUNTY

FISH

Sabine shiner

Notropis sabinae

Inhabits small streams and large rivers of eastern Texas from San Jacinto drainage northward along the Gulf Coast to the Sabine River Basin; Habitat generalist with affinities for shallow, moving water and rarely found in pools and backwater areas; closely restricted to substrate of fine, silt free sand in small creeks and rivers having slight to moderate current.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G4

State Rank: S3

saltmarsh topminnow

Fundulus jenkinsi

Occupies estuaries and the edges of saltmarsh habitats along the Gulf coast in salinities of 4-20 ppt in Spartina dominated tidal creeks and wetlands (Peterson & Ross 1991; Peterson & Turner 1994; Lopez et al. 2010; and Griffith 1974). Requires access to small interconnected tidal creeks for feeding and reproduction. Spawning occurs from March to August during high tide events (Robertson Thesis, 2016). Non-migratory.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S1

shortfin mako shark

Isurus oxyrinchus

Habitat description is not available at this time.

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: GNR

State Rank: S2

silverband shiner

Notropis shumardi

In Texas, found from Red River to Lavaca River; Main channel with moderate to swift current velocities and moderate to deep depths; associated with turbid water over silt, sand, and gravel.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G5

State Rank: S4

southern flounder

Paralichthys lethostigma

This is an estuarine-dependent species that inhabits riverine, estuarine and coastal waters, and prefers muddy, sandy, or silty substrates (Reagan and Wingo 1985). Individuals can tolerate wide temperature (~5-35°C) and salinity ranges (0-60 ppt). Southern Flounder spawn in offshore waters of the Gulf of Mexico from October to February (Reagan and Wingo 1985). The oceanic larval stage is pelagic and lasts 30-60 days. Metamorphosing individuals enter estuaries and migrate towards low-salinity headwaters, where settlement occurs (Burke et al. 1991, Walsh et al. 1999). The young fish enter the bays during late winter and early spring, occupying seagrass; some may move further into coastal rivers and bayous. Juveniles remain in estuaries until the onset of sexual maturation (approximately two years), at which time they migrate out of estuaries to join adults on the inner continental shelf. Adult southern flounder leave the bays during the fall for spawning in the Gulf of Mexico. They spawn for the first time when two years old at depths of 50 to 100 feet. Although most of the adults leave the bays and enter the Gulf for spawning during the winter, some remain behind and spend winter in the bays. Those in the Gulf will reenter the bays in the spring. The spring influx is gradual and does not occur with large concentrations that characterize the fall emigration.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G5

State Rank: S5

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HARRIS COUNTY

FISH

western creek chubsucker *Erimyzon claviformis*

Eastern Texas streams from the Red River to the San Jacinto drainage. Habitat includes silt-, sand-, and gravel-bottomed pools of clear headwaters, creeks, and small rivers; often near vegetation; occasionally in lakes. Spawning occurs in river mouths or pools, riffles, lake outlets, or upstream creeks. Prefers headwaters, but seldom occurs in springs.

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S2S3

INSECTS

American bumblebee *Bombus pensylvanicus*

Habitat description is not available at this time.

Federal Status:	State Status:	SGCN: Y
Endemic:	Global Rank: G3G4	State Rank: SNR

bay skipper *Euphyes bayensis*

Apparently tidal sawgrass marsh only, probably covers same range of salinity as saw grass, nectarivore (butterfly), herbivore (caterpillar), larval foodplant is so far unconfirmed but is probably sawgrass, diurnal; two well separated broods apparently peaking in late May and in September which suggests the larvae may well aestivate in summer and the next brood hibernate

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G2G3	State Rank: S1

MAMMALS

big brown bat *Eptesicus fuscus*

Any wooded areas or woodlands except south Texas. Riparian areas in west Texas.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S5

big free-tailed bat *Nyctinomops macrotis*

Habitat data sparse but records indicate that species prefers to roost in crevices and cracks in high canyon walls, but will use buildings, as well; reproduction data sparse, gives birth to single offspring late June-early July; females gather in nursery colonies; winter habits undetermined, but may hibernate in the Trans-Pecos; opportunistic insectivore

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3

blue whale *Balaenoptera musculus*

Inhabits tropical, subtropical, temperate, and subpolar waters worldwide, but are infrequently sighted in the Gulf of Mexico. They migrate seasonally between summer feeding grounds and winter breeding grounds, but specifics vary. Commonly observed at the surface in open ocean.

Federal Status: LE	State Status: E	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: SH

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HARRIS COUNTY

MAMMALS

eastern red bat

Lasiurus borealis

Red bats are migratory bats that are common across Texas. They are most common in the eastern and central parts of the state, due to their requirement of forests for foliage roosting. West Texas specimens are associated with forested areas (cottonwoods). Also common along the coastline. These bats are highly mobile, seasonally migratory, and practice a type of "wandering migration". Associations with specific habitat is difficult unless specific migratory stopover sites or wintering grounds are found. Likely associated with any forested area in East, Central, and North Texas but can occur statewide.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S4

eastern spotted skunk

Spilogale putorius

Generalist; open fields prairies, croplands, fence rows, farmyards, forest edges & woodlands. Prefer wooded, brushy areas & tallgrass prairies. S.p. ssp. interrupta found in wooded areas and tallgrass prairies, preferring rocky canyons and outcrops when such sites are available.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S1S3

Gulf of Mexico Bryde's whale

Balaenoptera edeni

Habitat description is not available at this time.

Federal Status: LE	State Status: E	SGCN: N
Endemic: N	Global Rank: G4	State Rank: SNR

hoary bat

Lasiurus cinereus

Hoary bats are highly migratory, high-flying bats that have been noted throughout the state. Females are known to migrate to Mexico in the winter, males tend to remain further north and may stay in Texas year-round. Commonly associated with forests (foliage roosting species) but are found in unforested parts of the state and lowland deserts. Tend to be captured over water and large, open flyways.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S4

humpback whale

Megaptera novaeangliae

Inhabits tropical, subtropical, temperate, and subpolar waters world wide. Migrate up to 5,000 miles between colder water (feeding grounds) and warmer water (calving grounds) each year. They will use both open ocean and coastal waters, sometimes including inshore areas such as bays, and are often found near the surface; however, this species is rare in the Gulf of Mexico. The northwest Atlantic/Gulf of Mexico distinct population segment is not considered at risk of extinction and is not listed as Endangered on the Endangered Species Act.

Federal Status: LE	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: SNR

long-tailed weasel

Mustela frenata

Includes brushlands, fence rows, upland woods and bottomland hardwoods, forest edges & rocky desert scrub. Usually live close to water.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S5

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HARRIS COUNTY

MAMMALS

Louisiana black bear *Ursus americanus luteolus*

Bottomland hardwoods, floodplain forests, upland hardwoods with mixed pine; marsh. Possible as transient; bottomland hardwoods and large tracts of inaccessible forested areas.

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G5T2	State Rank: SNA

mountain lion *Puma concolor*

Generalist; found in a wide range of habitats statewide. Found most frequently in rugged mountains & riparian zones.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S2S3

muskrat *Ondatra zibethicus*

Found in fresh or brackish marshes, lakes, ponds, swamps, and other bodies of slow-moving water. Most abundant in areas with cattail. Dens in bank burrow or conical house of vegetation in shallow vegetated water. It is primarily found in the Rio Grande near El Paso and in SE Texas in the Houston area.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S5

North Atlantic right whale *Eubalaena glacialis*

Inhabits subtropical and temperate waters in the northern Atlantic. Commonly found in coastal waters or close to the continental shelf near the surface. They migrate from feeding grounds in cooler waters (Canada and New England) to warmer waters of the southeast US (South Carolina, Georgia, and Florida) to give birth in the fall/winter - both areas are identified as critical habitat by NOAA-NMFS. Nursery areas are in shallow, coastal waters. This species is very rare in the Gulf of Mexico and the few reported sightings are likely vagrants (Ward-Geiger et al 2011).

Federal Status: LE	State Status: E	SGCN: Y
Endemic: N	Global Rank: G1	State Rank: S1

northern yellow bat *Lasiurus intermedius*

Occurs mainly along the Gulf Coast but inland specimens are not uncommon. Prefers roosting in spanish moss and in the hanging fronds of palm trees. Common where this vegetation occurs. Found near water and forages over grassy, open areas. Males usually roost solitarily, whereas females roost in groups of several individuals.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S4

Rafinesque's big-eared bat *Corynorhinus rafinesquii*

Historically, lowland pine and hardwood forests with large hollow trees. roosts in cavity trees of bottomland hardwoods, concrete culverts, and abandoned man-made structures

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S2

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HARRIS COUNTY

MAMMALS

sei whale *Balaenoptera borealis*

Habitat description is not available at this time.

Federal Status: LE	State Status: E	SGCN: N
Endemic: N	Global Rank: G3	State Rank: SNR

southeastern myotis bat *Myotis austroriparius*

Caves are rare in Texas portion of range; buildings, hollow trees are probably important. Historically, lowland pine and hardwood forests with large hollow trees; associated with ecological communities near water. Roosts in cavity trees of bottomland hardwoods, concrete culverts, and abandoned man-made structures.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S3?

sperm whale *Physeter macrocephalus*

Inhabits tropical, subtropical, and temperate waters world wide, avoiding icy waters. Distribution is highly dependent on their food source (squids, sharks, skates, and fish), breeding, and composition of the pod. In general, this species migrates from north to south in the winter and south to north in the summer; however, individuals in tropical and temperate waters don't seem to migrate at all. Routinely dive to catch their prey (2,000-10,000 feet) and generally occupies water at least 3,300 feet deep near ocean trenches.

Federal Status: LE	State Status: E	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S1

swamp rabbit *Sylvilagus aquaticus*

Primarily found in lowland areas near water including: cypress bogs and marshes, floodplains, creeks and rivers.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S5

tricolored bat *Perimyotis subflavus*

Forest, woodland and riparian areas are important. Caves are very important to this species.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G3G4	State Rank: S2

western hog-nosed skunk *Conepatus leuconotus*

Habitats include woodlands, grasslands & deserts, to 7200 feet, most common in rugged, rocky canyon country; little is known about the habitat of the ssp. *telmalestes*

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S4

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HARRIS COUNTY

MOLLUSKS

Louisiana pigtoe

Pleurobema riddellii

Occurs in small streams to large rivers in slow to moderate currents in substrates of clay, mud, sand, and gravel. Not known from impoundments (Howells 2010f; Randklev et al. 2013b; Troia et al. 2015). [Mussels of Texas 2019]

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: G1G2

State Rank: S1

sandbank pocketbook

Lampsilis satura

Occurs in small streams to large rivers in slow to moderate current in sandy mud to sand and gravel substrate. Can occur in a variety of habitats but most common in littoral habitats such as banks or backwaters or in protected areas along point bars (Randklev et al. 2013b; Randklev et al. 2014a; Troia et al. 2015). [Mussels of Texas 2019]

Federal Status:

State Status: T

SGCN: Y

Endemic:

Global Rank: G2?

State Rank: S1

REPTILES

alligator snapping turtle

Macrochelys temminckii

Aquatic: Perennial water bodies; rivers, canals, lakes, and oxbows; also swamps, bayous, and ponds near running water; sometimes enters brackish coastal waters. Females emerge to lay eggs close to the waters edge.

Federal Status:

State Status: T

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S2

common garter snake

Thamnophis sirtalis

Terrestrial and aquatic: Habitats used include the grasslands and modified open areas in the vicinity of aquatic features, such as ponds, streams or marshes. Damp soils and debris for cover are thought to be critical.

Federal Status:

State Status:

SGCN: N

Endemic:

Global Rank: G5

State Rank: S2

eastern box turtle

Terrapene carolina

Terrestrial: Eastern box turtles inhabit forests, fields, forest-brush, and forest-field ecotones. In some areas they move seasonally from fields in spring to forest in summer. They commonly enters pools of shallow water in summer. For shelter, they burrow into loose soil, debris, mud, old stump holes, or under leaf litter. They can successfully hibernate in sites that may experience subfreezing temperatures.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G5

State Rank: S3

loggerhead sea turtle

Caretta caretta

Inhabits tropical, subtropical, and temperate waters worldwide, including the Gulf of Mexico. They migrate from feeding grounds to nesting beaches/barrier islands and some nesting does occur in Texas (April to September). Beaches that are narrow, steeply sloped, with coarse-grain sand are preferred for nesting. Newly hatched individuals depend on floating algae/seaweed for protection and foraging, which eventually transport them offshore and into open ocean. Juveniles and young adults spend their lives in open ocean, offshore before migrating to coastal areas to breed and nest. Foraging areas for adults include shallow continental shelf waters.

Federal Status: LT

State Status: T

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S4

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HARRIS COUNTY

REPTILES

prairie skink

Plestiodon septentrionalis

The prairie skink can occur in any native grassland habitat across the Rolling Plains, Blackland Prairie, Post Oak Savanna and Pineywoods ecoregions.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S5

pygmy rattlesnake

Sistrurus miliarius

The pygmy rattlesnake occurs in a variety of wooded habitats from bottomland coastal hardwood forests to upland savannas. The species is frequently found in association with standing water.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S2S3

slender glass lizard

Ophisaurus attenuatus

Terrestrial: Habitats include open grassland, prairie, woodland edge, open woodland, oak savannas, longleaf pine flatwoods, scrubby areas, fallow fields, and areas near streams and ponds, often in habitats with sandy soil.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3

smooth softshell

Apalone mutica

Aquatic: Large rivers and streams; in some areas also found in lakes and impoundments (Ernst and Barbour 1972). Usually in water with sandy or mud bottom and few aquatic plants. Often basks on sand bars and mudflats at edge of water. Eggs are laid in nests dug in high open sandbars and banks close to water, usually within 90 m of water (Fitch and Plummer 1975).

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3

Texas diamondback terrapin

Malaclemys terrapin littoralis

Coastal marshes, tidal flats, coves, estuaries, and lagoons behind barrier beaches; brackish and salt water; burrows into mud when inactive. Bay islands are important habitats. Nests on oyster shell beaches.

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G4T3	State Rank: S2

Texas horned lizard

Phrynosoma cornutum

Terrestrial: Open habitats with sparse vegetation, including grass, prairie, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive. Occurs to 6000 feet, but largely limited below the pinyon-juniper zone on mountains in the Big Bend area.

Federal Status:	State Status: T	SGCN: Y
Endemic: N	Global Rank: G4G5	State Rank: S3

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HARRIS COUNTY

REPTILES

timber (canebrake) rattlesnake *Crotalus horridus*

Terrestrial: Swamps, floodplains, upland pine and deciduous woodland, riparian zones, abandoned farmland. Limestone bluffs, sandy soil or black clay. Prefers dense ground cover, i.e. grapevines, palmetto.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S4

western box turtle *Terrapene ornata*

Terrestrial: Ornate or western box turtles inhabit prairie grassland, pasture, fields, sandhills, and open woodland. They are essentially terrestrial but sometimes enter slow, shallow streams and creek pools. For shelter, they burrow into soil (e.g., under plants such as yucca) (Converse et al. 2002) or enter burrows made by other species.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S3

western chicken turtle *Deirochelys reticularia miaria*

Aquatic and terrestrial: This species uses aquatic habitats in the late winter, spring and early summer and then terrestrial habitats the remainder of the year. Preferred aquatic habitats seem to be highly vegetated shallow wetlands with gentle slopes. Specific terrestrial habitats are not well known.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5T5	State Rank: S2S3

western hognose snake *Heterodon nasicus*

Terrestrial: Shortgrass or mixed grass prairie, with gravel or sandy soils. Often found associated with draws, floodplains, and more mesic habitats within the arid landscape. Frequently occurs in shrub encroached grasslands.

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G5	State Rank: S4

PLANTS

awnless bluestem *Bothriochloa exaristata*

Coastal prairies on black clay; Perennial; Flowering April-Dec; Fruiting April- Dec

Federal Status:	State Status:	SGCN: Y
Endemic: N	Global Rank: G4	State Rank: S3

coastal gay-feather *Liatris bracteata*

Coastal prairie grasslands of various types, from salty prairie on low-lying somewhat saline clay loams to upland prairie on nonsaline clayey to sandy loams; flowering in fall

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G2G3	State Rank: S2S3

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HARRIS COUNTY

PLANTS

corkwood

Leitneria pilosa ssp. pilosa

Wet or saturated silty soils along brackish or freshwater swamps and ponds and other low, poorly drained sites; flowers in early spring, fruiting as early as May

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G2G3T2

State Rank: S2

Correll's false dragon-head

Physostegia correllii

Wet, silty clay loams on streamsides, in creek beds, irrigation channels and roadside drainage ditches; or seepy, mucky, sometimes gravelly soils along riverbanks or small islands in the Rio Grande; or underlain by Austin Chalk limestone along gently flowing spring-fed creek in central Texas; flowering May-September

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G2

State Rank: S2

giant sharpstem umbrella-sedge

Cyperus cephalanthus

In Texas on saturated, fine sandy loam soils, along nearly level fringes of deep prairie depressions; also in depressional area within coastal prairie remnant on heavy black clay; in Louisiana, most sites are coastal prairie on poorly drained sites, some on slightly elevated areas surrounded by standing shallow water, and on moderately drained sites; soils include very strongly acid to moderately alkaline silt loams and silty clay loams; flowering/fruiting May-June, August-September, and possibly other times in response to rainfall

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G3?Q

State Rank: S1

goldenwave tickseed

Coreopsis intermedia

In deep sandy soils of sandhills in openings in or along margins of post oak woodlands and pine-oak forests of east Texas; Perennial; Flowering/Fruiting May-Aug

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S3

Houston daisy

Rayjacksonia aurea

On and around naturally barren or sparsely vegetated saline slick spots or pimple mounds on coastal prairies, usually on sandy to sandy loam soils, occasionally in pastures and on roadsides in similar soil types where mowing may mimic natural prairie disturbance regimes; flowering late September-November (-December)

Federal Status:

State Status: T

SGCN: Y

Endemic: Y

Global Rank: G1

State Rank: S1

Indianola beakrush

Rhynchospora indianolensis

Locally abundant in cattle pastures in some areas (at least during wet years), possibly becoming a management problem in such sites; Perennial; Flowering/Fruiting April-Nov

Federal Status:

State Status:

SGCN: Y

Endemic: Y

Global Rank: G3Q

State Rank: S3

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HARRIS COUNTY

PLANTS

Oklahoma grass pink

Calopogon oklahomensis

Mesic, acidic, sandy to loamy prairies, pine savannas, oak woodlands, edges of bogs, and frequently mowed meadows (Goldman, Magrath & Catling 2002). Flowering March-July.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G2

State Rank: S1S2

panicked indigobush

Amorpha paniculata

A stout shrub, 3 m (9 ft) tall that grows in acid seep forests, peat bogs, wet floodplain forests, and seasonal wetlands on the edge of Saline Prairies in East Texas. It is distinguished from other *Amorpha* species by its fuzzy leaflets with prominent raised veins underneath, and the flower panicles, which are 8 to 16 inches long and slender, held above the foliage. Perennial; Flowering summer

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S3

Shinner's sunflower

Helianthus occidentalis ssp. plantagineus

Mostly in prairies on the Coastal Plain, with several slightly disjunct populations in the Pineywoods and South Texas Brush Country.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G5T4

State Rank: S4

South Texas false cudweed

Pseudognaphalium austrotexanum

In sandy grasslands on eroded area above saline flats; along edge of sendero through mesquite woodland and shrub mottes on sandy loam; on gravel and silt bars and flats in scour plain of streams (TEX-LL specimens Carr 23682, 29264, 22647, 27206). Oct-Jan, sometimes in spring.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G3

State Rank: S3

Texas ladies'-tresses

Spiranthes brevilabris

Sandy soils in moist prairies, incl. blackland/Fleming prairies, calcareous prairie pockets surrounded by pines, pine-hardwood forest, open pinelands, wetland pine savannas/flatwoods, and dry to moist fields, meadows, and roadsides. Delicate, nearly ephemeral orchid, producing winter rosettes, flowers Feb-Apr. Historically endemic to SE coastal plain.

Federal Status:

State Status:

SGCN: Y

Endemic: N

Global Rank: G1G2

State Rank: S1

Texas meadow-rue

Thalictrum texanum

Mostly found in woodlands and woodland margins on soils with a surface layer of sandy loam, but it also occurs on prairie pimple mounds; both on uplands and creek terraces, but perhaps most common on claypan savannas; soils are very moist during its active growing season; flowering/fruiting (January-)February-May, withering by midsummer, foliage reappears in late fall(November) and may persist through the winter

Federal Status:

State Status:

SGCN: Y

Endemic: Y

Global Rank: G2Q

State Rank: S2

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HARRIS COUNTY

PLANTS

Texas prairie dawn *Hymenoxys texana*

In poorly drained, sparsely vegetated areas (slick spots) at the base of mima mounds in open grassland or almost barren areas on slightly saline soils that are sticky when wet and powdery when dry; flowering late February-early April

Federal Status: LE	State Status: E	SGCN: Y
Endemic: Y	Global Rank: G2	State Rank: S2

Texas tauschia *Tauschia texana*

Occurs in loamy soils in deciduous forests or woodlands on river and stream terraces; Perennial; Flowering/Fruiting Feb-April

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G3	State Rank: S3

Texas willkommia *Willkommia texana* var. *texana*

Mostly in sparsely vegetated shortgrass patches within taller prairies on alkaline or saline soils on the Coastal Plain (Carr 2015).

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G3G4T3	State Rank: S3

Texas windmill grass *Chloris texensis*

Sandy to sandy loam soils in relatively bare areas in coastal prairie grassland remnants, often on roadsides where regular mowing may mimic natural prairie fire regimes; flowering in fall

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G2	State Rank: S2

Tharp's dropseed *Sporobolus tharpii*

Occurs on barrier islands, shores of lagoons and bays protected by the barrier islands, and on shores of a few near-coastal ponds. Plants occur at the bases of dunes, in interdune swales and sandflats, and on upper beaches. The substrate is of Holocene age.

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G3	State Rank: S3

threeflower broomweed *Thurovia triflora*

Near coast in sparse, low vegetation on a veneer of light colored silt or fine sand over saline clay along drier upper margins of ecotone between between salty prairies and tidal flats; further inland associated with vegetated slick spots on prairie mima mounds; flowering September-November

Federal Status:	State Status:	SGCN: Y
Endemic: Y	Global Rank: G2G3	State Rank: S2S3

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CHAPTER IV: GENERAL OPERATIONS

A. General

1. Operations Standard: The Park's general level of operations shall comply with the Maintenance and Operations Standard described in the Agreement and with this Chapter IV and Chapters V - VII. If no specific requirements are described below, the Maintenance and Operations Standard shall be as described in the Agreement. The Maintenance and Operations Standard will apply to all operating responsibilities of all Parties within the Park except as specifically described below.
2. Operations Defined: See definition in Article II of the Agreement.
See **Exhibit III-1** for locations of certain areas and features.
3. Safety: All Parties and their employees, licensees, and contractors shall comply with applicable OSHA regulations and any requirements for insurance coverage of property damage, injuries, deaths or other incidents that are required by the Agreement.
4. Environmental Controls:
 - a. Endangered Species: See Chapter III(A)((3)(b)).

B. City Operations

1. Excluded Area: The City shall operate the Excluded Area in accordance with the Maintenance and Operations Standard as it applies to trails, related amenities and bridges and Section 6.02(a)(7) of the Agreement.
2. Houston Parks and Recreation Department ("HPARD"): HPARD has responsibility for:
 - a. Park Rules: As described in Chapter V of this Manual, the HPARD Director shall establish and update the Park Rules for City-owned areas of the Park, including easements, subject to Section 6.04 of the Agreement.
 - b. Park Rules Enforcement: Park Rules on City-owned areas of the Park can be enforced by City personnel. HPARD's Urban Park Rangers will respond to certain enforcement issues (generally parking citations and dogs being off leash) at the Park in the same manner and on the same timeline as it responds to calls concerning any other City park.
 - c. Designated Representatives: The HPARD Director shall designate one member of his staff who will coordinate with BBP concerning operations and maintenance in City-owned areas of the Park. The HPARD Director may also communicate directly with BBP.
3. MOSE: MOSE shall oversee Special Events scheduled by MOSE as described in Chapter VI of this Manual.
4. HPW: HPW shall operate public rights-of-way and public utilities within the Park. In addition, this Manual acknowledges that HPW also has the right to repair existing utilities under the Park and may install new utilities in accordance with the Agreement and Chapter 26 of the Texas Parks and Wildlife Code. For the avoidance of doubt, BBP shall have the responsibility for maintenance and operation of Park improvements within public rights-of-way within the Park in accordance with the Agreement.
5. Houston Police Department ("HPD"): HPD shall work cooperatively with the public and the Parties to prevent crime, enforce the law, preserve the peace, and provide a safe

environment in accordance with Section 6.04 of the Agreement. HPD shall respond to calls for police assistance in the Park in the same manner and on the same timeline as it responds to calls for police assistance in Buffalo Bayou Park. HPD also will have primary responsibility for crowd control when large crowds congregate at the Park.

6. Administration & Regulatory Affairs Department: The Administration & Regulatory Affairs Department shall operate public parking in accordance with Section 6.08 of the Agreement.

C. County Operations

County operations are limited to Park Rules and setting User Fees as described in Chapter V.

D. BBP Operations

1. General: BBP is not responsible for Operations in the Excluded Area. Details of the Maintenance and Operations Standard for BBP are described in this Chapter IV(D) and in **Exhibit IV-1**. The application of the Operating Standard to any general operations responsibility of BBP shall be subject to Section 7.02(c) and Section 7.06 of the Agreement.
2. Management and Coordination with HPARD and the County: BBP's Park Director shall oversee BBP operations and maintenance in the Park and shall coordinate directly with HPARD's and the County's designated representatives. In addition, the President of BBP may communicate directly with HPARD and the County.
3. Park Rules Enforcement: BBP shall monitor the Park with respect to compliance with Park Rules and notify persons of their non-compliance when non-compliance is observed. If BBP determines additional enforcement is appropriate because of specific observed conditions, BBP shall notify HPARD's Urban Park Ranger dispatch, the County, HPD, and/or any off-duty peace officer scheduled and funded by BBP patrolling the Park at that time.
4. Security: Within the constraints of the limited times and locations that its staff is present in the Park, if BBP notices dangerous, illegal and criminal activity within the Park then it will notify HPD about those activities of which it acquires knowledge. BBP shall not be held to a standard of absolute safety for any individual entering the Park. BBP shall coordinate its work with HPARD, the County and HPD. For the avoidance of doubt, during construction, contractors are responsible for supplying security for areas within their work zone at their sole cost.
5. Vandalism: Within the constraints of the limited times and locations its staff is present in the Park, if BBP notices illegal activities that result in vandalism, graffiti and other damage within the Park then it will notify HPD about those activities of which it acquires knowledge. BBP shall not be held to a standard of no damage to the Park. BBP shall coordinate its work with HPARD, the County and HPD. BBP shall endeavor to abate graffiti and damage resulting from vandalism pursuant to Exhibit III-3.
6. Information Center: Subject to adequate funding for development of such facilities, BBP shall operate an information center or kiosk in the Park at Tony Marron Park. Kiosks shall not include third-party advertisements, and if BBP funds are inadequate, staffing and

operation of the information centers shall be reduced before reductions are made to Park maintenance. The purpose of these facilities is to:

- a. Monitor activity in this area of the Park,
- b. Provide general information to the public, and
- c. In conjunction with Concessions, provide other services to the public such as issuing permits and event tickets.

7. Restrooms: Subject to adequate funding for development of such facilities, BBP shall operate public restrooms at Tony Marron Park. BBP is obligated to open these restrooms only when BBP has adequate funding after first funding maintenance of the Park. Restroom hours of operation are 7:00 a.m. to 9:00 p.m.; however, the restrooms will be open only when BBP staff is present to monitor conditions in order to promote safe conditions and to minimize damage and vandalism in the restrooms.
8. Public Parking and Vehicle Staging Areas: BBP shall operate any public parking and vehicle staging areas within the Park that is accessed via a curb cut and may install parking meters in accordance with Section 6.08 of the Agreement. BBP may license these same parking and vehicles staging areas to Concession licensees in accordance with Section 6.07 of the Agreement and as described in Chapter VII. BBP shall not operate on-street public parking except parking under the Lockwood Bridge. See **Exhibit IV-2** for parking areas.
9. Maintenance Yard: BBP shall maintain a secure fenced perimeter, security camera system and other security equipment in and around the maintenance yard.
10. Communications: BBP shall maintain a website with current information about the Park, and BBP shall link its web-based information with the HPARD, Precinct 1 and Precinct 2 websites. If BBP funds are inadequate, communications operations shall be reduced before reductions are made to Park maintenance. BBP shall also coordinate with HPARD, and the applicable Precinct on any proposed press releases or other media activity prior to release.
11. Fiscal and Budget Management: BBP shall conduct its management of Park operations and maintenance in a manner that facilitates the reporting requirements of the Agreement.
12. Optional Operations Activities: While complying with this Manual, the Agreement and Applicable Laws, BBP may opt to conduct additional operations activities not required by the Agreement or this Manual. If it chooses to do so, BBP may raise private funds by offering naming opportunities in accordance with Naming Rights Policy described in Chapter VIII.
13. Other Operations: In addition to the operational responsibilities described in this Section IV(D), BBP has primary responsibility for the following:
 - a. Permitting Special Uses and Park Events - see Chapter V.
 - b. Scheduling and coordination concerning Special Events, except in the Excluded Area and public rights-of-way – see Chapter VI.
 - c. Concessions - see Chapter VII.

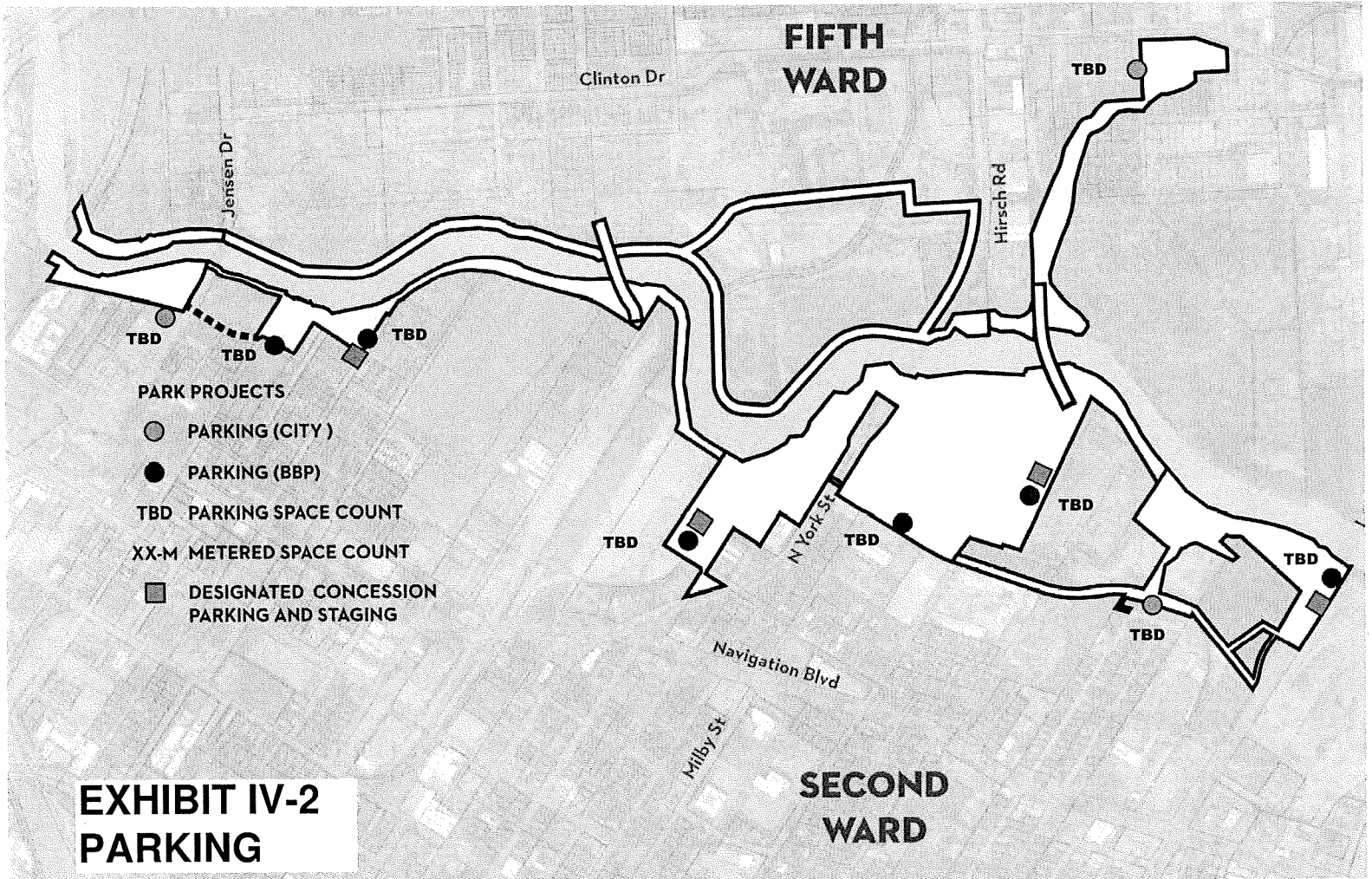
E. Operations During Emergencies

1. Emergency Work: Any entity that performs Emergency Work in the Park shall make best efforts to communicate with BBP, the County and HPARD before, during and after such Emergencies. Emergencies include Federally Declared Disasters described in the Agreement, and certain events of Force Majeure that directly impact the Park, such as acts of civil disobedience, fire, flood or other Casualty
2. Floods: During floods, City and County may enter areas of the Park each owns to remove obstructions to the flow of flood waters. County and City shall endeavor to use the access points described in **Exhibits II-1**, but may enter other areas of the Park with vehicles and mechanized equipment in Emergency situations.
3. Other Dire Situations: During other dire situations, such as attacks, major accidents, environmental incidents, windstorms, fires, riots and terrorist incidents, the City and County shall assume operating control of the property after first notifying BBP.
4. Repairs: Within a reasonable time period following resolution of the Emergency, the City and County shall repair damage caused by their respective Emergency Work and return those damaged areas and facilities to substantially the same condition in which they existed before the Emergency Work occurred; however, no party will be responsible for restoration of areas and features that were installed at variance with Exhibit A as amended by the Standards Committee from time to time.

Exhibit IV-1

* Estimated Work Effort and Manpower Workload represents the projected workload and may be more or less than the actual work required to maintain the Operating Standard. Various factors will cause the workload to vary from day to day, season to season or year to year, including weather, intensity of usage and other Acts of God.

OPERATION	CATEGORY	General Operating Standard	Work Effort and Manpower Workload	Comments
	Establish Park Rules	Chapter 32 for City property as amended with the COM Agreement. County Prk rules for county property.	HPARD Director and County responsible. Standards Committee may make minor adjustments for consistency per Section 3.05e11. See Chapter V for details.	
	Modify Park Rules	BBP can change scope (or City or County pay more) if changes impact maintenance and operating costs.	As described in Section V(A)2.	
	Monitor for Compliance	BBP monitoring for compliance will occur when it has staff in the Park and subject to funding availability. BBP will only be able to monitor limited areas of the Park at any one time.	Weekday zoned field staff and supervisors reporting to Park Manager (about 7:30-3:30). Small weekend field staff (0-1 in each zone). Off-Hours Site Manager @ 1.4 FTE (every night) Off-Hours Crew at 2 FTE per week.	To the degree funds are available, BBP pays for field staff during weekends and off hours.
	Enforcement	HPD and HPARD respond to BBP calls. Limited presence of HPD off-duty officers or other certified peace officers, including constables.	Off-Duty Officer @ 2.9 FTE per week	To the degree funds are available, BBP pays for any officers dedicated to the Park.
	Public Safety	HPD responds to calls in the same timeframe as Buffalo Bayou Park.	Part of standard HPD coverage.	BBP monitors in general and responds when notified by park visitors, including contacting HPD.
	Vandalism	BBP monitors and inspects for vandalism.	Off-Hours Site Manager @ 1.4 FTE (every night) Off-Hours Crew at 2 FTE per week. Subject to funding availability and as-needed, BBP deploys off-duty officers to catch vandals @ +/- .1 FTE/week.	This activity is as much a Maintenance function as an Operations function. Maintenance requires some enforcement.
	Information Centers	Clean and well-lit with a functioning air circulation system set to operate efficiently. Opening hours are subject to staffing availability.	Paid staff available 40 hours/week. BBP endeavors to secure unpaid staff and use of concession staff to supplement this schedule.	Staffing at this location is a lower priority than general park maintenance.
	Restrooms	Restrooms to be monitored by BBP staff. Closed at other times.	Paid staff available in area when restrooms are open. BBP endeavors to secure unpaid staff and use of concession staff to supplement this schedule.	Staffing at this location is a lower priority than general park maintenance.
	Maintenance Yard	Open during hours when BBP staff are present and able to monitor the yard. At other times, it is securely shut with security systems engaged.	BBP Park Manager, Park Supervisor, Mechanic or Contract Compliance Officer on site.	Exact security systems TBD. Stout fencing and lockable gates on perimeter and between outer yard and inner yard.



**EXHIBIT IV-2
PARKING**

CHAPTER V: PARK RULES

A. General

1. Park Rules Defined: The Park Rules for City property are the written rules and regulations prescribed by (i) Chapter 32 of the City Code and (ii) the HPARD Director from time to time. The Park Rules for County property are the written rules and regulations prescribed by each County Commissioner.
2. Changes to Park Rules: With the exception of state law changes, HPARD and the County shall notify BBP of any change to Park Rules at least 30 days in advance of the date for such change or, in the case of a change required by an Emergency, a reasonable time in advance of such change. In the event of changes to any Park Rule that (a) changes the Park's hours of operation or (b) reasonably could (i) increase the Park maintenance and/or operating costs by reducing restrictions on certain behaviors that can result in damage to the Park, by allowing increases in activities that can cause injuries, and by allowing increases in activities that require additional operational oversight, or (ii) decreases the Concession Revenues realizable to BBP from the Park, BBP shall have the right to respond by temporarily modifying its Greenspace Maintenance and Operations, including a reduced Maintenance and Operations Standard. Long-term, BBP may obtain approval for an increase in funding from the City or County, increase its contributions from the BBP Endowment Fund or other funding sources, implement metered parking, and/or identify efficiencies that reduce costs as allowed in Section 7.06(c) of the Agreement.
3. If a state law should change, BBP will adhere to the updated law as of its effective date without further notification from City or County.
4. The Standards Committee may make adjustments to Park Rules in accordance with Section 3.05(e)(11) of the Agreement, and such adjustments are and will be documented in Exhibit V-3.
5. Hours of Operation: The Park shall be open to the public as follows:
 - a. Areas with Lighting: Open daily from 6:00 a.m. to 11:00 p.m., except trails with lighting that are outside of areas that are generally lit, which are open from 6:00 a.m. to 10:00 p.m.
 - b. Playgrounds: Open daily from 9:00 a.m. to 8:00 p.m.; however, if BBP funds are inadequate to properly monitor these areas, the hours when they are open shall be reduced prior to reductions in Park maintenance.
 - c. Areas without Lighting: Areas of the Park without lighting, including footpaths and any unlit areas next to the main trail, are open from sunrise to sunset.
 - d. BBP may from time to time order the temporary closure or change in operating hours of the Park or areas within the Park. Such temporary closure or change in operating hours may be required as the result of renovation and construction projects, Emergency conditions, other operating situations, a Special Use, Park Event or Special Event. A temporary closure will not be considered a permanent change in operating hours unless such change is approved by the HPARD Director or the County's Director for property each owns.

6. Amendments to Chapter 32: See Exhibit V-4 for Chapter 32 amendments.
7. Other Park Uses: See Sections 6.02 and 6.03 of the Agreement for free speech-related administration and **Exhibit V-1** for designation of areas for that purpose, which are described as "Free Speech Areas" therein.
8. Posting: BBP shall maintain a current copy of the Park Rules for the Park (except for the Excluded Area) on the Park's website. Upon changes in state law or notice from HPARD or the County of any changes, BBP shall update the posted Park Rules.

B. Special Uses, Park Events and Permits

1. General: This section describes the Permit process to be administered by BBP to manage Special Uses and Park Events except in the Excluded Area and public rights-of-way. BBP will generally administer the permit process and manage Special Uses and Park Events in general conformance with HPARD procedures on City property and County procedures on County property. BBP may adopt additional detailed procedures and requirements for Special Uses and Park Events; however, any material deviation from this Chapter V(B) must be approved by the HPARD Director or County Director and the Standards Committee.

See **Exhibit VI-1** for Park Event venues.

2. Special Uses Defined: Special Use means permitted additional, extra, special, and/or exclusive privileges to use an area of the Park for an event or activity that is not advertised or open to the public. Installation of temporary art (defined as art on display for less than six months) shall be permitted by BBP as a Special Use. Professional filming of a movie shall be permitted by BBP as a Special Use, and because of this use's potential impact on the park, BBP shall use license requirements similar to those described in Exhibit VI-2.
3. Park Event Defined: Park Event means a use, activity or event defined as a Park Event in Section 32-60 of the City Code [or any similar event under County regulations if the County authorizes events].
4. Permit Defined: A permit is a written document issued by BBP granting permission to a specific permittee to conduct a Special Use or Park Event in the Park.
5. BBP Administration: BBP shall administer Special Use and Park Event Permits in the manner and within the timeframes achieved by HPARD on City property and the County on County property.
6. Special Requirements: BBP has the right to impose special requirements on certain Special Uses and Park Events in general conformance with similar requirements for Special Events described in Chapter VI:
 - a. Peace Officers: Permits involving large gatherings of people may be required to employ certified peace officers.
 - b. Emergency Personnel: Permits involving large gatherings of people may be required to employ emergency medical personnel.
 - c. Traffic Officers: Permits that could disrupt traffic flow may be required to employ traffic officers.
 - d. Youth Functions: Permits involving minors may require chaperones age 21 or over.

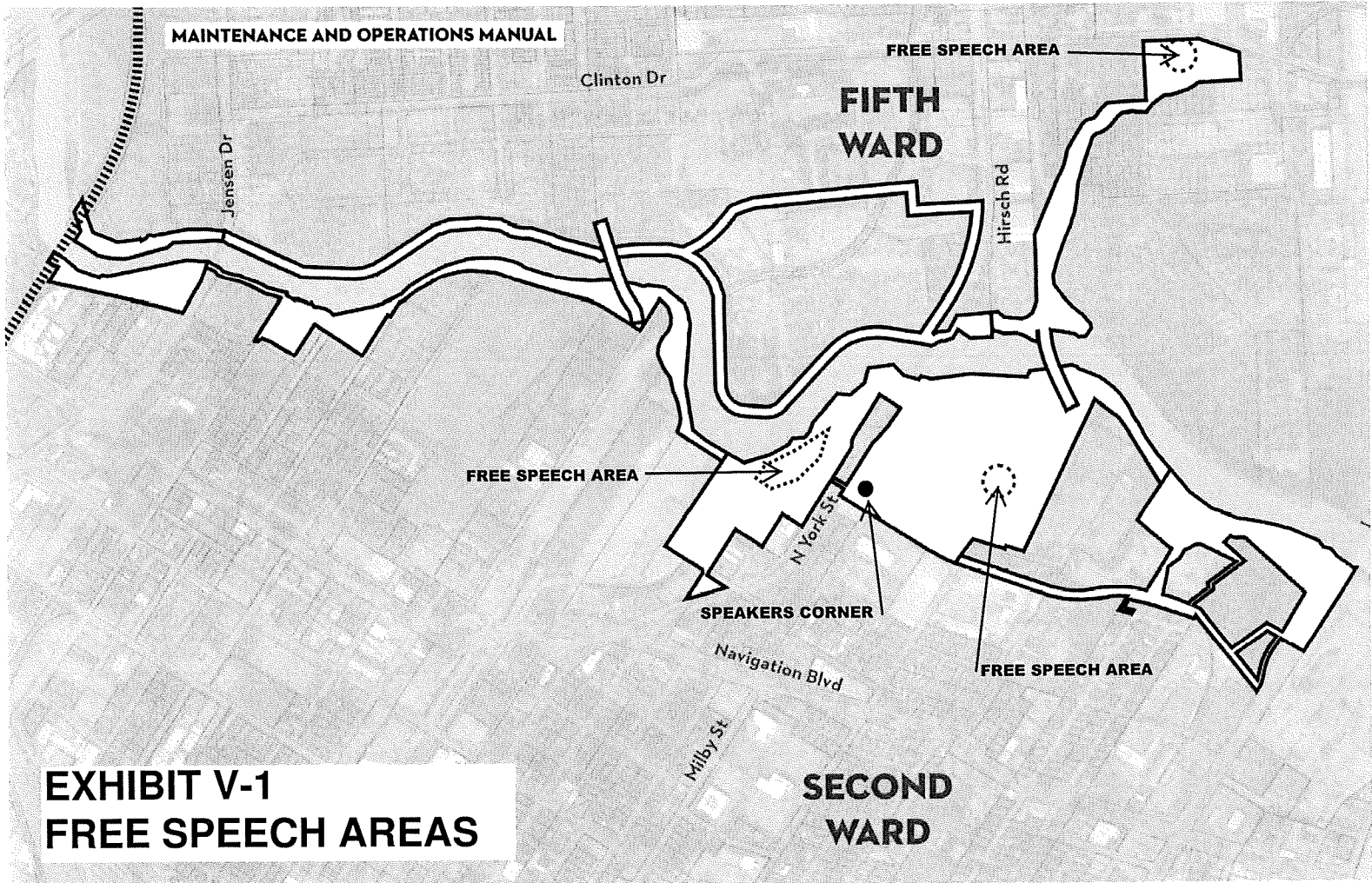
- e. Fencing and Security Deposits: Permits involving large gatherings of people or activities that could damage the Park may require a Security Deposit or installation of fencing.
- f. Event insurance.

C. User Fees and Other Requirements

1. General: BBP has established user fees as described in **Exhibit V-2**, and subject to Standards Committee approval, user fees may be adjusted by the Standards Committee using the following criteria:
 - a. User fees established by HPARD for Special Uses in other City parks.
 - b. The special conditions and constraints present in the Park.
 - c. The cost to BBP of administering Permits and managing Special Uses.
2. Posting of User Fees: BBP shall post a copy of the Park Fee Schedule on the Park's website. A copy of the user fees shall be made available to any person upon request at no cost.
3. Use of Revenue: BBP may use revenues from user fees in accordance with Section 6.05(e) of the Agreement.
4. Records: BBP shall keep accurate records of the costs and expenses incurred in the management of Special Uses and Park Events and make those records available for review by the City and County upon request.
5. Security Deposits: An amount paid to BBP by a permittee for deposit by BBP in its bank account or via a hold on the permittee's credit card before a Special Use or Park Event will be approved by BBP. The amount is refundable after the conclusion of the Special Use or Park Event's breakdown period subject to provisions of Chapter VI.

BBP may require a Security Deposit in an amount reasonably determined by BBP when BBP reasonably determines that the Special Use or Park Event may cause damage to lawns, gardens, pavements, facilities or other appurtenances. The amount of the Security Deposit shall be based on the estimated attendance, type of activity and its proposed location in the Park, and BBP shall have the right to adjust that amount if new information about the type of activity or the estimated attendance is revealed after the activity is approved. If such adjusted amount is not paid, BBP will have the right to rescind the permit and require the cancellation of the Special Use or Park Event.

MAINTENANCE AND OPERATIONS MANUAL



**EXHIBIT V-1
FREE SPEECH AREAS**

EXHIBIT V-2
PARK FEE SCHEDULE – PARK EVENTS AND SPECIAL USES

BBP may adjust this schedule annually in accordance with the Escalator Index (as of September 2022), and as HPARD makes adjustments to its Special Use Permit and Park Event Fees and County makes adjustments to its fees, this schedule also shall be adjusted accordingly. The Standards Committee shall review and approve additional adjustments to this schedule of User Fees if BBP proposes additional adjustments as described in Section V(C)1.

Location Name	Proposed Fee	Proposed Deposit
Tony Marron Park - Event Shed (fits approx. 200)	\$300/ up to 3 hours	\$300 or credit card authorization
Tony Marron Park - Children's Pavilion	\$150/ up to 3 hours	\$150 or credit card authorization
Tony Marron Park - Barbeque Shed	\$150/ up to 3 hours	\$150 or credit card authorization
Tony Marron Park - Entrance Pavilion (current structure)	\$100/ up to 3 hours	\$100 or credit card authorization
Guadalupe Plaza Park (only applies to Downtown Gateway area between Talento Bilingue de Houston and Buffalo Bayou)	\$200/ up to 3 hours	\$500 or credit card authorization

*Original refundable security deposit fees are now a credit card authorization hold.

EXHIBIT V-3
ADJUSTMENTS TO PARK RULES AND REGULATIONS

In accordance with Section 3.05(e)(11) and Section 6.04 of the Agreement, the Standards Committee may make minor adjustments to Park Rules and Regulations to ensure a consistent user experience throughout City-owned and County-owned areas of the Park. Known adjustments as of the Agreement's Effective Date that must be determined include but are not limited to:

1. Park Opening Hours
2. Trail Speed Limits

EXHIBIT V-4
CHAPTER 32 AMENDMENTS

Amendments to be entered here after final approval by City Council.

CHAPTER VI: SPECIAL EVENTS

A. General

Special Events will occur in the Park as described in this Chapter VI; however, (i) no Event Venue shall be designated and (ii) no Special Event shall be licensed on County-owned property without County's express written consent:

1. Special Event Defined: In accordance with Chapter 25-2 of the City Code, a Special Event is a festival, celebration, or gathering that involves the reservation and temporary use of all or a portion of the Park that includes one or more of the following: entertainment, dancing, music, dramatic productions, art or cultural exhibitions, the sale of merchandise, food, or alcohol, or mass participation sports events, such as marathons, bicycling, walking, running and other competitive events that require the significant provision or coordination of City services. The term does not include the rental of a park pavilion or other area of the Park that is available to the general public for rental on a regular basis. Additionally, the term does not include a demonstration or expressive activity that does not involve the reservation of all or a portion of the Park.
2. Application of Manual Requirements: Only Special Events that wholly or partially occur within the Park are governed by this Manual. Special Events that occur exclusively on adjacent streets and roadways are not governed by this Manual.
3. BBP Special Events: Except in the Excluded Area and public rights-of-way, BBP may schedule Special Events in the Park as described in this Chapter VI.
4. MOSE: Mayor's Office of Special Events.
5. Event Licensee: An individual or organization that is licensed by an Event License Agreement to conduct a Special Event within the Park.
6. BBP and MOSE Special Events: BBP shall schedule and license all Special Events with expected attendance of 5,000 or less people. MOSE may schedule and license Special Events with expected attendance of more than 5,000 in coordination with BBP in Event Venues designated for such purpose and other Event Locations, subject to the Special Event limitations, Event License Agreement requirements and scheduling coordination requirements described in this Chapter VI and provided for in Chapter 32 of the City Code. Pursuant to the Agreement, MOSE may schedule and hold 2 Special Events prior to June 30 of each year and 2 Special Events after June 30 of each year, however, MOSE may not self-produce Special Events in the Park, and BBP will not be required to pay license or permit fees associated with Special Events in the Park.
7. BBP Authority: Except in the Excluded Area, BBP is the HPARD Director's designee as described in Chapter 32, Article XIII of the City Code. In addition, Chapter 32, Article XIII of the City Code establishes certain additional BBP authority. In summary, these provisions provide BBP with the following authority; however, if there is a conflict, Chapter 32, Article XIII and Chapter 25 of the City Code control:
 - a. Identify special event areas and restricted areas as part of its authority under Section 25-3;
 - b. Approve forms to be used by MOSE, including any event license agreement form, as part of its authority under Section 25-4(c), and such form shall comply with Section VI(C) of this Manual;

- c. Concurrent authority with MOSE to deny permits as provided in Chapter 32, Article XIII of the City Code, using the same criteria as used by MOSE under Section 25-7 of the City Code;
 - d. Be consulted concerning security control services and traffic control services under Section 25-9 of the City Code;
 - e. Revoke permits under Section 25-10 of the City Code, and participate in appeals under Section 25-11 of the City Code;
 - f. Require insurance and indemnification from event organizers under Chapter 32, Article XIII of the City Code;
 - g. Receive Event Fees and Security Deposits as provided in Chapter 32, Article XIII of the City Code;
 - h. Approve co-produced Special Events under Section 25-16 of the City Code ;
 - i. Require scheduling coordination between MOSE and BBP as provided in Chapter 32, Article XIII of the City Code.
8. Amendments: The Standards Committee, the HPARD Director for City property, and the County for County property must approve any amendments to the requirements of this Chapter VI.

B. Event Venues

Acting as the HPARD Director's designee, BBP has designated certain City-owned areas of the Park as Event Venues; however, all such areas are restricted areas. The restrictions described herein are in addition to any other limitations on Special Events that may be imposed by Chapters 25 and 32 of the City Code, and other laws, agreements, policies or contract requirements. The Standards Committee shall amend the restrictions described below if the size, duration, frequency or nature of Special Events cause long-term damage to the Park's horticultural health or facilities, and at no time will the Park's horticultural health be compromised in favor of a Special Event.

The Park's Event Venues are on City-owned property as described in **Exhibit VI-1**, and no Event Venue may be designated on BBP or County property without BBP's or County's express written permission respectively:

1. Tony Marron Park Event Pavilion
2. Tony Marron Park Barbeque Pavilion
3. Tony Marron Park Event Lawn ("TMP Event Lawn")
4. Tony Marron Park Children's Pavilion
5. Tony Marron Park Entrance Pavilion (existing)
6. Guadalupe Plaza Park (behind TBH)

Other Special Event Locations: Fun runs, cross country meets and other sporting events involving relatively small crowds may be scheduled for certain other areas of the Park occasionally, but not on the TMP Event Lawn or in other Event Venues as defined in **Exhibit VI-1** unless approved in advance by BBP. Special Event limitations include:

- a. Size: No Special Events using other areas of the Park may close trails in such a manner that it is not possible for the public to traverse the Park from Jensen Drive to Lockwood Drive (on the south bank). In addition:

- Cross Country meets may involve no more than a total of 1500 contestants in multiple races
- Fun runs with a route within the Park may involve no more than 1000 contestants
- Walks with a route within the Park may involve no more than 1000 contestants
- b. Duration: Special Events may last no longer than twelve hours per day within the Park, excluding set-up and breakdown periods. Set-up time and breakdown time within the Park may last no longer than twelve hours.
- c. Dates and Frequency: Special Events using other areas of the Park may not occur Friday through Sunday after 12:00 p.m. No one area of the Park may be used for Special Events more than five times per year.
- d. Prohibited Activities except when approved by BBP:
 - Use or denial of access to the Playground,
 - Use of lawns except for cross country meets, organized games involving only people, and small tented refreshment stands,
 - Any entry into landscaped areas other than lawns for any purpose,
 - Amplified sound outside of designated Event Venues,
 - Any use of motorized vehicles; and
 - Any use of non-motorized vehicles in a manner that damages the Park.

C. Event License Agreements

1. Event License Agreements: For Special Events with expected attendance of more than 5,000, MOSE shall issue written Event License Agreements in connection with Special Events in a form approved by BBP. Event License Agreements shall include the Event Fee and Security Deposit payable to BBP described in **Exhibit VI-3** and, at a minimum, the terms and conditions described in **Exhibit VI-2** to protect public safety and Park property; to provide BBP with recourse if there is damage or costs to BBP caused by a Special Event; and to obligate the Event Licensee to comply with insurance and indemnification requirements. For Special Events with expected attendance of 5,000 or less, BBP will issue Venue License Agreements or self-produce a Special Event. In all cases, BBP will adhere to the terms and conditions described in **Exhibit VI-2**; however, insurance and indemnification requirements will be in compliance with the Agreement.
2. Failure to Include Exhibit VI-2 Terms and Conditions: The City shall be financially and contractually liable for any Park damage and/or cost to BBP associated with any Special Event MOSE has scheduled for which MOSE has failed to include the **Exhibit VI-2** terms and conditions in the Event License Agreement for the Special Event.
3. Event Fee and Security Deposit: A Security Deposit and Event Fee owed to BBP will be due and payable with the deposit payment having cleared BBP's bank account prior to approval of the scheduling of a Special Event by BBP. The schedule of Security Deposits and Event Fees is described in **Exhibit VI-3**. The Security Deposit is for protection of Park property and to defray unanticipated costs incurred by BBP before, during and after the Special Event. MOSE may impose additional Security Deposit amounts payable to MOSE to encourage compliance with various provisions of their Event License Agreements. After the Special Event, BBP shall notify MOSE of its intent to retain some or all of the Security Deposit for a Special Event scheduled by MOSE and the reasons why within fourteen (14) days of the end of the breakdown period. BBP will return the remaining Security Deposit within thirty (30) days of the end of the breakdown period. BBP may retain an amount equal to the direct cost of the damage and/or cost to BBP plus

a 15% administrative charge. BBP may elect to waive or reduce these requirements on an event-by-event basis.

4. Major and Repeated Damage or Violation of Exhibit VI-2 Requirements: If a Special Event scheduled by MOSE causes damage to the Park involving costs in excess of the Security Deposit or violates **Exhibit VI-2** requirements in a manner that results in costs to BBP in excess of the Security Deposit, MOSE shall actively assist BBP in securing reimbursement from the Event Licensee. Until such reimbursement has been paid, MOSE shall not schedule Special Events with the Event Licensee or any other organization that includes the same responsible individual(s), and if such a Special Event is proposed to be scheduled in the Park, BBP will have the right to decline approval of the Special Event.
5. Crowd Control: If a Special Event scheduled by MOSE causes large crowds to congregate in the Park outside of the Event Venue, MOSE shall have primary responsibility for arranging for the security and control of these crowds and for any damage to the Park caused by such crowds. After such an occurrence, BBP may decline its approval for any similar Special Event in terms of general size and entertainment until MOSE has demonstrated that it has taken specific steps to avoid a recurrence of crowds forming in the Park outside the Event Venue. If crowds form outside the Event Venue during three Special Events of a similar type, BBP may permanently decline to approve the scheduling of this general size and type of Special Event during the remainder of the Term.

D. Special Event Scheduling

1. Quarterly Reports: MOSE shall provide to BBP a quarterly report listing and providing details about all Special Events proposed to be scheduled by MOSE. MOSE shall not schedule, promote or license any Special Event not reflected on such report except with the prior written consent of BBP. Similarly, BBP shall provide to City a quarterly report listing and providing details about any permitted Special Events booked or scheduled by BBP, including relevant details about the same.
2. Special Event Scheduling:
 - a. BBP must approve the proposed schedule for all Special Events, including set-up and breakdown periods.
 - b. Reservations are on a first come, first served basis, and BBP may decline approval of any Special Event proposed less than thirty days prior to the date of the first proposed set-up day for the Special Event. Unless waived in writing by BBP, no reservation will be considered effective until BBP has received (i) an executed Event License Agreement that includes the terms and conditions described in **Exhibit VI-2**, (ii) an insurance certificate complying with **Exhibit VI-2**, and (iii) any Event Fee and Security Deposit required for such reservation is paid and such payment has cleared BBP's bank account or BBP has secured a hold on the Event Licensee's credit card.
 - c. MOSE will submit a proposed Special Event to BBP a minimum of thirty (30) days prior to the scheduled start of set-up for the Special Event, and MOSE shall not initiate promotions for such Special Event nor allow the proposed Event Licensee to initiate promotions of the Special Event until the Event Licensee has obtained BBP's approval for such Special Event. After providing the information described in Section VI(D)(2)(b), MOSE shall not materially change any of the information about the Special Event or allow assignment of the Event License Agreement, Event Licensee or the Special Event producer for the Special Event without BBP approval.

- d. Because of the importance of access to the public and the horticultural health of the Park, Special Events are limited to the Event Venues. BBP may decline approval of a Special Event because the proposed Special Event does not comply with the requirements of Section VI(B).
 - e. BBP reserves the right to cancel and/or reschedule any Special Event for just cause upon due notice including any safety, health or Emergency.
- 2. In addition to other requirements of this Part VI, MOSE and its Event Licensees may be required to install fencing to protect areas of the Park not designed and maintained to accommodate a Special Event of the type being proposed.
 - 3. BBP has the right to revoke a permit as described in Section 25-10 of the City Code if new information about a Special Event or its estimated attendance is revealed after the Special Event is approved, and if such adjusted amount is not paid, BBP has the right to rescind approval, require cancellation of the Special Event and/or retain the increased Event Fee before returning the Security Deposit. The Event Licensee and BBP may also mutually agree to adjust the amount of a Special Event's Event Fee and/or Security Deposit as an alternative.

E. Use of Event Fee and User Fee Revenue

In accordance with Chapter 32, Article XIII, BBP may use fee revenue associated with Special Events for the benefit of the Park in accordance with Section 6.05(e) of the Agreement.

MAINTENANCE AND OPERATIONS MANUAL

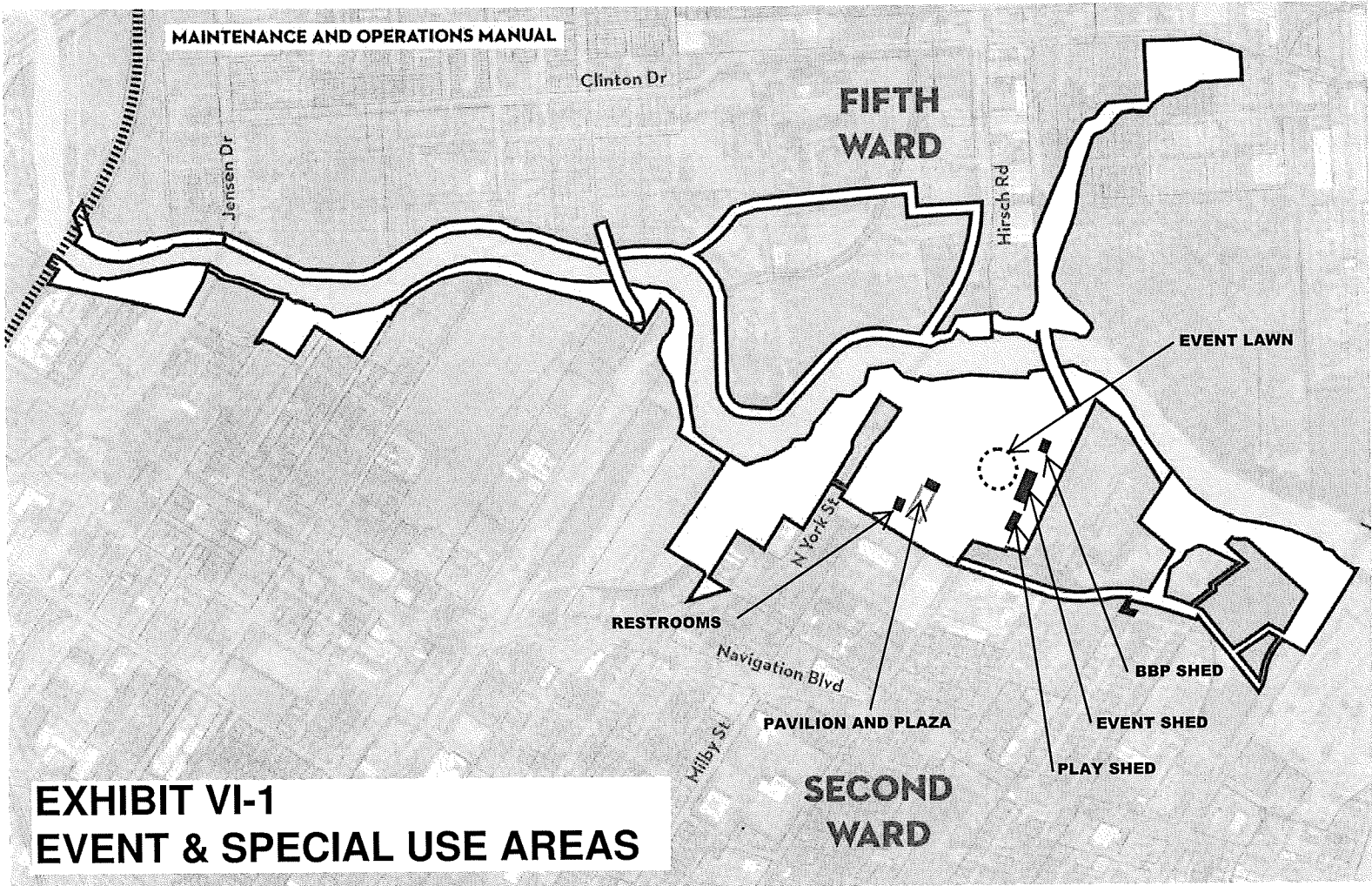


EXHIBIT VI-2 – EVENT LICENSE AGREEMENT REQUIREMENTS

MOSE and BBP will cooperate in the development of their Event License Agreements for the use of Event Venues in the Park, and such Event License Agreements shall include the following provisions. All defined terms are as described in this exhibit or the Manual. When used below, the term “Licensee” includes the Event Licensee and its contractors, vendors, employees, agents, volunteers, guests and invitees. “Event” and “Special Event” have the same meaning in this exhibit:

- a. Licensee shall comply with all applicable laws, rules, ordinances, regulations, codes, statutes and court orders (whether federal, state or local) and will not do or permit to be done anything in violation thereof. Licensee shall not commit or permit any nuisance in the Park.
- b. Licensee acknowledges that the Event Venue is suitable for the Event regardless of any defects that may exist, whether same are apparent or otherwise, and that BBP and the City have no obligations, express or implied, to modify or improve the Event Venue. Licensee agrees that no representation respecting the Event Venue condition and no promises to decorate, alter, repair or improve the Event Venue have been made by BBP or the City. Neither BBP nor the City is liable to Licensee for any loss caused by the Event Venue being in a state of disrepair.
- c. The termination of this Event License Agreement as herein provided shall not relieve Licensee from the payment of any sum that shall then be due and payable or become due and payable to BBP hereunder or any claim for damages then or therefore accruing against Licensee hereunder, and any such sum or claim for damages by any remedy provided for by law, or from recovering damages plus reasonable attorney’s fees from Licensee for any default hereunder. All rights, options and remedies of BBP contained in this Event License Agreement shall be cumulative of the other, and BBP shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Event License Agreement.
- d. The Park and its Event Venues shall at all times be under the charge and control of BBP and HPARD. BBP and HPARD shall at all times have free and unlimited access to the Park and its Event Venues and shall have the right at any time to enter any portion thereof for any purpose whatsoever.
- e. BBP reserves the right to monitor all individuals in the Park, its Event Venues and facilities, including, but not limited to, any employee, agent, contractor, sponsor, guest or invitee of the Licensee. BBP reserves the right to cause the ejection any objectionable individual (as determined in BBP’s sole discretion) without prior notice to the Licensee. The Licensee hereby waives any and all claims for damages of any kind against BBP that may result from such action.
- f. All Events serving alcohol and other Events with attendance of more than five-hundred (500) persons and/or ten (10) concessionaires must have an event planner approved by BBP who is responsible for developing accurate, legible site maps; clear, complete timelines; obtaining all applicable TABC, health or other permits necessary; managing all event vendors and suppliers; providing concessionaire and exhibitor load-in instructions; and managing the event set-up, conduct of the Event and event breakdown. If BBP must assume this role or perform any one of these duties during the Event, its set-up or its breakdown, it will charge for these services and items and reduce the Security Deposit returned to the Licensee accordingly.

- g. The Licensee shall, at all times, conduct its activities with full regard for public safety and shall be responsible for the conduct of all persons admitted to the Event or any portion thereof. BBP and the City shall have no obligation or liability for the security, health or safety of the Licensee and releases BBP and the City from the same.
- h. Uniformed and armed licensed peace officers certified by the State of Texas ("Officers") must be in attendance at the Event, beginning at least one hour before and until one hour after the Event. Officers are provided to ensure the safety of the attendees and to monitor the Event Venue. Officers are not provided to secure monetary payment or assist with traffic flow and parking. The Licensee shall fund the number of Officers listed below. Additional Officers will be required to perform any duties other than safety and monitoring the Event Venue, such as helping to control the traffic (see Traffic section). If the number of Officers required exceeds five, then one Officer must be a Sergeant *:

0 – 100 guests: Officers Optional.

101 - 500 guests: One Officer.

501-1,500 guests: Two Officers.

1501+ guests: One Officer/500 guests.

* Required numbers above are doubled if alcohol is served at the Event.

Notwithstanding the requirement that the Licensee meet the above security standards in connection with the holding of the Event, including the provisions of Officers where applicable, BBP shall have no obligation or liability with respect to the security, health or safety of the Licensee, and Licensee releases BBP and the City from same.

- i. When an Event is a function for Minors, a minimum of one (1) adult chaperone for each ten (10) Minors shall be required. Such chaperones must be present prior to opening the Event Venue for the Event, and shall remain at the Event Venue throughout the scheduled Event.
- j. Vehicles are not permitted in the Park without a Vehicular Access Pass granted by (MOSE or BBP), and this pass will only permit access to the Event Venue. Heavy vehicles (vehicles other than light pick-up trucks and passenger automobiles) are not to enter any area of the Park without explicit written permission of BBP as documented in the Event License Agreement. It is the sole responsibility of the Licensee to inform everyone associated with the Event that vehicular access is not permitted without prior written permission. Upon notice from BBP, unauthorized vehicles shall be removed from the Park, and in such cases, Licensee is subject to loss of Security Deposit. It is the Licensee's responsibility to plan for load-in in a manner and on a schedule that minimizes the risk of damage caused by unauthorized use of vehicles in the Park.
- k. The Licensee is responsible for securing parking for the Event, and no Event parking is allowed within the Park except in paved parking areas within the licensed Event Venue.
- l. All Licensees are required to restore the Event Venue and surrounding area back to their full Aesthetic and Horticultural Condition and Functionality prior to the period such Event Venue was licensed to the Licensee, immediately following the conclusion of the Event. (MOSE or BBP) shall, at its sole discretion, determine the number of temporary trash receptacles required for the Event, and the Licensee will be responsible for obtaining, maintaining and removing those receptacles. All trash must be cleared, regularly bagged and tied, and receptacles

properly relined before, during and after the Event. Before leaving the Event Venue, the Licensee shall be responsible for removing all trash bags (full or still in receptacles), litter and debris. Receptacles, crates, decorations or other materials brought to the Event Venue by the Licensee must be removed by the Licensee immediately after the Event. If the Licensee has not cleaned the Event Venue as outlined above, BBP will charge the Licensee to clean the Event Venue and surrounding area, which charge may be deducted from the Security Deposit.

- m. Licensee is responsible for providing restrooms, one (1) toilet fixture per one hundred and fifty (150) guests, balanced between genders and with a minimum of one (1) for each gender. (MOSE or BBP) may require additional toilet fixtures if alcohol is being served, and (MOSE or BBP) may increase the required number of toilet fixtures if the Event exceeds four (4) hours. The Park's restrooms are not available for Events except when an additional fee is paid to BBP.
- n. Alcohol is only allowed within fenced areas for Events that have a valid permit from the TABC. Alcoholic beverages must be contained within the licensed Event Venue, and guests are prohibited from being anywhere in the remainder of the Park with any alcoholic beverage. Licensee shall not engage in any conduct prohibited by Chapter 108, Subchapter C of the Texas Alcoholic Beverage Code.
- o. No vehicles or equipment shall be driven on lawns except on routes approved by BBP and with $\frac{3}{4}$ " plywood (or equivalent material approved in advance by BBP) laid on the route to protect the lawn.
- p. No staking of any kind is allowed, and no decorations may be tied, taped, nailed, pinned or otherwise attached to buildings, trees, light posts or furniture. Decorations may be placed on self-supporting stands but must be secured against wind and may not be driven into the ground because of potential damage to irrigation and electrical lines. All items brought into the Park must be removed within the allowable breakdown period, or the Licensee will forfeit its Security Deposit.
- q. Set up and breakdown of the Event equipment, fencing, signs, comfort stations and decorations shall begin and be completed in accordance with the Event schedule and Event Venue plan provided to BBP prior to its approval of the Event. All load-in and load-out activities shall be conducted through the areas and routes approved by BBP for such purpose. Any items present in the Park outside of the approved set-up and breakdown schedule and/or outside of the approved Event Venue and its approved areas and routes are subject to confiscation by BBP. Gardens, lawn, foliage, wood decks, stone pavement, concrete walkways, gravel surfaces, drainage grates, lighting and furniture must be protected from damage during load-in, load-out and the Event itself, and Licensee is responsible for any damage to Park landscaping or facilities, including costs that exceed the Security Deposit. The Licensee's event producer must be present at the facility when any set up or breakdown is to occur. BBP will not be held responsible for any items brought to the Park by the Licensee and/or third parties contracted by the Licensee. The Licensee is responsible for any security required to protect the event equipment and other event-related items while those items are in the Park.
- r. **Security Deposit:** The Security Deposit will be used to ensure payment of amounts owed by the Licensee to BBP pursuant to the terms and conditions of this Event License Agreement. In addition to any other rights of BBP contained in this License Agreement, BBP may retain the Security Deposit, or a portion thereof plus a 15% administrative fee, for the following reasons:

1. The repair or replacement of any Park or BBP property that is damaged or destroyed by the Licensee, including damaged lawns and landscaping.
 2. If Licensee Parties operate vehicles within the Park without MOSE or BBP permission.
 3. For failing to reduce sound (music) levels if required by the BBP.
 4. For failure to vacate the Park in accordance with the set-up and breakdown schedule.
 5. For failure to remove Event decorations, equipment and/or signs as and when required by the terms of this License Agreement.
 6. To pay for BBP's costs resulting from incomplete, excessive or unusual clean up.
 7. For any use of BBP staff or equipment during set-up or breakdown because of Licensee's inadequate preparation for the Event.
 8. For violating any provision of this License Agreement.
- s. **Event Insurance:** Licensee shall, at its sole cost and expense, obtain and maintain the following policies of insurance:

Commercial General Liability Policy: A commercial general liability insurance policy ("Licensee's GL Policy"), written on an occurrence basis, naming the Licensee as the named insured (with the effect that Licensee and its employees and contractors of any tier are covered) and BBP and the City as additional insured and additional certificate holder, affording protection against liability arising out of personal injury, bodily injury, sickness and death or property damage occurring, in, upon or about the event. Licensee's GL Policy shall have the following policy limits: (i) \$1,000,000 each occurrence and (ii) \$2,000,000 general aggregate. Licensee's GL Policy will be effected under valid policies by insurers having an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VIII" and shall include a waiver of all rights of subrogation against BBP.

Liquor Liability Policy: If liquor is served at the event, a liquor liability policy ("Liquor Liability Policy") covering the Event naming Licensee as the insured (with the effect that Licensee and its employees and contractors of any tier are covered) and BBP and the City as an additional insured, in an amount not less than (i) \$1,000,000 general aggregate and (ii) \$1,000,000 each occurrence.

BBP shall not be obligated to maintain and shall not maintain any insurance with respect to the Event.

Each and every insurance policy required to be carried by the Licensee shall (i) contain an endorsement to the effect that the "other insurance" clause that may appear therein is not applicable to BBP and the City, (ii) name BBP and the City as an additional insured at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of BBP and the City, (iv) provide that such policy is primary and that any other insurance of any insured or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing, (v) provide that any loss shall be payable in accordance with the terms of such policy notwithstanding any action, inaction or negligence of the insured or of any other person(s) (including Licensee, City or BBP) which might otherwise result in a diminution or loss of coverage, including "breach of warranty", and (vi) provide the respective interests of the Licensee, BBP and the City shall be insured regardless of any breach or violation by the Licensee, BBP, the City or any other person of any warranty, declaration or condition contained in or with regard to such insurance policies.

Agreement to Indemnify: To the maximum extent allowed by applicable law, the Licensee covenants and agrees to and hereby does indemnify, protect, defend and hold **BBP**, and the **City** and each of their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors, lessees, sublessees, licensees, lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and affiliates (collectively, "Indemnatee") harmless from and against any and all demands, claims, suits, losses, damages, causes of action, fines, penalties, liabilities, costs, settlements, judgments and expenses (collectively, "Indemnity Claims"), including, but not limited to, those Indemnity Claims arising in favor of or brought by any of the Licensee's guests, invitees, employees, agents, consultants, contractors (of any tier), suppliers, vendors or representatives or any other person directly or indirectly employed by Licensee or any of the foregoing or for whose actions Licensee or any of the foregoing may be liable (collectively, the "Licensee Parties"), or by any governmental authority or by any other third party, whether arising in equity, at common law or by statute (including, but not limited to, the Texas Deceptive Trade Practices Act or similar statutes of other jurisdictions), or under the law of contracts, torts (including, but not limited to, negligence and strict liability without regard to fault) or property, of every kind or character (including, but not limited to, Indemnity Claims for death, personal injury, emotional distress, discriminatory denial of access or real or personal property damage) and which are based upon, in connection with, relating to or arising out of, directly or indirectly (i) the Event or Licensee's use or occupation of the Park or any portion thereof in connection with same, (ii) Licensee's breach of the Event License Agreement, (iii) the actions, inactions, negligence, gross negligence or willful misconduct of Licensee, (iv) the failure of Licensee to comply with all applicable laws in connection with the Event or the use or occupation of the Park or any portion thereof or (v) any infringement of any intellectual property rights arising out of the event or the exercise of the Licensee's rights or performance of the Licensee's obligations under the License Agreement, **EVEN IF DUE IN WHOLE OR IN PART TO ANY INDEMNITEE'S NEGLIGENCE OR OTHER FAULT, VIOLATION OF STATUTE (INCLUDING, BUT NOT LIMITED TO, THE TEXAS DECEPTIVE TRADE PRACTICES ACT) OR STRICT LIABILITY; PROVIDED, HOWEVER, THAT THE LICENSEE'S OBLIGATION OF INDEMNIFICATION HEREUNDER SHALL NOT EXTEND TO THE PERCENTAGE OF ANY INDEMNITY CLAIMS CAUSED BY INDEMNITEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The obligations of the Licensee shall not be construed to negate, abridge or reduce the rights or obligations of indemnity, which would otherwise exist as to Indemnatee, but shall operate to expand or increase such obligation, if applicable. None of (i) the insurance required by the Licensee, (ii) any other insurance carried by the Licensee or any Licensee Party, (iii) Indemnatee being named additional insured on certain insurance carried by Licensee nor (iv) any benefits payable under any employee benefits acts shall be construed as a limitation upon the duties and obligations of Licensee hereunder. This indemnity includes Licensee's agreement to pay all costs and expenses of defense, including, but not limited to, attorney's fees, expenses of litigation and court costs incurred by Indemnatee. This indemnity shall apply without limitation to any liabilities imposed on any party indemnified hereunder as a result of any statute, rule, regulation or theory of strict liability. The Licensee expressly assumes the entire liability pursuant to this indemnification provision for any and all liabilities arising in favor of any third party, governmental authority or the Indemnatee.

t. **Required Use of Names.** Licensee shall use the following names when referring to areas and features within Tony Marron Park:

1. Tony Marron Park
2. Kinder Foundation Trail
3. Kinder Foundation Bridge

EXHIBIT VI-3
PARK FEE SCHEDULE - SPECIAL EVENTS

The Event Fees described in this exhibit will be adjusted annually in accordance with the Escalator Index. BBP may adjust its Security Deposits if it can demonstrate that damage to the Park or unanticipated costs to BBP due to Special Events is exceeding Security Deposit amounts described in this exhibit, with such adjustments subject to Standards Committee review and approval.

Location Name	Proposed Fee	Proposed Deposit
Tony Marron Park – Event Lawn and Event Shed – under 5,000 attendees	\$2,500/ day	\$2,500 or credit card authorization
Tony Marron Park - Event Lawn and Event Shed – more than 5,000 attendees	\$5,000/ day	\$5,000 or credit card authorization
Additional load-in/load-out days	\$500/day	\$500 or credit card authorization

*Original refundable security deposit fees are now a credit card authorization hold.

CHAPTER VII: CONCESSIONS

A. General

1. BBP has the exclusive right to manage Concessions in the Park, including the right to select Concession licensees and to develop improvements for such Concessions in accordance with Section 6.07 of the Agreement.
2. At no time shall a BBP Concession licensee be permitted to conduct its activities in violation of applicable laws, in a manner that creates a nuisance for the Park or its neighbors, or in a manner that creates public safety hazard.
3. All Concession Revenues received by BBP shall be held by BBP in the Capital Expenditure Reserve Fund in accordance with Section 6.07(d) of the Agreement or, as deemed reasonably necessary or appropriate by BBP, transferred to Operations and maintenance funds, for the benefit of the Park during the Term.
4. City and County shall grant no concession licenses in the Park during the Term.
5. Concessions Defined: In Article II of the Agreement. Concessions within licensed Special Event venues and permitted Special Use and Park Event venues, during such licensed Special Events and permitted Special Uses and Park Events, are excluded.

B. Operating Standard

BBP shall cause all Concessions to be operated in compliance with all Applicable Laws and in a manner that generally supports the project goals described in Section 1(C). BBP will manage Concessions to minimize visible trash in the Park, noise, use of parking in violation of the requirements of the Manual, and other activities that reduce the overall aesthetics, environmental qualities and public enjoyment of the Park.

C. Concession Areas

The areas available for BBP's licensing for Concessions are described in **Exhibit VII-1**. Seasonal Concessions may be farmers or artisan markets, food trucks, food carts and other activities that are Concessions for a limited period of time, which do not require permanent improvements.

D. Parking and Vehicle Staging

Parking and vehicle staging areas identified in **Exhibit IV-2** (also Exhibit E of the Agreement) are available for licensing for Concessions in such cases that access to and special privileges in such areas are required features for the success of the Concession.

E. Service Access

BBP may include in its Concession licenses certain areas that are restricted to service activities associated with the Concession. In addition, the Concession licenses may include limited access to adjacent areas of the Park that are required for access to such services areas.

F. Hours of Operation

Any allowable or required Concession opening hours must comply with the Park's hours of operations; however, the HPARD Director (for City property) and County Director (for County property) may in his or her sole and absolute discretion approve variances from those hours upon the request of BBP.

G. BBP Concession

During the Term, BBP may plan, design, develop, maintain and operate the BBP Concession in a manner that is consistent with the overall design, use and character of Tony Marron Park, using funds BBP secures for these purposes. In that regard, cultural and/or commercial uses that (i) still allow the park's green space to extend into the property, (ii) accommodate activities that are compatible with the community's use of the park, and (iii) are compatible with (but not necessarily identical to) the park's design will be considered consistent. These uses will be governed by the requirements that apply to Concessions in the Agreement. Any such proposal shall be subject to Article V of the Agreement; however, once redeveloped, only the cost of maintaining and operating the green space component of the BBP Concession may be funded by the Greenspace Maintenance Fund. Any other area within a Concession shall be maintained and operated by BBP or the Concession.

Prior to any such development of the BBP Concession, BBP may (i) maintain and operate the property using the Greenspace Maintenance Fund and (ii) produce or license Special Events and permit Park Events and Special Uses in accordance with the procedures in Chapter V and Chapter VI respectively.

MAINTENANCE AND OPERATIONS MANUAL

Clinton Dr

SEASONAL CONCESSION

**FIFTH
WARD**

Hirsch Rd

Jensen Dr

SILOS

SEASONAL CONCESSION

POSSIBLE CONCESSION
INSIDE MAINTENANCE
FACILITY

POSSIBLE
CONCESSION
INSIDE EVENT SHED

BBP CONCESSION

Navigation Blyd

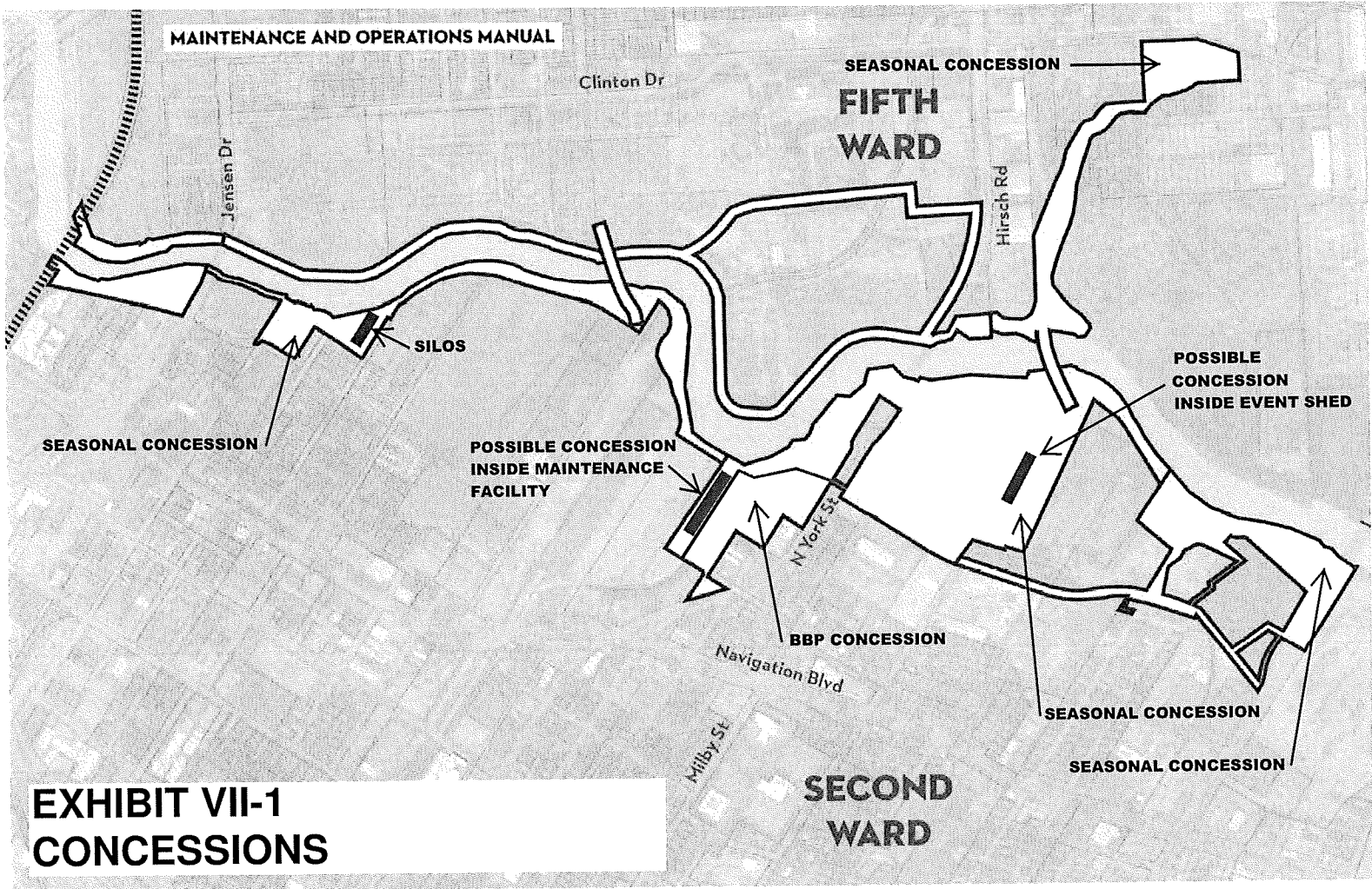
**SECOND
WARD**

SEASONAL CONCESSION

SEASONAL CONCESSION

Hilby St

**EXHIBIT VII-1
CONCESSIONS**



CHAPTER VIII: ADDITIONAL IMPROVEMENTS

A. General

1. General Prohibition: Except as allowed by this Chapter VIII, no additional improvements may be implemented in the Park, including permanent artworks, landscaping and major planting projects.
2. Development Standard Defined: All additional improvements planned, designed or constructed in the Park shall (i) be of the same construction and consistent aesthetic quality as the landscapes, site features, structures and artworks implemented prior to Park Dedication, (ii) as determined by the Standards Committee in accordance with Section 3.05(e)(4), (iii) as approved by the HPARD Director for City property, the County for County property and BBP for BBP property, and (iv) in accordance with Article V of the Agreement if proposed for the Park.
4. Ten-Year Plan: Certain additional improvements are described in Exhibit A5 as amended by the Standards Committee, and implementation of these features shall comply with Article V of the Agreement.
5. Utility and Public Safety Projects: Projects required for utility work, flood control and public safety (with the exception of expanding roadways into the Park) are not subject to approval under this Manual; however, they must be designed and constructed to minimize their impact on the Park and in accordance with the notification and review procedures described in Section VIII(B). The Party or other person or entity causing or permitting such work shall restore the Park to the full Aesthetic and Horticultural Condition and Functionality as existed prior to its commencement of such work. All such work shall consist of materials, designs and engineering consistent with completed Park Projects.
6. Unobstructed Trail & Pathway Width: The preferred unobstructed pavement width of the main trail or pathway intended for use by both pedestrians and cyclists along Buffalo Bayou, and primary access connections to this trail, (the "Bayou Trail") is fifteen (15) feet. The minimum acceptable unobstructed pavement width standard is thirteen (13) feet; provided, however, brief segments of the Bayou Trail may gradually transition to narrower widths to avoid existing obstacles or allow for a more practical, site-specific design within the available easement or trail land. The Bayou Trail may not have a width less than twelve (12) feet unless approved by the Standards Committee. When the unobstructed pavement width is less than fifteen (15) feet, a minimum horizontal clearance of two (2) feet exists between the edges of the pavement and any wall, structure, guardrail, or other vertical improvement beyond standard site furnishings associated with the trail or pathway.

Other trails, pathways, and sidewalks within the Park may have a minimum standard width less than the standard width of the Bayou Trail when constructed in accordance with the Park Project design approved by Standards Committee under section 3.05(e) of the Agreement
7. Trail & Pathway Vertical Clearance: Except where limited by an existing physical constraint, the minimum vertical clearance on a trail or pathway is ten (10) feet when intended for use by cyclists and eight (8) feet when intended only for pedestrian use. The vertical clearance is measured from the highest point of the pavement surface.

8. Other Requirements: Only pavements, trees, lighting and basic groundcovers will be installed within ten feet of the curb of adjacent roadways and within utility easements in place as of the Effective Date of the Agreement. BBP may install signage in these areas but will remove such signage if it interferes with work planned by HPW.

B. Notification and Review

Any Party or other entity planning additional improvements in the Park must comply with Section 3.05(e)(4) of the Agreement.

C. Other Requirements

Requirements for additional work developed by the City, County or BBP shall generally conform to the Agreement, including with regard to insurance and indemnification requirements for City contractors and consultants.

D. Emergency Work

Emergency Work is exempted from the requirements of this Chapter VIII and is described in Section IV(E).

E. BBP Naming Rights Policy

Subject to the requirements of Section 3.04 of the Agreement, BBP has the right to name features and improvements within the Park; however, only such names for donors of gifts of \$10,000 or more shall survive the expiration of the Term; (ii) names shall only be effective upon substantial completion of Construction; and (iii) no area or feature may be named for a commercially available product unless the product's name is also the name of the corporation selling the product. Prior to completion of each Park Project, BBP shall review proposed names of park features for compliance with the Park Naming Policy with the applicable Director. After completion of a Park Project on property owned by the County or at other times when area, structures or facilities are to be named or re-named on County owned property, proposed names must be approved by Commissioners Court.

The Park Naming Policy is:

1. Park Name: The name of the entire park area shall be "Buffalo Bayou East Park", which is subject to change in accordance with this policy, including the area known as Tony Marron Park and Japhet Creek Park, which are both currently considered to be a "park within a park".
2. Existing Names: No existing park property or feature names will be changed by BBP without specific written HPARD approval, including:
 - a. Tony Marron Park (the park area as of the Agreement's execution date),
3. Eligible Types of Names: In addition to naming based on donations as restricted above, park property (areas) and features may be named after streets, geographical locations, historical figures, events, and concepts; state, local or national leaders; or an individual or group that has brought national or international prominence and/or historical significance to Houston as a result of a major accomplishment or achievement.

4. Naming for Donors: Subject to the restrictions above, Park property (areas) and features may be named for monetary or in-kind donors in accordance with the value of their donation to the Buffalo Bayou East project or operations:
 - a. Except for Major Donor, such naming will not grant the donor naming rights over other features within the named facility, and the donor's consent shall not be required for such additional naming. This provision shall be clearly outlined in the written donation and naming agreement.
 - b. New individual features, including within Tony Marron Park, may be named.
5. Naming Restrictions:
 - a. "Buffalo Bayou Partnership" is not eligible as a feature name or as part of a feature name.
 - b. Donors may provide funding at any time for the naming of park property or feature after an elected official, however the naming shall not be effective until that elected official has been out of office for at least one year. The one-year naming deferment shall not be applicable if that elected official is the donor of the funds.
 - c. Names may not endorse or advocate a specific religious belief or promote a particular religion or religious denomination.
 - d. Names may not have obscene connotations; be morally distasteful or offensive; or promote sex, sexual products (including pornography), sexual businesses of any kind, and contraception or contraceptive products.
 - e. Names may not relate to or promote the use of illegal or illicit drugs.
 - f. Names may not demean, intimidate or maliciously portray any racial or ethnic group.
 - g. A park feature may not be named for an individual or organization that has been found guilty of a felony crime.
 - h. All names shall be otherwise consistent with names that are appropriate for a first-class urban park.
6. Implementation: BBP shall administer all work associated with fundraising and related designation of names for park property and features, including responsibility for publicity, ceremonies, on-site markers (and related maintenance) associated with naming designations. BBP shall regularly communicate with the HPARD Director and County with regard to this work.
7. Status of Names: Names of park property and features designated through this policy shall be the City's and County's official names for such park property and features. HPARD, and County shall use such official feature names in their communications and record-keeping. BBP shall have the option of placing a time limit on names or granting them in perpetuity.
8. No Other Names: Except as described in this policy, HPARD and County shall not approve new names for park property or features within the Park during the Term, except those that are approved and designated by BBP.
9. Naming Opportunities List: BBP shall maintain a "Naming Opportunities" list, and BBP shall forward immediately to the HPARD Director and County any revisions or updates to the list.
10. Receipts: All funds received for naming rights shall be used solely for improvements, maintenance or operation of the Park.

CHAPTER IX: ADMINISTRATIVE PROVISIONS

A. Contacts

HPARD, BBP, and the County shall each designate a single representative with regard to communications and work in the Park, communicate the contact information for its representative to members of the Standards Committee, and notify the Standards Committee when its representative or their contact information changes.

B. Amendments to the Manual

Per the Agreement, only the Standards Committee can approve amendments to this Manual, including the Maintenance and Operations Standard with modifications to these standards also subject to Major Donor approval. Unless this rule is modified by the Standards Committee, any proposed amendment must be submitted to the chair of the Standards Committee at least one month prior to the Standards Committee's next scheduled meeting.

C. Review of Changes to Landscape and Facilities Proposed by BBP

Changes to landscapes and facilities proposed by BBP must be approved by the Standards Committee except changes to individual plant types and irrigation. BBP may proceed with Capital Expenditure Projects and technical upgrades to lighting and other facilities without Standards Committee review and approval.

D. Interpretation and Reconciliation

The Standards Committee shall interpret the Manual. In addition, the Standards Committee shall oversee the Reconciliation process in accordance with Section 7.06(d) of the Agreement.

EXHIBIT IX-1: STANDARDS COMMITTEE REPRESENTATIVES

City of Houston

[To be appointed by December 2022]

Buffalo Bayou Partnership

Anne Olson
President
1019 Commerce, Suite 200
Houston TX 77002
713-7x52-0314 x 102
aolson@buffalobayou.org

Kinder Foundation

Guy Hagstette
Senior Vice-President Parks & Civic Projects
2229 San Felipe, Suite 1700
Houston TX 77019
713-529-5537
ghagstette@kinderfoundation.org

Harris County

Jamaal Smith (Precinct 1)

City of Houston

[To be appointed by December 2022]

Buffalo Bayou Partnership

Roy Lira
2214 Ann Street
Houston TX 77003

Kinder Foundation

Patra Brannon-Isaac
Director of Education and Community Projects
2229 San Felipe, Suite 1700
Houston, Texas 77019
713-529-5537
pisaac@kinderfoundation.org

Harris County

Jorge Bustamante (Precinct 2)

EXHIBIT IX-2: OPERATING CONTACTS

City of Houston

Luci Correa
Manager of Partnerships
2999 South Wayside
Houston TX 77023
832-395-7057
713-594-6385 (cell)
luci.correa@houstontx.gov

Andy Icken
Chief Development Officer
901 Bagby, 4th Floor
Houston, TX 77002
832-393-1064

andy.icken@houstontx.gov

Buffalo Bayou Partnership – Operations

Joe Rodriguez
Park Director – Buffalo Bayou Park
1803 Memorial Drive
Houston TX 77007
713-752-0314 x 202
jrodriguez@buffalobayou.org

Buffalo Bayou Partnership – Financial

Michele Marvin
Vice-President of Finance & Administration
1019 Commerce, Suite 200
Houston TX 77002
713-752-0314 x 106
mmarvin@buffalobayou.org

Harris County Precinct 1
[Note – County to provide.]

Harris County Precinct 2
[Note – County to provide.]

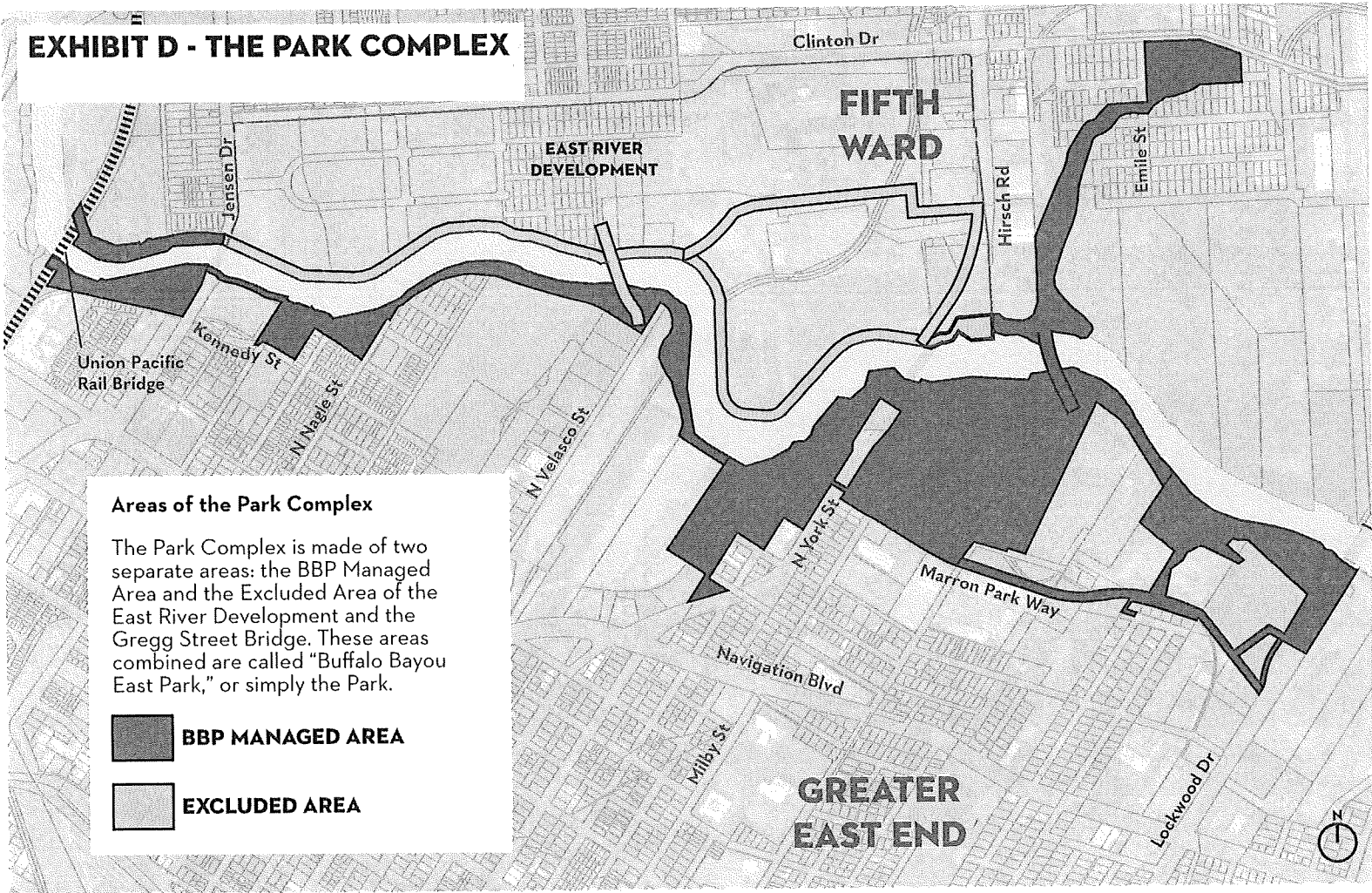
FINAL VERSION FOR APPROVAL

EXHIBIT D

THE PARK

[See attached.]

EXHIBIT D - THE PARK COMPLEX



Areas of the Park Complex

The Park Complex is made of two separate areas: the BBP Managed Area and the Excluded Area of the East River Development and the Gregg Street Bridge. These areas combined are called "Buffalo Bayou East Park," or simply the Park.

-  **BBP MANAGED AREA**
-  **EXCLUDED AREA**

FINAL VERSION FOR APPROVAL

EXHIBIT E
PARKING MAP

[See attached.]

EXHIBIT E - PARKING

PARK PROJECTS

- PARKING (CITY)
- PARKING (BBP)
- TBD PARKING SPACE COUNT
- XX-M METERED SPACE COUNT
- DESIGNATED CONCESSION
PARKING AND STAGING

Clinton Dr

**FIFTH
WARD**

Hirsch Rd

N York St

Navigation Blvd

Milby St

**GREATER
EAST END**

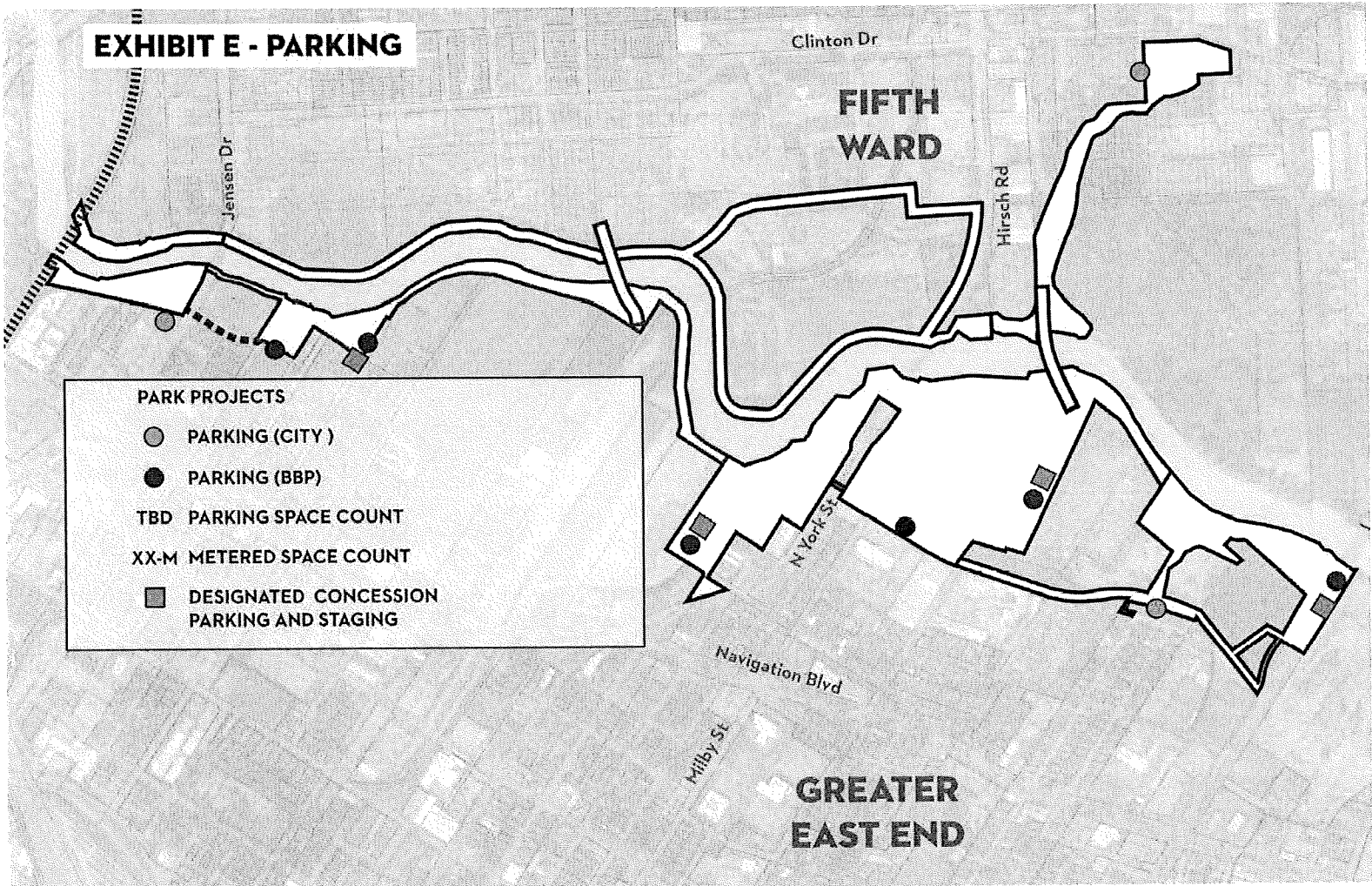


EXHIBIT F
DEEDS AND BILL OF SALE

**EXHIBIT F-1
FORM OF SPECIAL WARRANTY DEED
WITH RIGHT OF REVERTER**

After recording return to:

[Insert]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**SPECIAL WARRANTY DEED
WITH RIGHT OF REVERTER**

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

§

THAT _____, a _____ ("Grantor"),
whose mailing address is _____, Attention:
_____, for and in consideration of the sum of TEN AND NO/100
DOLLARS (\$10.00) and other good and valuable consideration paid in cash to Grantor by the
Grantee herein named and as described below and otherwise set forth in the Development,
Construction, Operations, Maintenance and Concession Agreement by and Among the City of
Houston, Texas, Harris County, and Buffalo Bayou Partnership Relating to Buffalo Bayou
Redevelopment from the Union Pacific Railroad Bridge Immediately East of U.S.59/I-69 to Mack
Street (the "Tri-Party Agreement"), as described in the Memorandum of Restrictive Covenants
recorded at _____ (the "Restrictive Covenants"), has GRANTED, BARGAINED, SOLD
and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto
_____, a _____ ("Grantee"), whose
mailing address is _____, that certain real property
situated in Harris County, more particularly described on Exhibit A attached hereto and made a
part hereof for all purposes, (the "Subject Property"), together with: (a) any and all appurtenances
belonging or appertaining thereto; (b) any and all appurtenant easements or rights of way affecting
the Subject Property and any rights of Grantor to use the same; (c) any and all rights of ingress and
egress to and from the Subject Property and any rights of Grantor to use the same; (d) all rights,
title and interest of Grantor in the oil, gas and other minerals of every kind located in, on or under
the Subject Property; and (e) all right, title and interest of Grantor, if any, in and to (i) any and all
roads, streets, alleys and ways (open or closed) affecting, crossing, fronting or bounding the
Subject Property but not otherwise, (ii) any and all air rights relating to the Subject Property, and
(iii) any and all reversionary rights or interests in and to the Subject Property, save and except the

Right of Reverter (as defined below) (the Subject Property and other appurtenances, rights, interests and other property described in clauses (a) through (e) above being collectively referred to herein as the "Property").

Notwithstanding anything contained in this Deed to the contrary, with regard to the rights and interests described in clauses (a) through (e) of the first grammatical paragraph of this Deed, Grantor is hereby only granting, selling and conveying Grantor's rights, title or interest, if any, in and to the same without warranty of title (whether statutory, express, implied, or otherwise).

As part of the consideration for the conveyance of the Property from Grantor to Grantee, Grantee has agreed to appropriate or otherwise contribute certain funds toward the capital costs for the initial development of the Property, the ongoing maintenance and operations of the Property, and certain other costs, including utilities, repairs and restoration following casualty events (all such funding obligations as more particularly described in the Tri-Party Agreement). In the event that Grantee fails to meet any of its funding or other monetary obligations as set forth in the Tri-Party Agreement, including a failure to appropriate funds, or to renew the Tri-Party Agreement in accordance with the terms thereof, and such failure continues for 60 days following written notice of such failure delivered to Grantee, then Grantor shall have the right, at its election, to cause title to the Property to revert to Grantor (the "Right of Reverter"). Grantor may exercise the Right of Reverter by filing of record a notice of its election to exercise the Right of Reverter with the County Clerk of Harris County, Texas (a "Notice of Reverter"). Upon Grantor's filing of a Notice of Reverter with the County Clerk of Harris County, Texas, title to the Property shall automatically be vested in Grantor, its successors and assigns, subject to the Permitted Exceptions and the Restrictive Covenants, without the necessity of any further act or entry on the part of or on behalf of Grantor or Grantee. The conveyance in this Deed is made and delivered subject to the Right of Reverter, it being the express intent of Grantor and Grantee that this Deed conveys to the Grantee a defeasible estate in and to the Property.

This conveyance is further made and delivered subject to those matters of title (the "Permitted Exceptions") set forth on Exhibit B attached hereto and incorporated herein by reference, but only to the extent the same exist and are applicable to the Property.

IT IS UNDERSTOOD AND AGREED THAT GRANTOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, (II) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER AUTHORITY OR BODY, OR (III) THE EXISTENCE OF ANY TOXIC OR HAZARDOUS SUBSTANCE OR WASTE IN, ON, UNDER THE SURFACE OF OR ABOUT THE PROPERTY. GRANTEE AGREES THAT WITH RESPECT TO THE PROPERTY, GRANTEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF GRANTOR EXCEPT FOR THE WARRANTIES OF TITLE IN THIS DEED. GRANTEE AGREES THAT ANY INFORMATION PROVIDED TO GRANTEE BY GRANTOR WITH RESPECT TO THE

PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (A) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND (B) HAS NOT MADE ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN, REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTEE AGREES THAT GRANTOR IS SELLING AND CONVEYING THE PROPERTY TO GRANTEE AND GRANTEE IS ACCEPTING THE PROPERTY ON AN "AS IS WHERE IS WITH ALL FAULTS" BASIS, AND GRANTEE AGREES THAT GRANTOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING CONDITION, HABITABILITY, SUITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND GRANTEE HAS NOT RELIED UPON ANY ORAL STATEMENT OR REPRESENTATION MADE BY GRANTOR, ANY BROKER OR BY ANY OTHER PERSON.

TO HAVE AND TO HOLD the Property, subject to the Right of Reverter and the Permitted Exceptions, together with all and singular the rights and appurtenances thereto and in any wise belonging unto the said Grantee, its legal representatives, successors and assigns, forever; and Grantor does hereby bind itself, its legal representatives and successors, to warrant and forever defend all and singular the Subject Property only, subject to the Right of Reverter and the Permitted Exceptions and all other matters set forth herein, unto the said Grantee, its legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on the ____ day of _____, 20[___].

[SIGNATURE PAGE FOLLOWS]

GRANTOR:

By: _____

By: _____

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

§

COUNTY OF _____

§

This instrument was acknowledged before me on the ____ day of _____,
202__, by _____, _____ of _____,
a _____, the _____ of _____, a _____, the
_____ of _____, a _____, on behalf of said
limited partnership/corporation/company.

Notary Public – State of Texas

My commission expires: _____

EXHIBIT A

Property Description

EXHIBIT B

Permitted Exceptions

**EXHIBIT F-2
FORM OF SPECIAL WARRANTY DEED**

After recording return to:

[Insert]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

§

THAT _____, a _____ ("Grantor"), whose mailing address is _____, Attention: _____, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid in cash to Grantor by the Grantee herein named and as described below and otherwise set forth in the Development, Construction, Operations, Maintenance and Concession Agreement by and Among the City of Houston, Texas, Harris County, and Buffalo Bayou Partnership Relating to Buffalo Bayou Redevelopment from the Union Pacific Railroad Bridge Immediately East of U.S.59/I-69 to Mack Street (the "Tri-Party Agreement") as described in a Memorandum of Restrictive Covenants recorded at _____ (the "Restrictive Covenants"), has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto _____, a _____ ("Grantee"), whose mailing address is _____, that certain real property situated in Harris County, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, (the "Subject Property"), together with: (a) any and all appurtenances belonging or appertaining thereto; (b) any and all appurtenant easements or rights of way affecting the Subject Property and any rights of Grantor to use the same; (c) any and all rights of ingress and egress to and from the Subject Property and any rights of Grantor to use the same; (d) all rights, title and interest of Grantor in the oil, gas and other minerals of every kind located in, on or under the Subject Property; and (e) all right, title and interest of Grantor, if any, in and to (i) any and all roads, streets, alleys and ways (open or closed) affecting, crossing, fronting or bounding the Subject Property but not otherwise, (ii) any and all air rights relating to the Subject Property, and (iii) any and all reversionary rights or interests in and to the Subject Property (the Subject Property

and other appurtenances, rights, interests and other property described in clauses (a) through (e) above being collectively referred to herein as the "Property").

Notwithstanding anything contained in this Deed to the contrary, with regard to the rights and interests described in clauses (a) through (e) of the first grammatical paragraph of this Deed, Grantor is hereby only granting, selling and conveying Grantor's rights, title or interest, if any, in and to the same without warranty of title (whether statutory, express, implied, or otherwise).

This conveyance is further made and delivered subject to those matters of title (the "Permitted Exceptions") set forth on Exhibit B attached hereto and incorporated herein by reference, but only to the extent the same, in fact, do exist and are applicable to the Property.

IT IS UNDERSTOOD AND AGREED THAT GRANTOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, (II) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER AUTHORITY OR BODY, OR (III) THE EXISTENCE OF ANY TOXIC OR HAZARDOUS SUBSTANCE OR WASTE IN, ON, UNDER THE SURFACE OF OR ABOUT THE PROPERTY. GRANTEE AGREES THAT WITH RESPECT TO THE PROPERTY, GRANTEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF GRANTOR EXCEPT FOR THE WARRANTIES OF TITLE IN THIS DEED. GRANTEE AGREES THAT ANY INFORMATION PROVIDED TO GRANTEE BY GRANTOR WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (A) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND (B) HAS NOT MADE ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN, REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTEE AGREES THAT GRANTOR IS SELLING AND CONVEYING THE PROPERTY TO GRANTEE AND GRANTEE IS ACCEPTING THE PROPERTY ON AN "AS IS WHERE IS WITH ALL FAULTS" BASIS, AND GRANTEE AGREES THAT GRANTOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING CONDITION, HABITABILITY, SUITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND GRANTEE HAS NOT RELIED UPON ANY ORAL STATEMENT OR REPRESENTATION MADE BY GRANTOR, ANY BROKER OR BY ANY OTHER PERSON.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions (defined below), together with all and singular the rights and appurtenances thereto and in any wise belonging unto the said Grantee, its legal representatives, successors and assigns, forever; and Grantor does hereby bind itself, its legal representatives and successors, to warrant and forever defend all and singular the Subject Property only, subject to the Permitted Exceptions and all other

matters set forth herein, unto the said Grantee, its legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on the ____ day of _____, 20[___].

[SIGNATURE PAGE FOLLOWS]

GRANTOR:

By: _____

By: _____

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

§

COUNTY OF _____

§

This instrument was acknowledged before me on the ____ day of _____, 202__, by _____, _____ of _____, a _____, the _____ of _____, a _____, the _____ of _____, a _____, on behalf of said limited partnership/corporation/company.

Notary Public – State of Texas

My commission expires: _____

EXHIBIT A

Property Description

EXHIBIT B

Permitted Exceptions

**EXHIBIT F-3
FORM OF BILL OF SALE**

THE STATE OF TEXAS §

§

COUNTY OF HARRIS §

BILL OF SALE

WHEREAS, by Agreement ("Agreement") dated _____, the City of Houston (the "City"), Harris County (the "County") and The Buffalo Bayou Partnership ("BBP"), _____ have agreed to provide for the (Name of the Project) and the surrounding area (location) (the "Project"); and

WHEREAS, pursuant to such Agreement, _____ is obligated to transfer ownership of the Project to _____; NOW THEREFORE,

KNOW ALL MEN BY THESE PRESENTS:

That _____, by and through its duly authorized representatives whose names and signatures as duly affixed hereto, for and in consideration of TEN DOLLARS (\$10.00), and other good and valuable consideration in hand paid to it by _____, the receipt and adequacy of which are hereby acknowledges, and grants, sells, conveys, transfers, assigns and delivers to _____ all of its right, title and interest in the Project and does hereby grant, sell, convey, transfer, assign and deliver the Project unto _____, free and clear of all liens and encumbrances thereof;

TO HAVE AND TO HOLD the Project, together with all and singular the rights and appurtenances thereto, unto _____, its successors and assigns, forever, and

_____ does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto _____, against every person claiming or to claim the same, or any part hereof.

_____ has executed this Bill of Sale and delivered the Project to _____, and _____ has accepted this Bill of Sale and acquired the Project from _____, AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, IT BEING THE INTENTION OF _____ AND _____ TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROJECT OR BY ANY SAMPLE OR MODE, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY LAW, INCLUDING THE TEXAS UNIFORM COMMERCIAL CODE, except the warranty of title set forth above. This disclaimer of warranties shall have no effect on the warranties and guarantees described in Section 5.06 of the Agreement.

From and after the date hereof, _____ shall be released and discharged of all of its obligations, duties and responsibilities under the Agreement, save and except the duty of indemnification contained in Section 8.01 of the Agreement.

[Remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Bill of Sale has been executed by _____
by its duly authorized officer on _____, 20 .

By: _____
[Name], [Title]

ACCEPTED ON BEHALF OF

By: _____
[Name], [Title]

EXHIBIT G

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-6 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take

such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT H

FORM OF MEMORANDUM OF RESTRICTIVE COVENANTS

MEMORANDUM OF RESTRICTIVE COVENANTS

"BUFFALO BAYOU EAST", HOUSTON, TEXAS

This **MEMORANDUM OF RESTRICTIVE COVENANTS** (this "**Memorandum**"), dated effective as of the Effective Date set forth below, is executed by [**THE BUFFALO BAYOU PARTNERSHIP**, a Texas nonprofit corporation ("**BBP**")], [**HARRIS COUNTY** ("**County**")], a body corporate and politic under the laws of the State of Texas], [the **CITY OF HOUSTON, TEXAS** ("**City**")], a home-rule city located in Harris, Montgomery and Fort Bend Counties, Texas, acting by and through its governing body, the City Council.]¹

RECITALS

The [City/County/BBP]² is the owner of certain real property and interests in real property, being more particularly described by metes and bounds in **EXHIBIT A** attached hereto, (the "**Park Property**").

Prior to the Effective Date hereof, BBP has developed a Master Plan for "Buffalo Bayou East," an approximately four-mile distance along Buffalo Bayou from the Union Pacific Railroad Bridge immediately east of U.S. 59/I-69 North to Hidalgo Park and extending into the greater East End and Fifth Ward Communities (the "**Master Plan**"), which includes the Park Property.

As part of the Master Plan, The Buffalo Bayou Partnership, a Texas nonprofit corporation ("**BBP**"), Harris County ("**County**"), a body corporate and politic under the laws of the State of Texas, and the City of Houston, Texas ("**City**"), a home rule city located in Harris, Montgomery and Fort Bend Counties, Texas, acting by and through its governing body, the City Council (each, a "**Party**," and collectively, the "**Parties**") have entered into that certain Development, Construction, Operations, Maintenance and Concession Agreement dated effective as of the Effective Date hereof (the "**Tri-Party Agreement**") pursuant to which the Parties will cooperate in a long-term project for the development, implementation and completion of the Master Plan (the "**Project**"). The Tri-Party Agreement may be amended from time to time hereafter as provided therein.

The Tri-Party Agreement provides that the Project has a term beginning prior to the Effective Date hereof, and continuing for an initial term ending at midnight on _____, 2052, and provides the option for BBP to extend the term for two (2) additional, consecutive Renewal Terms of 30 years each, respectively, subject to consent by the City and the County, potentially

¹ **NTD**: Owner of applicable party to be identified at the time of recording, and other parties to be deleted from this recital.

² **NTD**: Owner of applicable party to be identified at the time of recording.

extending until midnight on _____, 2112 (collectively, the "**Term**"), as such capitalized terms are more specifically defined in the Tri-Party Agreement.

Pursuant to the Tri-Party Agreement, and as a condition of each Party's undertaking its respective obligations under the Tri-Party Agreement, the Parties have adopted, and have agreed to be bound by, the Operations and Maintenance Manual, covering the Park Property, which may be amended from time to time (the "**Operations and Maintenance Manual**"). The Operations and Maintenance Manual contains a description of planned or existing Concessions and Programs, reservations systems, venue rental rates, user fees, Employee/Volunteer Performance Standards, Names and Sponsorship Policy, and other matters the Standards Committee deems desirable or necessary to (1) preserving the integrity of the Park Property, (2) enriching the Park Property's heritage as a unique landmark, and (3) transforming the Park Property into one of the nation's premier parks. The Operations and Maintenance Manual may be amended from time to time, but in any event, shall remain in effect for the entire Term of the Project.

NOTICE

NOW, THEREFORE, in consideration of the foregoing premises, and as required in the Tri-Party Agreement, [City/County/BBP]³ has executed this Memorandum, and has caused the same to be recorded in the Official Public Records of Real Property of Harris County, Texas, to give notice (i) of the existence of the Tri-Party Agreement, the Operations and Maintenance Manual and the Master Plan, as amended from time to time during the Term, (ii) that the terms, conditions, covenants and restrictions set forth in the foregoing documents (collectively, the "**Restrictive Covenants**") are declared by [City/County/BBP]⁴ and intended by the Parties as covenants running with the land (both real property and interests in real property) consisting of the Park Property, and (iii) that such Restrictive Covenants shall be binding on the Parties and their respective employees, agents, contractors and subcontractors with regards to their respective activities and operations in and on the Park Property and otherwise relating to the Project, from and after the Effective Date hereof for the duration of the Term.

Any one of the Parties hereto, and/or the Kinder Foundation, a Texas non-profit corporation, acting jointly or severally, shall have the right to enforce the Restrictive Covenants against any of the Parties, their respective employees, agents, contractors and subcontractors, with any rights and remedies available at law or in equity, or as otherwise set forth in the Tri-Party Agreement. The Parties stipulate, however, 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 the Parties hereto (or their permitted successors or assigns), and/or the Kinder Foundation as third-party beneficiaries, acting jointly or severally.

For a complete version of the Restrictive Covenants, copies of the Tri-Party Agreement, the Operations and Maintenance Manual and the Master Plan, as amended from time to time after

³ NTD: Owner of applicable party to be identified at the time of recording.

⁴ NTD: Owner of applicable party to be identified at the time of recording.

the Effective Date hereof, may be obtained upon written request (at the expense of the requesting party) to City, County, or BBP as follows:

Mayor, City of Houston 900 Bagby Houston, Texas 77002	County of Harris, Texas 1019 Congress, 15th Floor Houston, Texas 77002 Attn: County Attorney	Buffalo Bayou Partnership 1019 Commerce Street, Suite 200 Houston, Texas 77002 Attn: President
--	--	--

Nothing in this Memorandum of Restrictive Covenants is intended, nor shall it be construed to, amend, supplement, delete or otherwise revise any portion of the Tri-Party Agreement, the Operations and Maintenance Manual and the Master Plan, as amended from time to time after the Effective Date hereof. The Parties acknowledge and agree that nothing in this Memorandum of Restrictive Covenants is intended to amend, supplement, delete, or otherwise revise any other restrictions of record affecting the Property.

EXECUTED in multiple counterpart originals by the respective Parties, to be made effective on the date of the last acknowledgement set forth below (the "**Effective Date**").

ATTEST:⁵

CITY OF HOUSTON, TEXAS

By: _____
Pat Jefferson Daniel, City Secretary

By: _____
Sylvester Turner, Mayor

COUNTERSIGNED:

By: _____
Chris B. Brown, Controller

DATE OF COUNTERSIGNATURE: _____

APPROVED:

By: _____
Andy Icken, Chief Development Officer

⁵ **NTD:** Owner of applicable party to be identified at the time of recording; all other signature blocks/acknowledgements can be deleted.

APPROVED:

By: _____
Walter Hambrick, Deputy Chief of Staff

APPROVED:

By: _____
Kenneth Allen, Director
Houston Parks and Recreation Department

APPROVED AS TO FORM:

By: _____
Ondrea U. Taylor
Senior Assistant City Attorney
LD # 0392200146001

COUNTY:

HARRIS COUNTY, TEXAS,
a body corporate and politic under the laws of the State
of Texas

By: _____
Name: Lina Hidalgo
Title: County Judge

Approved as to Form:

By: CHRISTIAN MENEFEE
Harris County Attorney

By: _____
Name: Randy Keenan
Title: Senior Assistant County Attorney

BBP:

BUFFALO BAYOU PARTNERSHIP,
A Texas non-profit corporation

By: _____

Name: Shawn W. Cloonan

Title: Chair

Acknowledgments

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2022,
by Sylvester Turner, Mayor of CITY OF HOUSTON, TEXAS, a Texas home rule municipality,
on behalf of said municipality.

[SEAL]

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2022,
by Lina Hidalgo, County Judge of HARRIS COUNTY, TEXAS, a body corporate and politic
under the laws of the State of Texas.

[SEAL]

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2022,
by Shawn W. Cloonan, Chair of BUFFALO BAYOU PARTNERSHIP, a Texas non-profit
corporation, on behalf of said corporation.

[SEAL]

Notary Public, State of Texas

H-7

EXHIBIT A

MEMORANDUM OF RESTRICTIVE COVENANTS

Legal Description of the Park Property

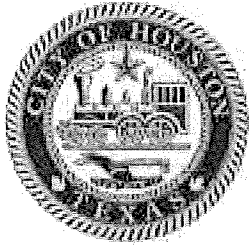
[To be inserted once agreed to by the Parties pursuant to Section 10.22(d) of the Agreement]

FINAL VERSION FOR APPROVAL

EXHIBIT I

HPW MEMO

[See attached.]



Date: September 13, 2021

To: Houston Public Works Staff and Interested Parties

From: Suhail Kanwar, P.E., City Engineer

Subject: Lower Buffalo Bayou – HWY 69 to Houston Ship Channel Turning Basin

The purpose of this memorandum is to clarify the application of Chapter 9 Stormwater Design Requirements of the Houston Public Works Infrastructure Design Manual (IDM), dated July 2021, specifically relating to lower Buffalo Bayou. Lower Buffalo Bayou is defined on the attached exhibit.

Buffalo Bayou is a stream approximately 52.8 miles in length originating from Barker Reservoir to the Houston Ship Channel. The watershed is approximately 102 square miles based in information obtained from the Harris County Flood Control District (HCFCD). The lower portion of Buffalo Bayou, for the purpose of this memorandum, is from US Highway 69 to the Houston Ship Channel Turning Basin, stream length of approximately 4 miles. Land use in this portion of the watershed is primarily industrial between Clinton Drive to the north and Navigation Blvd. to the south. Remainder of the watershed is mixed use mostly residential.

Review of the HCFCD Interim Guidelines and Criteria for Atlas 14 Implementation, Section 6 – Stormwater Detention Basins, Section 6.1.2 outlines conditions where detention is not required. These conditions include; where system capacity exists, one single residence proposed, development less than one acre and where redevelopment does not increase impervious cover. Lower Buffalo Bayou is primarily developed and has excess capacity when comparing the regulatory 1% and 0.2% flood elevations to the high bank of Buffalo Bayou. Additionally, due to the shape of the watershed, runoff from a watershed wide rainfall event should be permitted to drain unimpeded in the lower portion of the watershed, in advance of the upstream flood wave, preventing coincident downstream flooding.

Based upon these hydrologic and hydraulic conditions of the watershed, it is the policy of the City of Houston Public Works to not require additional on-site or off-site detention for new or redevelopment for properties within the boundary of the watershed shown on the attached exhibit. However, this provision is valid only where runoff from the development is routed directly to Buffalo Bayou. In the event the runoff is directed to an existing city infrastructure the detention requirements outlined in the IDM Chapter 9 prevail. Additionally, it is required, where applicable, to include Low Impact Development techniques as stated in the IDM Chapter 9 for any new or redevelopment.

Suhail Kanwar
Suhail Kanwar, P.E.

C: Carol Ellinger Haddock, P.E., Director
Christon Butler, MCD
Stephen C. Costello, P.E.
Kathile S. Jeng-Bullock, Ph.D., P.E., D.WRE, CFM

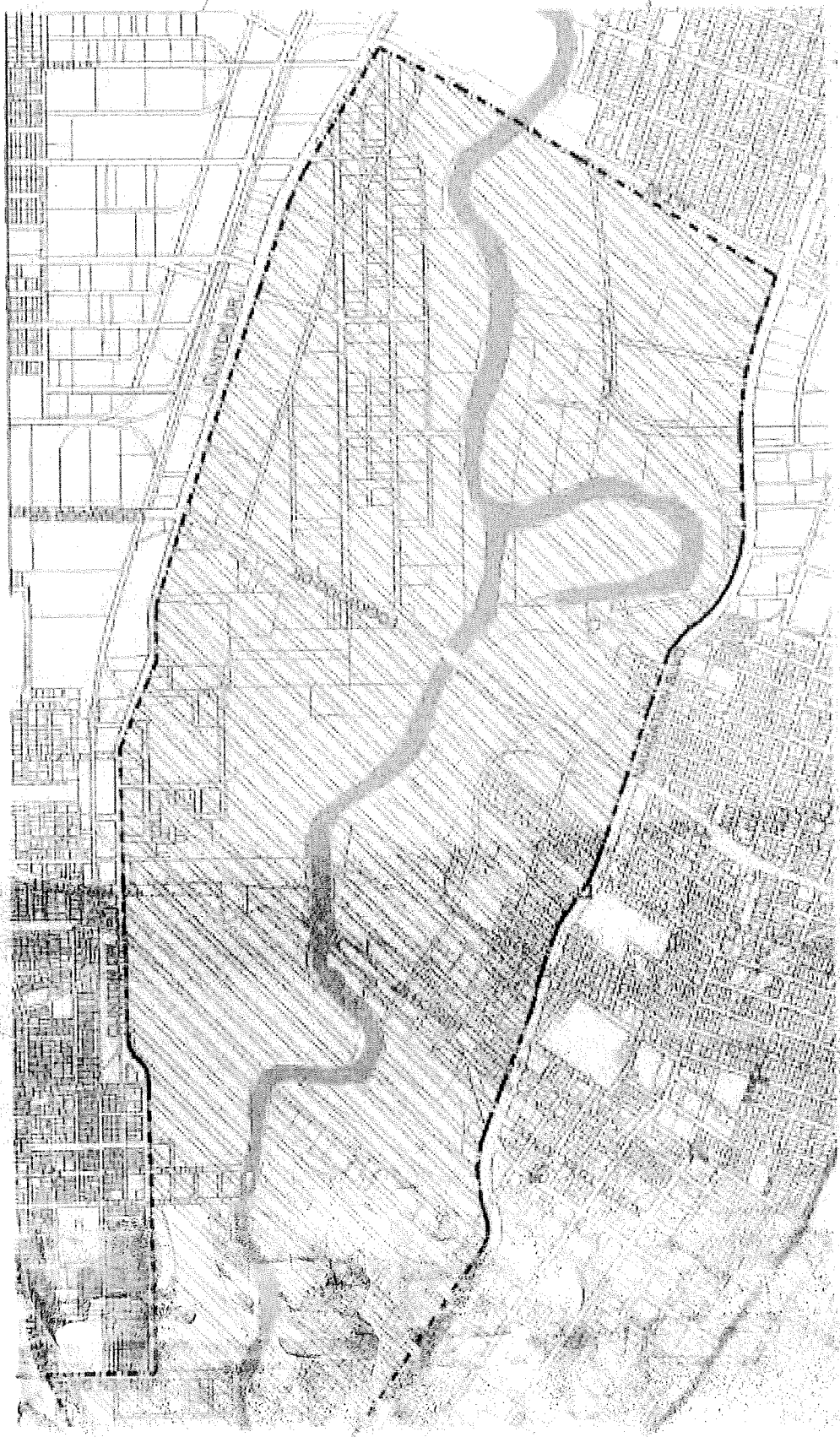


EXHIBIT M

FORM OF INDEMNIFICATION LANGUAGE

GENERAL INDEMNIFICATION OBLIGATION OF CONTRACTOR. Subject to the second paragraph of this Section [•], Contractor hereby assumes the entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of Contractor, its Subcontractors, or otherwise, and to all property, caused by, resulting from, arising out of or occurring in connection with the execution of the Work. Except to the extent expressly prohibited by statute or other non-waivable applicable law, should any Claims (as hereinafter defined) for such damage or injury (including death resulting therefrom) be made or asserted, **WHETHER OR NOT SUCH CLAIMS ARE BASED UPON THE OWNER'S OR INDEMNITEES' (AS DEFINED BELOW) ALLEGED STRICT LIABILITY AND REGARDLESS OF WHETHER THE CLAIMS INCLUDE ALLEGATIONS OF OWNER'S OR INDEMNITEES' SOLE OR CONTRIBUTORY NEGLIGENCE OR PARTICIPATION IN THE WRONG OR BREACH OF A STATUTORY DUTY OR OBLIGATION, IT BEING THE EXPRESS INTENT OF THE PARTIES HERETO THAT THE CONTRACTOR SHALL INDEMNIFY OWNER AND THE INDEMNITEES FOR ITS OR THEIR SOLE OR CONTRIBUTORY OR NEGLIGENT ACTS,** Contractor agrees to indemnify and save harmless Owner, Architect, City of Houston, Texas, Harris County, Buffalo Bayou Partnership, a Texas non-profit corporation, Kinder Foundation, a Texas non-profit corporation, and each of their respective officers, agents, servants and employees, (collectively referred to hereinafter as "Indemnitees") from and against any and all such claims, and further from and against any and all loss, cost, expense, liability, damage or injury, including legal fees and disbursements, court costs, costs of experts and other witnesses and other costs of defense (collectively, "Claims"), that any of the Indemnitees may directly or indirectly sustain, suffer or incur as a result thereof; and Contractor agrees to and does hereby assume, on behalf of each of the Indemnitees, the defense of any action at law or in equity which may be brought against Indemnitees, upon or by reason of such Claims and to pay on behalf of all of the Indemnitees, upon its demand, the amount of any judgment that may be entered against the Indemnitees, in any such action. In the event that any such Claims arise or are made, asserted, or threatened against any of the Indemnitees, then Owner shall have the right to withhold from any payments due or to become due to Contractor an amount sufficient in its judgment to protect and indemnify such Indemnitees, from and against any and all such Claims including legal fees or disbursements, or Owner in its discretion, may require Contractor to furnish a surety bond satisfactory to Owner guaranteeing such protection, which bond shall be furnished by Contractor within five (5) days after written demand has been made therefor.

EXHIBIT L
FORM OF NOTICE TO PROCEED

[Date]

[Name], Director
[Address]

RE: [Project Name]

Dear [Director]:

In accordance with the Development, Construction, Operations, Maintenance and Concession Agreement Relating to Buffalo Bayou Redevelopment from the Union Pacific Railroad Bridge Immediately East of U.S. 59/I-69 to Mack Street which took effect on [Effective Date], [Project Manager Organization Name] formally requests a Notice-to-Proceed (NTP) for the subject project and respectfully submits the following information for your review:

- Plans – Included as an attachment: (1) half size set of 100% Construction Drawings and (1) set of 100% Project Specifications.
- Funding – [Project Manager Organization Name] confirms funding is in place for [%] of Secured Funds necessary during the Project Manager's current fiscal year.
- Schedule – [Project Manager Organization Name] has awarded the contract to [Contractor]. Contractor's NTP is pending a formal NTP from the Director. The project is anticipated to be substantially complete by [Date]

Per the Agreement, within 14 business days of the request to proceed, the Director shall provide a written response to approve or deny the request. However, if no response is given within the 14-business day review period, the request as submitted shall be deemed to have been approved by the Director.

Please let me know of any questions. We look forward to your response.

Sincerely,

[Contact Name]
[Title]
[Project Manager Organization Name]

tax increment as an expected source of revenue to finance County contributions under Section 7.05(b) of this Agreement; and (z) provides for extension of the term for the Harrisburg Zone through December 31, 2052. This Action is subject to approval of Additional Joint Action 1b. above.

- c. Fiscal Year 2023 Operating Budget and Fiscal Years 2023-2027 Capital Improvement Plan Budget for the Fifth Ward Zone that include the applicable annual funding amounts from City and County tax increment to be contributed under this Agreement. This Action is subject to approval of Additional City Action 2a. above.
 - d. Fiscal Year 2023 Operating Budget and Fiscal Years 2023-2027 Capital Improvement Plan Budget for the Harrisburg Zone that include the applicable annual funding amounts from City and County tax increment to be contributed under this Agreement. This Action is subject to approval of Additional City Actions 2b. above.
- 3. The City shall exercise best efforts to cause the approval of a development agreement by and between Fifth Ward Redevelopment Authority and BBP on or before March 31, 2023, that provides that (i) a specified portion or amount of tax increment contributed by the City is paid to BBP for the purpose of meeting City's funding obligations under this Agreement, (ii) the tax increment contributed by the County is paid to BBP for the purpose of meeting County's funding obligations under Section 7.05(b) of this Agreement, and (iii) in the event any such funding obligations are determined to be "ineligible project costs" under the TIRZ Act by the Attorney General of the State of Texas ("AG") through a written opinion of the AG, or by a court of law with competent jurisdiction without appeal, the responsibility of the City or County to fund any such "ineligible project cost" shall be governed by Sections 7.07 and 7.08 of this Agreement, as applicable. This Action is subject to approval of all Additional Joint Actions and Additional City Actions relating to the Fifth Ward Zone.
 - 4. The City shall exercise best efforts to cause the approval of a development agreement by and between Harrisburg Redevelopment Authority and BBP on or before March 31, 2023, that provides that (i) a specified portion or amount of tax increment contributed by the City is paid to BBP for the purpose of meeting City's funding obligations under this Agreement, (ii) the tax increment contributed by the County is paid to BBP for the purpose of meeting County's funding obligations under Section 7.05(b) of this Agreement, and (iii) in the event any such funding obligations are determined to be "ineligible project costs" under the TIRZ Act by the AG through a written opinion of the AG, or by a court of law with competent jurisdiction without appeal, the responsibility of the City or County to fund any such "ineligible project cost" shall be governed by Sections 7.07 and 7.08 of this Agreement, as applicable. This Action is subject to approval of all Additional Joint Actions and Additional City Actions relating to the Harrisburg Zone.

EXHIBIT C

Project and Construction Budget



Buffalo Bayou Partnership
Marron Park Way
Opinion of Probable Project Cost

Updated: September 1, 2023

Project Information:

Name: Foley Street
Limits: Drennan Street to Maplewood Street
Class: Modified Collector with 11' Lanes
Length (ft): 1900 feet

Basis for Cost Projection:

- ☐ No Design
☒ Schematic Design
☐ Final Design

This is an opinion of probable project cost for engineering/field work, permitting, construction. This project includes roadway construction of (2) 11' lanes and onstreet parking including internalized storm drain, water and sewer line, a 6' sidewalk and 12' shared use path, street and pedestrian lighting, and landscaping improvements.

Construction Cost					
Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
Section 1 - Mobilization & Demolition					
M1	OVERHEAD ELECTRIC DESIGN AND RELOCATION	1	LS	Estimate	\$250,000
M2	CONCRETE POWER POLES	8	EA	\$10,000.00	\$80,000
M3	TRAFFIC CONTROL	1	LS	\$5,000.00	\$5,000
M4	EROSION CONTROL/SWPPP	1	EA	\$15,000.00	\$15,000
M5	REMOVE EXISTING GRAVEL	26	SY	\$50.00	\$1,311
M6	REMOVE EXISTING STEEL RAIL ROAD TRACK	0	LF	\$17.00	\$0
M7	RECYCLE EXISTING STEEL RAIL ROAD TRACK (50 #/LF)	0	TON	\$250.00	\$0
M8	REMOVE AND TREAT EXISTING RAIL ROAD TIE	0	LF	\$20.00	\$0
M9	SOIL DISPOSAL	1	LS	\$65,000.00	\$65,000
M10	REMOVE EXISTING CONCRETE PAVEMENT	192	SY	\$20.00	\$3,842
M11	REMOVE EXISTING FENCING	1,052	LF	\$5.00	\$5,260
M12	TREE REMOVAL	23	EA	\$500.00	\$11,500
Mobilization & Demolition Total					\$436,913
Section 2 - Street Improvements					
P1	ROADWAY EXCAVATION (CUT)	3,525	CY	\$25.00	\$88,125
P2	ROADWAY EMBANKMENT (FILL)	270	CY	\$20.00	\$5,400
P3	EXCESS HAUL OFF	3,255	CY	\$25.00	\$81,375
P4	8" LIME STABILIZED SUBGRADE	5,979	SY	\$7.00	\$41,852
P5	HYDRATED LIME (54 LB/SY)	161	TON	\$250.00	\$40,358
P6	MOUNTABLE CURB (ALLOWANCE)	1	LS	\$10,000.00	\$10,000
P7	9" REINFORCED CONCRETE PAVEMENT WITH CURB	5,160	SY	\$80.00	\$412,800
P8	4 12" CONCRETE SIDEWALK (12' SHARED PATH)	2,431	SY	\$60.00	\$145,847
P9	4 12" CONCRETE SIDEWALK (6' SIDEWALK)	1,249	SY	\$55.00	\$68,701
P10	4 12" CONCRETE SIDEWALK (12' GREENFINGER CONNECTION)	450	SY	\$60.00	\$27,000
P11	PAVEMENT MARKINGS	2,070	LF	\$8.00	\$16,560
P12	PEDESTRIAN SIGNALS	2	EA	\$7,500.00	\$15,000
P13	PEDESTRIAN CURB RAMPS (PERPENDICULAR)	6	EA	\$1,750.00	\$10,500
P14	SIGNS	11	EA	\$500.00	\$5,500
P15	RAISED PEDESTRIAN CROSSING WITH RECTANGULAR FLASHING BEACON (RR)	1	EA	\$15,000.00	\$15,000
Street Improvements Total					\$984,018
Section 3 - Storm Drain Improvements					
D1	24" REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	1,242	LF	\$160.00	\$198,720
D2	36" REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	400	LF	\$180.00	\$72,000
D3	TYPE C INLET	6	EA	\$7,000.00	\$42,000
D4	MANHOLE/JUNCTION BOX	3	EA	\$12,000.00	\$36,000
D5	CONNECT TO EXISTING RCP/RCB	2	EA	\$5,000.00	\$10,000
D6	INSTALL JUNCTION BOX AND CONNECT TO EXISTING RCP (ALLOWANCE)	2	EA	\$30,000.00	\$60,000
Storm Drain Improvements Total					\$418,720
Section 4 - Water & Sewer Improvements					
WS1	12" WATER LINE (PVC)	1,900	LF	\$100.00	\$190,000
WS2	BORING AND CASING (ALLOWANCE)	1	LS	\$20,000.00	\$20,000
WS3	WATER LINE APPURTENANCES (VALVES, METERS, HYDRANTS)	1	LS	\$50,000.00	\$50,000
WS4	EXISTING WATER LINE RELOCATION AND ADJUSTMENT (ALLOWANCE)	1	LS	\$10,000.00	\$10,000
WS5	TRENCH EXCAVATION PROTECTION (WATER LINE)	1,900	LF	\$5.00	\$9,500
WS6	12" SANITARY SEWER LINE (PVC)	1,900	LF	\$100.00	\$190,000
WS7	SANITARY SEWER LINE APPURTENANCES (SERVICES, MANHOLES)	1	LS	\$50,000.00	\$50,000
WS8	EXISTING SEWER LINE RELOCATION/ADJUSTMENT (ALLOWANCE)	1	LS	\$10,000.00	\$10,000
WS9	TRENCH EXCAVATION PROTECTION (SANITARY SEWER)	1,900	LF	\$5.00	\$9,500
Water & Sewer Improvements Total					\$539,000
Section 5 - Landscape & Irrigation Improvements					
L1	SOD	3,557	SY	\$10.00	\$35,568
L2	TOPSOIL	3,557	SY	\$6.00	\$21,341
L3	TREES AND PLANTINGS IN RIGHT OF WAY	1	LS	\$225,000.00	\$225,000
L4	BIOSWALE STORMWATER SYSTEM	6,945	SF	\$50.00	\$347,250
L5	PEDESTRIAN TRAIL BENCHES & FURNISHINGS	1	LS	\$21,000.00	\$21,000
L6	BUS STOPS	1	EA	\$20,000.00	\$20,000
L7	IRRIGATION SYSTEM	1	LS	\$50,000.00	\$50,000
L8	PARK TRAIL - ROADWAY SOUTH	1	LS	\$34,628.00	\$34,628
Landscape & Irrigation Improvements Total					\$754,786
Section 6 - Street Light Improvements and Utilities					
ILL1	DECORATIVE PEDESTRIAN LIGHTING (POLE & ASSEMBLY)	45	EA	\$6,500.00	\$292,500
ILL2	ELECTRIAL SERVICE	1	EA	\$50,000.00	\$50,000
ILL3	COMMUNICATIONS UNDERGROUND	6,000	LF	\$7.00	\$42,000
ILL4	STREET LIGHTING (POLE & ASSEMBLY) (ASSUMING MINIMUM SPACING)	10	EA	\$3,500.00	\$35,000
ILL5	CONDUIT (PVC) (SCHD 40) (2") (TRENCH)	2,000	LF	\$7.00	\$14,000
ILL6	LIGHTING APPURTENANCES (ALLOWANCES) (GROUND BOXES AND CONNECT)	1	LS	\$10,000.00	\$10,000
ILL7	LOCKWOOD TRAFFIC SIGNAL	1	LS	\$175,000.00	\$175,000
ILL8	CONNECT TO EXISTING ELECTRICAL SOURCE	1	LS	\$2,500.00	\$2,500

Total Non-Allowances \$3,329,437

Total Allowances \$425,000

Subtotal \$3,754,437

Contingency (15%, +/-) \$563,166

Construction Year Inflation Contingency 2024 (4.5%, +/-) \$168,950

Construction Cost Total \$4,486,553

Administrative Management

Administrative Management \$ 265,000

BBP Project Management \$ 100,000

Administrative Management \$ 365,000.00

Design & Construction Phase Management

LANDSCAPE AND CIVIL ENGINEERING \$400,546

FRANCHISE UTILITY COORDINATION \$10,000

GEOTECHNICAL TESTING & PAVEMENT RECOMMENDATION \$25,000

GEOTECH MATERIAL TESTING \$50,000

WATER LINE AND SANITARY SEWER LINE TESTING \$12,000

ON SITE CONSTRUCTION MANAGEMENT AND INSPECTION \$50,000

Total \$ 547,546

Contingency (10%, +/-) \$54,755

Construction Management Cost Total \$ 602,300

Summary

Construction \$ 4,486,553

Administrative Management \$ 365,000

Design & Construction Phase Management \$ 602,300

Total \$ 5,453,853

Exhibit D - Scope of Work

Marron Park Way (formerly known as Foley Street) Project Fact Sheet

The Housing and Community Development Department (HCDD) recommends Council Approval of an Ordinance authorizing a new Subrecipient Agreement between the City of Houston (City) and Buffalo Bayou Partnership (BBP) to utilize \$5,453,853 in CDBG-MIT funds to mitigate and lessen the risk of flooding impacts through the development of underground storm drainage and new public road facilities. Funding for the project will be used for project administration, engineering design, construction of a new segment of public road, associated improvements, and construction phase services (Exhibit A).

The project consists of acquisition of approximately 146,068 square-feet of a former Railroad ROW to develop a new street to be called Marron Park Way as a new neighborhood collector street to provide new vehicular access to and complete roadway improvements from Lockwood Drive to the east and Drennan Street to the west. The new roadway constructed under this agreement will be approximate 1,600 linear feet and constructed on vacant land. The total road upon completion will be over 3,000 linear feet. The new road consists of a new 22-foot-wide concrete roadway consisting of two (2) 11-foot lanes with 6" curb, gutter, and storm infrastructure. The roadway section will be graded at a 2% slope from south to north with storm water inlets placed on the north side curb to maximize storm infrastructure/cost ratio and efficiency. This system will have the capacity to convey the 100-year storm flow.

New public storm utilities will be developed by conveying the areas runoff through underground storm drainage that will outfall directly into the Buffalo Bayou that will address documented drainage needs by METRO and TIRZ 23, to help mitigate long-term flooding in the neighborhood. The improvements will provide the necessary capacity required for a 100-year storm event, and per the City Lower Buffalo Bayou Watershed determination memo for storm water management (Exhibit B), *"the subject area should not detain any stormwater and should send storm flow directly to Buffalo Bayou.* The attached (Exhibit C) Kimley Horn engineering memo confirms the COH Policy. Additionally, it is understood the bayou has a capacity of 14,000 CFS (cubic feet / second) and during Hurricane Harvey, approximately 7,400 CFS was conveyed through the bayou.. The flow from this development will add 173.55 CFS, and will not have negative downstream impacts. Furthermore, *"the highest flooding elevation recorded in the bayou at this project location is 22.4' (during Hurricane Harvey). The top of bank of the bayou is at 38.0', therefore the bayou has ample capacity to convey the flows from the project without any negative impacts downstream".*

In all, this Project will benefit approximately 213 existing homes and the 250 planned affordable residential units within the proposed development and surrounding areas. The outfall for the drainage infrastructure will be sized to convey 173.55 CFS, the 100-year storm flow for Marron Park Way needed to mitigate existing unmet requirements, and future development within the overall benefit area. No current storm infrastructure exists in the location of the specific project,

and the need for such improvements has been identified by multiple public agency studies (Exhibits D and E). The immediate area's public facilities (utilities, roads, etc.) have been relatively unchanged since constructed before the mid-1940s.

The Marron Park Way improvements will meet the MIT goals by lessening impacts from future disasters, reducing life safety issues by providing secondary emergency and vehicular access and increase resilience of the surrounding areas. Additional benefits of the project are the new roadway will provide access for commercial vehicles to industrial properties located within the neighborhood, which currently access these facilities on streets designed prior to the implementation of the current size of modern commercial 18-wheel vehicles, by providing access to the new roadway. See provided photo documentation provided with such trucks stuck in ditches along these streets (Exhibit F).

In addition, the project will provide significant benefits for the community by enhancing safe pedestrian and cyclist routes with new multimodal trails and sidewalks and park-like landscaping. Green infrastructure improvements such as rain gardens, bioswales, trees and other Low Impact Development (LID) recommendations will be implemented to enhance the project and tie into other planned improvements, including access to Tony Marron Park, enabling it to expand from 19 to 40 acres.

The project is located between N. York and Lockwood Drive on the south side of Buffalo Bayou in Houston's Second Ward complete communities neighborhood, a low-moderate income (LMI) community.

The total project budget is \$5,453,853 which is funded by HCDD. Buffalo Bayou Partnership will be responsible to manage and oversee the Project and the procurement of a Consultant to oversee the bid and advertisement of engineering and construction services for this Project per funding requirements.

Construction is anticipated to start in September 2024 and take approximately 6-9 months to build.

EXHIBIT A

Sources and Uses

9/1/23

Marron
Park Way
DR-MIT
Grant

	Use	Source
Design & Construction Management	\$602,300	
Construction	\$4,486,553	
Administrative Management	\$365,000	
DR-MIT Grant		\$ 5,453,823
TOTAL SOURCES / USES	\$5,453,853	\$5,453,853

EXHIBIT D-1

Scope of Work Areas

Exhibit E

APPLICABLE LAW

Federal Provisions, CDBG-MIT Provision, CDBG-MIT Main Notice

FEDERAL PROVISIONS

Version 03/16/2023

GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS ("GENERAL FEDERAL REQUIREMENTS")

Subrecipient must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this **Appendix**, the following terms have the meanings set forth in this Appendix.

- "Agreement" means the Agreement, Addendum, or Purchase Order to which this **Appendix** is attached.
- "Subrecipient" means BBP or Vendor as defined in the Agreement to which this **Appendix** is attached and any subrecipient, contractor, or subcontractor performing work on behalf of the Subrecipient pursuant to the foregoing Agreement.
- "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Appendix** is attached as a source of funding.

Subrecipient also acknowledges that the City is using federal funds attached to a federal program ("Program") for all or a portion of this Agreement. Subrecipient therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions or websites required by the CPO, and any specific terms and conditions set forth in the grant as specified by the CPO ("Funding Law, Regulations and Guidelines").

Subrecipient also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this **Appendix** in any agreements it enters into with other parties relating to the federal funds.

1. Subrecipient acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Subrecipient shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
 - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
 - c. Generally applicable federal environmental laws and regulations
2. Subrecipient acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Subrecipient, or any other party pertaining to any matter resulting from this Agreement.
3. Subrecipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Subrecipient's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
4. Use of Funds. Subrecipient understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.

5. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.
6. Period of Performance. The Period of Performance of this Agreement will begin on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Subrecipient signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.
7. Subrecipient shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
8. Access to Records. The following access to records requirements apply to this Agreement:
 - a. Subrecipient agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Subrecipient which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Subrecipient shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
 - b. Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. Subrecipient agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
 - d. In compliance with the Disaster Recovery Act of 2018, the City and Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
 - e. Within ten days of written request by the City, Subrecipient agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.
6. Environmental Compliance – Applicable only to Agreements over \$150,000.
 - a. Subrecipient shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
 - b. Subrecipient shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. Subrecipient shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
7. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
 - c. Withholding for unpaid wages and liquidated damages. The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
 - d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
8. Equal Employment Opportunity. During the performance of this Agreement, Subrecipient agrees as follows:
- a. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- c. Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Subrecipient's legal duty to furnish information.
- d. Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Subrecipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. Subrecipient will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Subrecipient will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.
- i. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- j. The City agrees that it will assist and cooperate actively with the Federal Agency, and the Secretary of Labor in obtaining the compliance of subrecipients and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the

Secretary of Labor, that it will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.

- k. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a subrecipient or vendor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon subrecipients and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

9. Procurement of Recovered Materials.

- a. In the performance of this Agreement, Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Domestic Preference Requirements

- a. Domestic Preference Requirement – 2 C.F.R. §200.322
 - i. As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
 - 1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as

aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

b. Domestic Content Procurement Preference Requirement for Infrastructure Projects

- i. For all infrastructure projects funded by Federal financial assistance, except for certain projects funded by a federal agency that constitute pre- and post-disaster or emergency expenditures as defined in OMB Guidance M-22-11 or otherwise falls under a waiver approved by the Federal Agency, Subrecipient shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:
 1. "Domestic Content Procurement Preference" means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.
 2. "Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.
 3. "Produced in the United States" means—
 - a. in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 - b. in the case of manufactured products, that— (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
 - c. in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.
 4. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use would not constitute an infrastructure project under OMB Guidance M-22-11. Projects that will serve a public function, are publicly owned and operated, privately

operated on behalf of the public, or are a place of public accommodation are indicia of infrastructure.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

- a. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.
- b. Prohibitions
 - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - ii. Unless an exception in this paragraph applies, Subrecipient and its subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:
 - 1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - 2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - 3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - 4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- c. Exceptions
 - i. This paragraph does not prohibit subrecipients from providing—
 - 1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - 2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - 1. Covered telecommunications equipment or services that:

- a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system.
 - 2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
 - 3. That which 2 C.F.R. Section 200.216 does not apply.
 - d. Reporting requirement
 - i. In the event Subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Subrecipient is notified of such by a Subcontractor at any tier or by any other source, Subrecipient shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.
 - ii. Subrecipient shall report the following information pursuant to paragraph (e):
 - 1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - 2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
 - e. Subcontracts. Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.
12. Remedies. If any work performed and/or goods delivered by Subrecipient fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:
- a. elect to have Subrecipient re-perform or cause to be re-performed, at Subrecipient's sole expense, any of the work which failed to meet the requirements of the contract;
 - b. in the case of goods, reject the goods and require Subrecipient to provide replacement goods that meet the needs of the City and the terms of the Agreement;
 - c. hire another subrecipient or vendor to perform the work and deduct any additional costs incurred by the City as a result of substituting a third party or vendors from any amounts due to Subrecipient; or
 - d. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all

other available legal or equitable remedies against Subrecipient.

13. Suspension and Debarment.

- a. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Subrecipient can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.
- b. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Subrecipient is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- c. Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- d. This certification, found in Exhibit 1, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Subrecipient did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- e. Subrecipient agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14. Byrd Anti-Lobbying Amendment.

- a. A subrecipient who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Exhibit 2 of this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

15. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- a. If Subrecipient intends to subcontract any portion of the work covered by this Agreement, Subrecipient must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 16. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and not funded by FEMA-PA Program.
 - a. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Subrecipient shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - b. Subrecipient is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - c. Additionally, Subrecipient is required to pay wages not less than once a week.
- 17. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.0 and when the Davis-Bacon Act also applies.
 - a. Subrecipient. Subrecipient shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
 - b. Subcontracts. Subrecipient or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Subrecipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.
- 18. Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Subrecipient, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Subrecipient.
- 19. Protections for Whistleblowers.
 - a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
 - c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
20. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Subrecipient-owned, rented, or personally-owned vehicles.
21. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving.
22. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.
- Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.
23. Debts Owed to the City.
- a. Any funds paid to Subrecipient (1) in excess of the amount to which Subrecipient is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the City and to the Federal government.
 - b. Any debts determined to be owed the City must be paid promptly by Subrecipient for repayment to the federal government.
 - c. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.
24. Disclaimer. The United States expressly disclaims any and all responsibility or liability to Recipient and Subrecipient or third persons for the actions of Recipient, Subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any

way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Subrecipient does not in any way establish an agency relationship between the United States and Recipient or Subrecipient.

25. Subrecipient understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Subrecipient. Subrecipient must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the U.S. Department of Housing and Urban Development ("HUD"), Subrecipient shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any agreements Subrecipient enters into with other parties relating to these funds.

1. Civil Rights Compliance. Subrecipient shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Subrecipient shall submit to the City's Chief Procurement Officer or designee the required assurances as set out in Exhibit 3 of this Agreement. Subrecipient is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:
 - a. title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
 - b. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
 - c. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
 - d. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Subrecipient to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
 - e. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
 - f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
 - g. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.

- h. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
 - i. By signing this Agreement, Subrecipient understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system
2. National Flood Insurance Program.
 - a. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
 - b. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.
3. Displacement, Relocation, Acquisition and Replacement of Housing
 - a. Subrecipient understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.
4. Section 3 of the Housing and Urban Development Act of 1968
 - a. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon any Subrecipients and subcontractors. Failure to fulfill these requirements shall subject any Subrecipients and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided.
 - b. Subrecipients agree to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is subject to the requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Agreement. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as

defined at 24 CFR Part 75 ("Section 3 Regulations")."

- c. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").
 - d. Subrecipient agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Subrecipient certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.
 - e. Subrecipient shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.
 - f. Subrecipient will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontractor in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
 - g. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (i) after Subrecipient is selected but before the Agreements executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under Section 3 Regulations.
 - h. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.
6. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Subrecipient shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, as applicable.
7. Conflict of Interest
- a. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.

- b. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its contractors, subcontractors, subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
 - i. No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.
 - ii The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, contractor, subcontractor, or subrecipient which receives funds under the federal grant.
- 8. Eligibility of Aliens Not Lawfully Present in U.S. Subrecipient understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.
- 9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 101.19.6, for general type buildings).
- 10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Subrecipient shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a contractor pursuant to 2 C.F.R. §200.333. Subrecipient shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Subrecipient will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.
- 11. Audit Requirements.
 - a. Limited Scope Audit - Subrecipient understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 17. Subrecipient further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.

- b. Single Audit - Single Audit - Subrecipient further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Agreement is executed, Subrecipient understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.
- 12. Rights to Inventions made under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 13. Energy Policy and Conservation Act. Subrecipient must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).
- 14. Procurement of Recovered Materials. See 2 C.F.R. §200.322.
- 15. Subrecipient shall not use HUD seal(s), logos, crests, or reproductions of flags or likenesses of HUD agency officials without specific the HUD's written pre-approval.

APPLICABLE LAW - CDBG-MIT

1. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR Part 25 Universal Identifier and System for Award Management (SAM). The Grantee must have an active registration in SAM in accordance with 2 CFR Part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Grantee must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR Part 170 Reporting Subaward and Executive Compensation Information.

1. **Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Subrecipient and sub-awardees at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. The Subrecipient will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.
2. **Federal Award Number:** As per the Federal Funding Accountability and Transparency Act, federal agencies will assign a Federal Award Identification Number (FAIN) to each federal award. The FAINs are intended to increase transparency in federal spending and allow the American public to hold the government accountable for spending decisions. Each Subrecipient and sub-awardee should be aware of this identification number and ensure the FAIN is incorporated into all sub-grants under the Agreement.

2. Displacement, Relocation, Acquisition and Replacement of Housing

Subrecipient understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), 24 CFR Part 42 and 24 CFR 570.606; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

In addition to other URA requirements, these regulations (49 CFR 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

3. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of the Architectural Barriers Act and the Americans with Disabilities Act.

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR Part 40 for residential structures, and appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type

buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense

4. Conflict of Interest under 24 CFR 570.611

The subrecipient shall ensure that no employee, agent, or officer of your organization with decision-making responsibility for CDBG funds and activities is allowed to benefit from CDBG activities or have a financial interest in any agreement regarding those activities or in the proceeds of the activities. This requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s). The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or the subrecipient organization. Upon written request, exceptions may be granted by HUD on a case-by-case basis, after consideration of the cumulative effect of various factors listed in 24 CFR 570.611(d), and only with: (a) full disclosure of the potential conflict and (b) a legal opinion of the grantee's attorney that there would be no violation of state or local laws in granting the exception.

5. Religious Activities

The Subrecipient agrees that Grant Funds provided under this Agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization. Religious Organizations are allowed to participate in CDBG-MIT grant programs to support Mitigation and any eligible activity.

6. Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22, which imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making, and action (see 24 CFR part 58) and is not delegated the Subrecipient's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

7. Duplication of Benefits

The Subrecipient shall not carry out any of the activities under the Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. Specifically, Section 312 prohibits any person, business concern, or other entity from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 USC 5155 (a). A duplication occurs when a beneficiary receives

assistance from multiple sources of cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. If a duplication of benefits occurs, funds may be recaptured per the terms and conditions of the subrogation agreement (Attachment D). Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011).

EXHIBIT F

CBDG-MIT PUBLIC INFRASTRUCTURE QUARTERLY PERFORMANCE PROJECTIONS TEMPLATE

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-6109-N-02]

RIN 2506-ZA02

**Allocations, Common Application,
Waivers, and Alternative Requirements
for Community Development Block
Grant Mitigation Grantees**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$6.875 billion in Community Development Block Grant Mitigation (CDBG-MIT) funds to grantees recovering from qualifying 2015, 2016, and 2017 disasters. Funds allocated by this notice were made available by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (approved February 9, 2018) (the "Appropriations Act"). This notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to CDBG-MIT funds only. The Department acknowledges the governance and financial management challenges of the Commonwealth of Puerto Rico and the on-going capacity considerations in the U.S. Virgin Islands. Accordingly, the allocation of funds to the Commonwealth of Puerto Rico and the U.S. Virgin Islands for mitigation and electrical power system improvements shall be governed by subsequent notices in order to provide additional time to Puerto Rico and the U.S. Virgin Islands to work with the Department to address these issues.

DATES: *Applicability Date:* September 4, 2019.

FOR FURTHER INFORMATION CONTACT:
Jessie Handforth Kome, Acting Director,
Office of Block Grant Assistance,
Community Planning and Development,
Department of Housing and Urban
Development, 451 7th Street SW, Room
7282, Washington, DC 20410, telephone
number 202-708-3587. Persons with
hearing or speech impairments may
access this number via TTY by calling
the Federal Relay Service at 800-877-
8339. Facsimile inquiries may be sent to
Ms. Kome at 202-708-0033. (Except for
the "800" number, these telephone
numbers are not toll-free). Email
inquiries may be sent to *disaster_*
recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview and Policy Objectives
- II. Use of CDBG-MIT Funds

- A. Mitigation Definition
- B. Action Plan, Substantial Amendments,
and Covered Projects
- C. Most Impacted and Distressed Areas
- III. Allocations
- IV. Overview of Grant Process
- V. Applicable Rules, Statutes, Waivers, and
Alternative Requirements
- A. Grant Administration and Action Plan
Requirements
- B. Housing and Related Floodplain Issues
- C. Infrastructure
- D. Economic Development
- VI. Certifications and Collection of
Information
- VII. Duration of Funding
- VIII. Catalog of Federal Domestic Assistance
- IX. Finding of No Significant Impact

I. Overview and Policy Objectives

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, approved February 9, 2018) (the "Appropriations Act"), made available \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds, and directed HUD to allocate not less than \$12 billion for mitigation activities proportional to the amounts that CDBG-DR grantees received for qualifying disasters in 2015, 2016, and 2017. This notice accordingly allocates \$6,875,044,000 in CDBG-MIT funds for mitigation activities consistent with the Appropriations Act.

CDBG-MIT funds represent a unique and significant opportunity for grantees to use this assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses. While it is impossible to eliminate all risks, CDBG-MIT funds will enable grantees to mitigate against disaster risks, while at the same time allowing grantees the opportunity to transform State and local planning.

Through this allocation for mitigation, HUD seeks to:

- Support data-informed investments in high-impact projects that will reduce risks attributable to natural disasters, with particular focus on repetitive loss of property and critical infrastructure;
- Build the capacity of States and local governments to comprehensively analyze disaster risks and to update hazard mitigation plans through the use of data and meaningful community engagement;
- Support the adoption of policies that reflect local and regional priorities that will have long-lasting effects on community risk reduction, to include the risk reduction to community lifelines such as Safety and Security, Communications, Food, Water, Sheltering, Transportation, Health and

Medical, Hazardous Material (management) and Energy (Power & Fuel); and future disaster costs (e.g., adoption of forward-looking land use plans that integrate the hazard mitigation plan, latest edition of the published disaster-resistant building codes and standards (to include wildland urban interface, flood and all hazards, ASCE-24, and ASCE-7 respectively), vertical flood elevation protection, and policies that encourage hazard insurance for private and public facilities); and

- Maximize the impact of available funds by encouraging leverage, private-public partnerships, and coordination with other Federal programs.

The guiding structure and objectives established for CDBG-MIT funds bear similarities to other federal programs that address hazard mitigation, particularly FEMA's Hazard Mitigation Grant Program (HMGP). Accordingly, HUD has structured this notice and its requirements to complement HMGP policies and processes where possible. For example, both CDBG-MIT funds and FEMA HMGP funds require grantees to conduct a multi-hazard risk assessment to inform projects and programs. Additionally, grantee use of CDBG-MIT funds will be focused on effectively addressing risks to indispensable services that enable the continuous operation of critical business and government functions, and that are critical to the protection of human health and safety, or economic security, as described in section V.A.2.a.(1) of this notice.

The Appropriations Act provides CDBG-MIT funds as a supplemental appropriation to the Community Development Block Grant (CDBG) program. Accordingly, the alignment of CDBG-MIT funds with other federal mitigation programs must also occur within the basic CDBG framework. The national objectives of the CDBG program are: (a) Providing benefit to low- and moderate-income persons; (b) preventing or eliminating slum and blighting conditions; or (c) addressing a severe and recently arising urgent community welfare or health need. Unlike other forms of Federal disaster recovery assistance, CDBG-DR and CDBG-MIT grants have a statutory focus on benefiting vulnerable lower-income people and communities and targeting the most impacted and distressed areas.

The Appropriations Act requires that prior to the obligation of CDBG-DR funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds including the criteria for eligibility and how the use of these funds will address

mitigation in the most impacted and distressed (MID) areas. The Appropriations Act also provides HUD with waiver authority that enabled HUD to modify the basic CDBG requirements to support hazard mitigation when needed. However, there are several statutory requirements under the basic CDBG framework (*e.g.*, requirements related to labor standards, nondiscrimination, the environment and fair housing) which HUD is not authorized to waive. Because this framework will largely remain intact throughout this notice and to ensure compliance with all applicable program requirements, HUD strongly encourages grantees to designate the agency that administers its CDBG-DR funds to also administer this CDBG-MIT grant.

The notice also balances the goals of aligning mitigation policies across federally-funded programs, maximizing efficiencies, and preserving critical aspects of the CDBG structure. As discussed in section V.A. of this notice, Grant Administration and Action Plan Requirements, grantees are encouraged to use CDBG-MIT planning funds to update the FEMA-approved Hazard Mitigation Plans (HMP) and are required to reference the applicable FEMA HMP in their action plan and describe how the HMP has informed the CDBG-MIT action plan. Grantees may also use these funds for planning activities, including but not limited to regional mitigation planning, the integration of mitigation plans with other planning initiatives, activities related to FEMA's Pre-Disaster Mitigation (PDM, to be renamed Building Resilient and Infrastructure Communities (BRIC) as part of implementation of section 1234 of the Disaster Recovery Reform Act of 2018, which amended section 203 of the Stafford Act (42 U.S.C. 5133)) and Flood Mitigation Assistance (FMA), modernizing building codes and regional land-use plans, and upgrading mapping, data, and other capabilities to better understand evolving disaster risks. For example, in wildland fire risk areas, grantees may use these funds to develop a Community Wildfire Protection Plan (CWPP). Additionally, State grantees are encouraged to use CDBG-MIT planning funds to meet the additional requirements for an *enhanced* HMP and for eligible CDBG-MIT activities that increase a grantee's capacity to participate in FEMA's HMGP Program Administration by States (PAS) initiative. This use of CDBG-MIT funds, in combination with FEMA HMGP assistance, will have long-term benefits by supporting high-quality mitigation planning, building a

foundation for continuous coordination and data-driven outcomes, and providing common goals for selecting high impact projects across multiple programs and funding sources.

HUD recognizes that this first-time appropriation of mitigation-only CDBG funds may pose challenges to grantees in aligning their mitigation strategies and activities with their obligation to use most of their CDBG-MIT funds to benefit low- and moderate-income persons and to use the funds in the MID areas resulting from a disaster. Accordingly, this notice provides grantees with flexibility on the percentages related to a CDBG-MIT grant's overall benefit requirement and MID expenditure requirement. As with CDBG-DR, HUD encourages CDBG-MIT grantees to consider a wide range of community development objectives related to recovery and economic resilience. This notice provides a waiver and establishes an alternative requirement to include new urgent need national objective criteria that are applicable to CDBG-MIT funds only, as described in section V.A.13. of this notice. This urgent need mitigation (UNM) national objective requires activities funded with the CDBG-MIT grant to result in measurable and verifiable reductions in the risk of loss of life and property from future disasters and yield community development benefits. The waiver and alternative requirement in section V.A.13. also explains that grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD, because this national objective generally is not appropriate in the context of mitigation activities.

CDBG-MIT funds are to be used for distinctly different purposes than CDBG-DR funds. The amount of funding provided through this CDBG-MIT allocation and the nature of the programs and projects that are likely to be funded requires that CDBG-MIT grantees and their subrecipients strengthen their program management capacity, financial management, and internal controls. Each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The Department also intends to establish special grant conditions for individual CDBG-MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects

proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

While CDBG-DR and CDBG-MIT funding are valuable resources for long-term recovery and mitigation in the wake of major disasters, HUD concurrently expects that grantees will take steps to set in place substantial governmental policies and infrastructure to enhance the impact of HUD-funded investments. In some instances, this goal may be achieved through the development and application of more stringent building and zoning codes which will help to limit damage from future severe weather events. It should be noted that these actions are eligible costs under CDBG-DR or CDBG-MIT funding.

Consistent with prior CDBG-DR notices, HUD restates that disaster recovery is a partnership between Federal, state, and local government and CDBG-MIT grantees should invest in their own recovery. To sustain CDBG-MIT physical investments in the future, it is imperative that grantees collect and apply sufficient revenues for operation and maintenance costs in the outyears. HUD expects grantees to contribute to their recovery through the use of reserve or "rainy day" funds, borrowing authority, or retargeting of existing resources. The ultimate value of this mitigation funding appropriation is not limited to the projects and activities implemented with the funds but will also encompass how state and local partners are motivated to improve many of their governmental functions to better position jurisdictions to be resilient in the face of future disasters. HUD will examine how grantees plan to achieve this broader benefit and will promote best practices to future CDBG-DR grantees.

It is the policy of the Administration that this first implementation of CDBG-MIT funding be implemented in a manner that mandates careful planning, adequate oversight, and increased reporting of anticipated and actual outcomes of the uses of the mitigation funds, to inform future Federal disaster mitigation efforts, to encourage private sector funding of mitigation projects, and to maximize the benefits of CDBG-MIT funding.

The Administration cannot emphasize strongly enough the need for grantees to fully and carefully evaluate the projects that will be assisted with CDBG-MIT funds. One of the goals of CDBG-MIT is to set a nationwide standard that will

help guide not just future Federal investments in mitigation and resilience activities—to include the mitigation of community lifelines, but state and local investments as well. The level of CDBG-MIT funding available to most grantees cannot address the entire spectrum of known mitigation and resilience needs. Accordingly, HUD expects that grantees will rigorously evaluate proposed projects and activities and view them through several lenses before arriving at funding decisions, including ensuring that already committed public or private resources are not supplanted by CDBG-MIT funds.

One such lens could be a thorough consideration of projects and activities encompassed within the applicable FEMA HMP and a judgment of whether those projects/activities represent targeted strategic investments for the grantee based on current or foreseeable risks. This judgment would stand in contrast to the funding of projects/activities identified in such plans where, for example, there has been no recent review of the risk reduction value of the investment or the project/activity has been carried in the plan for years but has limited risk reduction value.

A second lens could be a consideration of the status of necessary planning and permitting efforts. To ensure that CDBG-MIT investments have the highest possible impact on long-term mitigation and resilience needs, each grantee should conduct a careful status review of planning and permitting actions for proposed projects/activities and identify those that can move forward quickly. Concurrently, this exercise can help to identify Federal regulatory relief that is critical to helping clear the path for these projects/activities. In this vein, the Administration expects that grantees will conduct a review of and make necessary changes and exceptions to their own permitting and related processes to expedite funded projects/activities. In undertaking this analysis, grantees should not succumb to the urge to select projects/activities solely because they are the most advanced in the planning and permitting process but should focus on high impact investments and a thorough understanding of what will be necessary to move those investments forward rapidly.

The notice includes several waivers and alternative requirements typically established in CDBG-DR **Federal Register** notices but modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department cannot anticipate every type of mitigation project or program that will

be proposed by grantees, but these activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects.

For purposes of this notice, HUD is using the terms CDBG-MIT programs and projects to refer to the means by which grantees implement CDBG eligible activities. This notice also references the general categories of infrastructure and public facilities, housing, planning and administration, public services, and economic development that grantees often use to group activities in an action plan, in the DRGR action plan, and in quarterly performance reports.

II. Use of CDBG-MIT Funds

II. A. Mitigation Definition

For the purposes of this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

II. B. Action Plan, Substantial Amendments, and Amendments for Covered Projects

Before the Secretary obligates CDBG-MIT funds to a grantee, the Appropriations Act requires the grantee to submit a plan to HUD for approval detailing the proposed use of all funds. All or a portion of an action plan or substantial amendment will be substantially incomplete if the plan does not include the elements required by this notice. A grantee's use of CDBG-MIT funds must be consistent with its action plan.

All CDBG-MIT activities must: (1) Meet the definition of mitigation activities above; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas (described below); (3) be CDBG-eligible activities under title I of the Housing and Community Development Act of 1974 (HCDA) or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and Covered Projects. The action plan must describe how funded activities satisfy these requirements.

As mentioned above, the action plan must include a risk-based Mitigation Needs Assessment that identifies and analyzes all significant current and

future disaster risks and provides a substantive basis for the activities proposed. To complete this assessment, grantees must consult with other jurisdictions, the private sector and other government agencies, including State and local emergency management agencies that have primary responsibility for the administration of FEMA mitigation funds, including the State Hazard Mitigation Officer (SHMO), for HMGP alignment. Grantees must also use the most recent risk assessment completed or currently being updated through the FEMA HMP process to inform the use of CDBG-MIT funds. Therefore, the grantee must use the risks identified in the FEMA approved HMP as the starting point for its Mitigation Needs Assessment unless the jurisdiction is in the process of updating the HMP. If a jurisdiction is currently updating an expired HMP, the grantee administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. The action plan must describe proposed allocations of CDBG-MIT funds that meet all of the requirements listed above in this section.

To maximize the impact of all available funds, grantees must coordinate and align these CDBG-MIT funds with other mitigation projects funded by FEMA, the U.S. Army Corps of Engineers (USACE), the U.S. Forest Service, and other agencies as appropriate. For example, in wildland fire prone areas, this would include federal and state forestry and fire agencies that carry out activities related to fire risk reduction.

Grantees must describe in their action plan how they have coordinated and will continue to coordinate with other partners who manage FEMA and USACE funds and describe the actions that they have taken to align their planned CDBG-MIT activities with other federal, state, and local mitigation projects and planning processes.

To allow for a more detailed review of larger projects, this notice requires that infrastructure projects that also meet the definition of a Covered Project be included in an action plan or a substantial action plan amendment. For purposes of this notice, a Covered Project is defined as an infrastructure project having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-National Disaster Resilience (NDR), CDBG-MIT, or CDBG)). For grantees that are considered by HUD to have "unmitigated high risks" that impact

their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the definition of a Covered Project.

As described in section V.A.2.h. below, when a grantee proposes a Covered Project, the action plan or substantial amendment must include a description of the project and the information required for other CDBG-MIT activities (how it meets the definition of a mitigation activity, consistency with the Mitigation Needs Assessment provided in the grantee's action plan, eligibility under section 105(a) of the HCDA or a waiver or alternative requirement, and national objective, including additional criteria for mitigation activities). Additionally, the action plan must describe how the Covered Project meets additional criteria for national objectives for Covered Projects (described in V.A.13. below) including: Consistency with other mitigation activities in the same MID area; demonstrated long-term efficacy and sustainability of the project including its operations and maintenance; and a demonstration that the benefits of the Covered Project outweigh the costs (through the methods described in V.A.2.h.).

II. C. Most Impacted and Distressed Areas

The Appropriations Act made CDBG-MIT funds available for eligible activities related to the mitigation of risks within the MID areas. This notice lists the HUD-identified MID areas for each CDBG-DR grantee receiving an allocation of CDBG-MIT funds. The HUD-identified MID areas for each CDBG-MIT grant are those identified by

HUD in the following **Federal Register** notices for the grantee's 2015, 2016, or 2017 CDBG-DR grants (collectively, the "Prior Notices"):

- *2015 Disasters*: 81 FR 39687; 82 FR 36812;
- *2016 Disasters*: 81 FR 83254; 82 FR 5591; 82 FR 36812; and
- *2017 Disasters*: 82 FR 61320; 83 FR 5844; 83 FR 40314.

The amount of CDBG-MIT funding grantees must expend to mitigate risks within the HUD-identified MID areas is listed in Table 1. In some instances, HUD previously identified the entire jurisdiction of a grantee as the MID area. For all other CDBG-MIT grantees, HUD is requiring that at least 50 percent of all CDBG-MIT funds must be used for mitigation activities that address identified risks within the HUD-identified MID areas. HUD will include 50 percent of a grantee's expenditures for grant administration in its determination that 50 percent of the total award has been expended in the HUD identified MID areas. Additionally, expenditures for planning activities may be counted towards a grantee's 50 percent MID expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD identified MID areas.

HUD may approve a grantee's request to add other areas to the HUD-identified MID areas based upon the grantee's submission of a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster. As the HUD-identified MID areas for CDBG-MIT funds are the same as those identified for each grantee in the Prior Notices, a

grantee seeking to amend its HUD-identified MID area for purposes of its CDBG-MIT grant, must also amend the HUD-identified MID area for its corresponding 2015, 2016, or 2017 CDBG-DR grant. Grantees proposing to add to the HUD-identified MID area for their existing CDBG-DR grant shall do so through a substantial amendment that includes a consideration of unmet housing recovery needs. The grantee must also undertake a substantial amendment to its CDBG-MIT action plan so that the HUD-identified MID areas are the same across both grants. The grantee may submit the substantial amendments for both grants simultaneously.

Grantees may determine where to use the remaining 50 percent of the CDBG-MIT grant (the grantee-identified MID areas), but that portion of the grant must be used for mitigation activities that address identified risks within those areas that the grantee determines are most impacted and distressed resulting from the major disasters identified by the disaster numbers listed in Table 1. The grantee-identified MID areas must be determined through the use of quantifiable and verifiable data.

Grantee expenditures for eligible mitigation activities outside of the HUD-identified or grantee-identified MID area may be counted toward the MID area expenditure requirements provided that the grantee can demonstrate how the expenditure of CDBG-MIT funds outside of this area will measurably mitigate risks identified within the HUD-identified or grantee-identified MID area (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

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III. Allocations: TABLE 1 – ALLOCATIONS FOR MITIGATION ACTIVITIES

Disaster No.	State	Grantee	CDBG-MIT Allocation	Minimum amount that must be expended in the HUD-identified "most impacted and distressed" areas listed herein	HUD-identified "most impacted and distressed" areas
4344; 4353	California	State of California	\$88,219,000.00	\$44,109,500.00	Sonoma and Ventura counties; 93108, 94558, 95422, 95470, and 95901 Zip Codes.
4280; 4283; 4337; 4341	Florida	State of Florida	\$633,485,000.00	\$316,742,500.00	Brevard, Broward, Clay, Collier, Duval, Hillsborough, Lee, Miami Dade, Monroe, Orange, Osceola, Palm Beach, Polk, St. Johns, St. Lucie, and Volusia counties; 32084, 32091, 32136, 32145, 32771, 33440, 33523, 33825, 33870, 32068, 33935, and 34266 Zip Codes.
4294; 4297; 4338	Georgia	State of Georgia	\$26,961,000.00	\$13,480,500.00	31520, 31548, and 31705 Zip Codes.
4263; 4277; 4272	Louisiana	State of Louisiana	\$1,213,917,000.00	\$606,958,500.00	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes
4317	Missouri	State of Missouri	\$41,592,000.00	\$20,796,000.00	63935, 63965, 64850, 65616, and 65775 Zip Codes.
4285	North Carolina	State of North Carolina	\$168,067,000.00	\$84,033,500.00	Bladen, Columbus, Cumberland, Edgecombe, Robeson, and Wayne Counties.
4241; 4286	South Carolina	State of South Carolina	\$157,590,000.00	\$50,978,000.00	Charleston, Clarendon, Dorchester, Florence, Georgetown, Horry, Marion, Sumter, and Williamsburg Counties.
4241		Columbia	\$18,585,000.00	\$18,585,000.00	Columbia.
4241		Lexington County (Urban County)	\$15,185,000.00	\$15,185,000.00	Lexington County Urban County Jurisdictions.
4241		Richland County (Urban County)	\$21,864,000.00	\$21,864,000.00	Richland County Urban County Jurisdictions.
4223; 4245; 4266; 4269; 4272; 4332	Texas	State of Texas	\$4,297,189,000.00	\$2,105,646,500.00	Aransas, Brazoria, Chambers, Fayette, Fort Bend, Galveston, Hardin, Harris, Hays, Hidalgo, Jasper, Jefferson, Liberty, Montgomery, Newton, Nueces, Orange, Refugio, San Jacinto, San Patricio, Travis, Victoria, and Wharton counties; 75979, 77320, 77335, 77351, 77414, 77423, 77482, 77493, 77979, 78934, 78945, 77612, 75956, 77632, and 78377 Zip Codes.
4223; 4245		Houston	\$61,884,000.00	\$61,884,000.00	Houston.
4223; 4245		San Marcos	\$24,012,000.00	\$24,012,000.00	San Marcos.
4273	West Virginia	State of West Virginia	\$106,494,000.00	\$53,247,000.00	Greenbrier, Clay, Kanawha and Nicholas Counties.
Total*:			\$6,875,044,000.00		

*The remaining \$9,059,472,000 will be allocated at a later date.

CDBG–DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

IV. Overview of Grant Process

The grant process outlined below aligns with the typical order employed for CDBG–DR grants. However, the Department recognizes the potentially broad range of mitigation activities that may be funded pursuant to this notice and the critical importance of coordinating those investments across multiple jurisdictions. Accordingly, the Department is providing extended time frames and mechanisms for on-going citizen participation in the development and implementation of plans for mitigation activities funded pursuant to this notice.

To begin expending CDBG–MIT funds, the following steps are necessary:

- Grantee develops or amends its citizen participation plan for disaster recovery per the requirements in section V.A.3 to provide for the mitigation funding.
- Grantee consults with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities (as identified in section V.A.7.).
- In accordance with the requirements in section V.A.1.a., 60 days prior to the deadline for the submission of an action plan as prescribed in section V.A.2.e, the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management.
- Grantee publishes its action plan for mitigation on the grantee's required public website for no less than 45 calendar days to solicit public comment and convenes the required amount of public hearings on the proposed plan.
- Pursuant to the date prescribed in section V.A.2.e., grantee responds to public comment and submits its action plan (which includes Standard Form 424 (SF–424) and certifications), its implementation plan and capacity assessment submissions in accordance with the requirements in section V.A.1.b., and projection of expenditures and outcomes to HUD.
- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the action plan to HUD. Any activities that are changed as a result of HUD's review must be updated once HUD approves the action plan.
- HUD reviews (within 60 days from date of receipt) the action plan

according to criteria identified for CDBG–MIT funds, and either approves or disapproves the plan. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the action plan within 45 days of the notification.

- After the action plan is approved, HUD sends an action plan approval letter.
- Prior to transmittal of the grant agreement, HUD notifies grantees of its certification of the grantee's financial controls, procurement processes and grant management procedures and its acceptance of the implementation plan and capacity assessment.
- HUD sends the grant agreement to the grantee.
- Grantee signs and returns the grant agreement to HUD.
- Grantee posts the final HUD-approved action plan on its official website.
- HUD establishes the grantee's line of credit.
- Grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).
- The grantee must publish (on its website) policies for programs and activities implemented by the grantee with CDBG–MIT funds.
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by the Appropriations Act and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification.
- Substantial amendments are subject to a 30-day public comment period, including posting to grantee's website, followed by a 60-day review period for HUD.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, as well as waivers and alternative requirements that apply to the CDBG–MIT funds provided in the Appropriations Act. The waivers and alternative requirements provide flexibility in program design and implementation to support the prudent implementation of mitigation activities to lessen the impact of future disasters, while ensuring that statutory requirements are met. For each waiver and alternative requirement, the Secretary has determined that good

cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the HCDA.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their mitigation activities. Grantee requests for waivers and alternative requirements must be accompanied by relevant data to support the request and must demonstrate to the satisfaction of the Department that there is good cause for the waiver or alternative requirement. Grantees must work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Except where noted, the waivers and alternative requirements described below apply only to the CDBG–MIT funds. Under the requirements of the Appropriations Act, waivers and alternative requirements must be published in the **Federal Register** and are effective five days after publication. Considering the time necessary for the development and publication of **Federal Register** notices, grantees are advised to allow sufficient time for consideration, approval and publication of requests for waivers and alternative requirements.

Except as described for CDBG–MIT funds, statutory and regulatory provisions governing the State CDBG program apply to States receiving a CDBG–MIT grant, including but not limited to, the principle of maximum feasible deference as provided at 24 CFR 570.480. In addition, except as provided herein, the statutory and regulatory provisions governing the Entitlement CDBG program apply only to local governments receiving a CDBG–MIT grant. Statutory provisions (title I of the HCDA) can be found at 42 U.S.C. 5301 *et seq.* State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations refer to the action plan required by this notice. All **Federal Register** notice references to timelines and/or deadlines are calendar days unless otherwise noted.

V.A. Grant Administration and Action Plan Requirements

V.A.1. Pre-award evaluation of management and oversight of funds.

The Administration intends to closely monitor all aspects of the CDBG-MIT effort. This approach fits with the view that the CDBG-MIT initiative will require a high level of interaction between HUD and grantees to ensure performance and compliance across the implementation spectrum. Consistent with this approach, HUD will place great focus on the question of whether grantees have developed and submitted CDBG-MIT plans consistent with the requirements for CDBG-MIT funds, with particular attention to implementation plans and capacity assessments. The Department encourages grantees to identify in their plan any management and administrative reforms that have or will be implemented to improve accountability and outcomes associated with the use of CDBG-MIT funds.

Consistent with 2 CFR part 200, HUD will use grant conditions to the fullest extent possible to effectuate grantee policies that will contribute not only to improved outcomes in the use of CDBG-MIT funding but also help strengthen grantee management practices and long-term resilience. The Department may, if warranted, restrict the availability of funds until such time as various grant conditions are met by individual grantees. Grantees are reminded that HUD may, at any time, add new grant conditions based on performance or lack thereof or may pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.1.a. Certification of financial controls and procurement processes, and adequate procedures for proper grant management. The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all mitigation activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the

certification documentation listed below. This information must be submitted 60 days prior to the deadline for the submission of an action plan. Grant agreements will not be executed until HUD has approved the grantee's certifications. Grantees must implement the CDBG-MIT grant consistent with the controls, processes and procedures as certified by HUD.

For each of the items (1) through (6) below, the grantee must also provide a table that clearly indicates which agency and personnel are responsible for each task along with contact information. All grantees must certify to the accuracy of its documentation and must submit this certification with its action plan, as required in section VI.1.

(1) Proficient financial management controls. The grantee must submit information upon which HUD can make the determination of proficient financial controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) Single audit report and consolidated annual financial report. The grantee submits its most recent single audit and consolidated annual financial report (CAFR), which indicates, in HUD's determination, that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the grant. If the grantee's most recent single audit or CAFR identified material weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed; and

(b) Grantee assessment of its financial standards and completed Public Law 115-123 Financial Management and Grant Compliance Certification and supporting documentation. The grantee has assessed its financial standards and has submitted a completed Public Law 115-123 Financial Management and Grant Compliance Certification (Compliance Certification) available on the HUD Exchange website at <https://www.hudexchange.info/CDBG-MIT/CDBG-MIT-laws-regulations-and-federal-register-notices/>, together with all documentation required in the Compliance Certification to comply with the requirements and standards of the Compliance Certification. The grantee must identify which sections of its financial standards address applicable questions in the Compliance Certification and must continue to maintain such standards until grant closeout.

(2) Procurement processes/standards. HUD will determine whether the overall

effect of the grantee's procurement processes/standards upholds the principles of full and open competition and whether the procurement processes/standards require an evaluation of the cost or price of the property or service. A grantee must submit its procurement policies and procedures and must demonstrate that the grantee will comply with the procurement requirements in section V.A.25. of this notice. The grantee must also provide a legal opinion that it has proficient procurement policies and procedures.

A State has proficient procurement policies and processes if HUD determines that its procurement processes/standards uphold the principles of full and open competition and include an evaluation of the cost or price of the property or service, and if its procurement processes/standards either (a) adopted 2 CFR 200.318 through 200.326; or (b) follows its own procurement policies and procedures and establishes requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements applicable to the State, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or (c) adopted 2 CFR 200.317, meaning that it will follow its own State procurement policies and procedures and will evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.326 on its subrecipients.

Local governments have proficient procurement policies and processes if those policies and processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326. When the grantee provides a copy of its procurement standards, it must indicate the sections of its procurement standards that incorporate these provisions.

(3) Duplication of benefits procedures. A grantee has adequate procedures to prevent the duplication of benefits if the grantee submits uniform processes that reflect the requirements of section V.A.24. of this notice, including: (a) Verifying all sources of assistance received by the grantee or applicant, as applicable, prior to the award of CDBG-MIT funds; (b) determining a grantee's or an applicant's remaining funding need(s) for CDBG-MIT assistance before committing funds or awarding assistance; and (c) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive

additional assistance for the same purpose for which the CDBG-MIT award was provided. The grantee must identify a method to monitor compliance with the terms of the agreement for a reasonable period and must articulate this method in its written procedures, including the basis for the period of time in which the grantee will monitor for compliance. This agreement must also include the following language: "*Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.*"

Policies and procedures of the grantee submitted to support the certification must provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state and federal sources of funding to prevent the duplication of benefits. In developing these policies and procedures, grantees are directed to the **Federal Register** notice published on June 20, 2019 entitled, "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (2019 DOB Notice) (84 FR 28836). A grantee's policies and procedures are adequate if they reflect the treatment of loans that is consistent with the requirements of the Declined Loans Provision and the Disaster Recovery Reform Act (Pub. L. 115-254, Division D, "DRRA") as explained in section V.A.24. of this notice and the 2019 DOB Notice.

(4) Timely expenditures. A grantee has adequate procedures to determine timely expenditures if it submits procedures that indicate the following to HUD: How the grantee will track expenditures each month; how it will monitor expenditures of its subrecipients; how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; how it will ensure that contracts and bills that require payment will be timely paid; how it will project expenditures of all CDBG-MIT funds within the period provided for in section V.A.26. of this notice; how it will ensure that its actual and projected expenditure of funds is accurately reported to HUD in its DRGR Quarterly Performance Report (QPR). The grantee shall also identify the personnel or organizational unit responsible for ensuring timely expenditures.

(5) Comprehensive mitigation website linked to the grantee's disaster recovery

website. A grantee has adequate procedures to maintain a comprehensive website regarding all disaster recovery and mitigation activities funded under the Prior Notices and this notice, if it submits procedures that indicate that the grantee will have a separate page dedicated to CDBG-MIT activities that includes the information described in section V.A.3.d. of this notice and any additional information subsequently required by HUD. The procedures must also indicate the frequency of website updates. At a minimum, a grantee must update its website monthly and must link its CDBG-MIT website with the website required for its CDBG-DR grant. Additionally, HUD may require grantees to publish additional reports or dashboards on the grantee's website.

(6) Procedures to detect and prevent fraud, waste, and abuse. A grantee has adequate procedures to detect and prevent fraud, waste and abuse if it submits policies or procedures that enhance those previously certified by the Department for the grantee's CDBG-DR grant and if those policies or procedures include:

- (i) The criteria to be used to evaluate the capacity of potential subrecipients;
- (ii) The frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG-MIT funds, how it will enhance its monitoring of subrecipients, contractors and other program participants, how and why monitoring is to be conducted and which items are to be monitored;
- (iii) Enhancements to the internal auditor function established for the grantee's CDBG-DR grant; or if the CDBG-MIT grant is to be administered by an agency that does not administer the CDBG-DR grant, how the internal auditor function is to be established and resourced. The internal audit function must provide both programmatic and financial oversight of grantee activities and the submission must include a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse. Additionally, grantees may, as a special grant condition, be required to submit internal audit reports directly to HUD;
- (iv) A conflict of interest policy and the process for promptly identifying and addressing such conflicts; and
- (v) Information on how the grantee will verify the accuracy of information provided by applicants.

Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.1.b. *Implementation plan and capacity assessment.* CDBG-MIT funds

will typically require grantees to adopt new roles and responsibilities within their organization and to establish new working relationships with other entities external to the organization. Before signing a grant agreement, HUD requires each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks. Evidence of grantee management capacity must be provided through the grantee's implementation plan and capacity assessment submissions. These submissions must meet the criteria in (1) and (2) below and must be submitted with the grantee's action plan. The grantee must certify to the accuracy of its documentation as required by section VI.1. of this notice. Grantees must implement the CDBG-MIT grant consistent with the implementation plan and capacity assessment as approved by HUD pursuant to this paragraph.

A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria are satisfied:

(1) Timely information on application status. A grantee has adequate procedures to enable applicants to determine the status of their applications for mitigation assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or agency is responsible for informing applicants of the status of applications.

(2) Implementation plan. To enable HUD to assess risk as described in 2 CFR 200.205(c), the grantee must submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out mitigation activities, how it will address any capacity gaps, and how agency staff that administer CDBG-DR and CDBG-MIT funds will work with their counterparts who manage the grantee's FEMA-funded mitigation activities. If a grantee chooses to designate the agency that administers its FEMA funds as the entity for administration of its CDBG-MIT funds, the implementation plan must indicate how that agency will coordinate its activities with the agency that administers its CDBG-DR grant and will ensure compliance with all generally applicable CDBG requirements. HUD will determine a plan is adequate to reduce risk if, at a minimum it adequately addresses (a) through (e) below:

(a) Capacity assessment. The grantee has assessed its capacity to carry out mitigation activities and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR findings and an update on the corrective actions undertaken to address each finding. HUD may include additional requirements in the grantee's grant terms and conditions to prevent similar findings for this grant.

(b) Staffing. The plan shows that the grantee has accurately assessed staff capacity and identified adequate personnel who: Have documented experience in the timely development and implementation of mitigation programs particularly as it relates to activities in infrastructure, housing, and economic development (if applicable); are responsible for procurement/contract management, compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 135) (Section 3), fair housing compliance, and environmental compliance; and are responsible for monitoring and quality assurance, and financial management. An adequate plan must also describe the agency's internal audit function, including responsible audit staff reporting independently to the chief elected official or executive officer or governing board of the designated administering entity. To help complete this exercise, grantees may choose to use the "Staffing Analysis Worksheet" available on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/#capacity>.

(c) Internal and interagency coordination. The plan describes how the grantee will ensure effective communication and coordination between State and local departments and divisions involved in the design and implementation of mitigation planning and projects, including, but not limited to the following: Departments responsible for developing the HMP for applicable jurisdictions; departments implementing the HMGP; subrecipients responsible for implementing the grantee's action plan; and local and regional planning departments to ensure consistency and the integration of CDBG-MIT activities with those planning efforts.

(d) Technical assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise

required for successful and timely implementation where identified in the capacity assessment.

(e) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG-MIT grant and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction.

During the course of the CDBG-MIT grant, HUD will continually monitor each grantee's use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein. A material failure to comply with the grantee's implementation plan, as approved by HUD, will prompt HUD to exercise any of the corrective or remedial actions authorized pursuant to subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.2. CDBG-MIT Action Plan waiver and alternative requirement.

Requirements for CDBG action plans, in 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), 24 CFR 91.320, and 24 CFR 91.220, are waived for CDBG-MIT grants. Instead, grantees must submit to HUD an action plan for the use of CDBG-MIT funds which will describe programs and projects that conform to applicable requirements as specified for CDBG-MIT funds. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy some or all the required elements identified for CDBG-MIT funds. HUD will monitor the grantee's actions and use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein.

V.A.2.a. Action plan. The action plan must identify how the proposed use of all funds: (1) Meets the definition of mitigation activities; (2) addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas as defined in section II.C.; (3) will be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) will meet a national objective, including additional criteria for mitigation activities and Covered Projects.

The action plan must describe the impacts of the use of CDBG-MIT funds geographically by type at the lowest

level practicable (e.g., county level, zip code, neighborhood, or census tract). A grantee must also identify any CDBG-MIT projects that are to be used in combination with CDBG-DR funds allocated to the grantee to address unmet disaster recovery needs. This combination of funds is possible because a mitigation project or program that meets the requirements for CDBG-MIT funds, remains eligible for CDBG-MIT funding even if it also responds to a remaining unmet recovery need of the qualified disasters.

Several resources are available to grantees to assist in the development of the Mitigation Needs Assessment and corresponding proposed activities required in the action plan, as appropriate, including: The FEMA Hazard Mitigation Plan Resources website: <https://www.fema.gov/hazard-mitigation-planning-resources>; the FEMA State Mitigation Planning Resources website: <https://www.fema.gov/state-mitigation-planning-resources>; The FEMA State Mitigation Planning Key Topics Bulletins: <https://www.fema.gov/media-library/assets/documents/115780>; the FEMA Local Mitigation Planning Resources website: <https://www.fema.gov/local-mitigation-planning-resources>; the U.S. Forest Service's resources on wildland fire (<https://www.fs.fed.us/managing-land/fire>); and the National Interagency Coordination Center (NICC) which is the focal point for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>.

Grantees that have a FEMA-approved standard State HMP pursuant to 44 CFR 201.4, an enhanced HMP in accordance with 44 CFR 201.5 or other FEMA-approved mitigation plan, are required to use those plans and each plan's risk assessment to inform its response to the action plan requirements below. Grantees must reference these plans and indicate how the risks identified in the Mitigation Needs Assessment have been informed by the risks identified in the FEMA mitigation plan.

Mitigation needs evolve over time and grantees are to amend the Mitigation Needs Assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.

In addition to the waiver and alternative requirement established for CDBG-MIT action plans in this section of the notice, HUD is establishing an alternative requirement that grantees shall implement CDBG-MIT programs and projects in accordance with their action plan and with the descriptions provided by the grantee in the action

plan in response to elements (1) through (12) below:

(1) A Mitigation Needs Assessment. Each grantee must assess the characteristics and impacts of current and future hazards identified through its recovery from the qualified disaster and any other Presidentially-declared disaster. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When risks are identified among other vulnerabilities during the framing and design of mitigation projects, implementation of those projects can enhance protection and save lives, maximize the utility of scarce resources, and benefit the community long after the projects are complete. Accordingly, each grantee receiving a CDBG-MIT allocation must conduct a risk-based assessment to inform the use of CDBG-MIT funds to meet its mitigation needs, considering identified current and future hazards.

Grantees must assess their mitigation needs in a manner that effectively addresses risks to indispensable services that enable continuous operation of critical business and government functions, and are critical to human health and safety, or economic security. The Mitigation Needs Assessment must quantitatively assess the significant potential impacts and risks of hazards affecting the following seven critical service areas, or community lifelines:

- Safety and Security
- Communications
- Food, Water, Sheltering
- Transportation
- Health and Medical
- Hazardous Material (Management)
- Energy (Power & Fuel)

CDBG-MIT funds activities that ensure that these critical areas are made more resilient and are able to reliably function during future disasters, can reduce the risk of loss of life, injury, and property damage and accelerate recovery following a disaster.

In the Mitigation Needs Assessment, each grantee must cite data sources and must at a minimum, use the risks identified in the current FEMA-approved state or local HMP. If a jurisdiction is currently updating an expired HMP, the grantee's agency administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. A grantee may identify additional risks that are not included in its jurisdiction's

HMP but must at a minimum address the risks included in its jurisdiction's HMP. Grantees must include citations from the State or local HMP as evidence that the Mitigation Needs Assessment is consistent with such plan.

In responding to this action plan requirement and presenting the required information, grantees must review and certify to HUD that they have considered, at a minimum, the following resources, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf; DHS Office of Infrastructure Protection (<https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf>); National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf; the U.S. Forest Service's resources around wildland fire (<https://www.fs.fed.us/managing-land/fire/>); the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>; and HUD's CPD Mapping tool: <https://egis.hud.gov/cpdmaps/>.

(2) Long-term planning and risk mitigation considerations. The grantee must describe how it plans to: Promote local and regional long-term planning and implementation informed by its Mitigation Needs Assessment, including through the development and enforcement of building codes and standards (such as wildland urban interface; and flood and all hazards, including ASCE-24 and ASCE-7, as may be applicable), vertical flood elevation protection, and revised land use and zoning policies; coordinate with other planning efforts by local and regional entities to ensure alignment of CDBG-MIT activities with those plans; and support actions to promote an increase in hazard insurance coverage.

For flood mitigation efforts: Grantees must consider high wind and continued sea level rise and ensure responsible floodplain and wetland management based on the history of flood mitigation efforts and the frequency and intensity of precipitation events. For wildfire mitigation efforts: Grantees must consider land-use plans that address density and quantity of development, as well as emergency access, landscaping, and water supply considerations. For tornado mitigation efforts: Grantees must consider promoting the construction and use of safe rooms and require or encourage wind engineering

measures and construction techniques into building codes. CDBG-MIT funds may be used to reimburse planning and administrative costs for developing the action plan, including the Mitigation Needs Assessment, for the preparation or update of a State, local or tribal FEMA HMPs, and for compliance with environmental review and citizen participation requirements.

(3) Connection of mitigation programs and projects to identified risks. For each proposed program or project in the action plan, the grantee must address how the program or project mitigates specific current and future risks identified in the Mitigation Needs Assessment.

(4) Low- and moderate-income priority. Proposed mitigation programs and projects must prioritize the protection of low-and-moderate income (LMI) individuals. Each grantee must describe in its action plan how it will prioritize programs and projects that will protect LMI persons in order to meet the overall benefit requirement pursuant to this notice.

Additionally, if the grantee's programs or projects will increase the resiliency of housing, the grantee must describe how the programs or projects will do so for housing that typically serves vulnerable populations, including the following housing: Transitional housing, permanent supportive housing, permanent housing serving individuals and families (including subpopulations) that are homeless and at-risk of homelessness, and public housing developments.

Grantees must also assess how the use of CDBG-MIT funds may affect members of protected classes under fair housing and civil rights laws, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote more resilient affordable housing and will respond to natural hazard related impacts.

(5) Coordination of mitigation projects and leverage. Each grantee must propose mitigation programs or projects that advance long-term resilience to current and future hazards. Additionally, each grantee must align its CDBG-MIT programs or projects with other planned federal, state, regional, or local capital improvements. In order to meet these requirements, each grantee must describe how the proposed mitigation programs or projects will: (a) Advance long-term resilience; (b) align with other planned capital improvements; and (c) promote community-level and regional (e.g., multiple local jurisdictions) planning for current and future disaster recovery efforts and additional mitigation investments.

Additionally, each grantee must describe how it will leverage CDBG-MIT funds with other funding provided through public-private partnerships and by other Federal, State, local, private, and nonprofit sources to generate more effective and comprehensive mitigation outcomes. Examples of other Federal sources are additional funding provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, U.S. Army Corps of Engineers (USACE), the Department of Transportation, and the Department of Agriculture including the U.S. Forest Service's Good Neighbor Authority (GNA), Stewardship Contracts, and Wildfire Resilience Treatments. The grantee must describe how it will seek to maximize the outcomes of investments and the degree to which CDBG-MIT funds are effectively leveraged, including through public-private partnerships and a commitment of funding by the grantee. Grantees shall identify any leveraged funds for each activity in the DRGR system.

(6) Plans to minimize displacement and ensure accessibility. Each grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its mitigation activities (except for mitigation through voluntary buyout activities that are designed to move households out of harm's way). This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. Grantees are reminded that they must take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 (available on the HUD Exchange website at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780).

(7) Maximum award amounts, necessary, and reasonable assistance. For each mitigation program providing a direct benefit to a person, household or business, the action plan must specify the maximum amount of assistance available to a beneficiary under each of the grantee's mitigation programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such

exceptions in its action plan. At minimum, each grantee must indicate that it will adopt policies and procedures governing maximum award amounts, describe how it will communicate the maximum amounts and any exceptions, how it will analyze the circumstances under which an exception is needed and how it will demonstrate that cost of providing assistance is necessary and reasonable. Each grantee must also indicate that it will make exceptions to the maximum award amounts when necessary to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.

(8) Natural infrastructure. Grantees are encouraged to develop a process to incorporate nature-based solutions and natural or green infrastructure in the selection and/or design of CDBG-MIT projects. Each grantee is encouraged to describe how it will consider natural infrastructure during the project selection process (e.g., alternatives and benefit-cost analysis); or propose projects and programs in the action plan that incorporate natural infrastructure. Natural or green infrastructure is defined as the integration of natural processes or systems (such as wetlands or land barriers) or engineered systems that mimic natural systems and processes into investments in resilient infrastructure, including, for example, using permeable pavements and amended soils to improve infiltration and pollutant removal.

(9) Construction standards. Each grantee must describe how it will: (a) Emphasize quality, durability, energy efficiency, sustainability, and mold resistance, as applicable; (b) consider application of the Green Building Standards as amended from the Prior Notices and as explained in section V.B.1.a. of this notice; and (c) adhere to the advanced elevation requirements established in section V.B.1.d. of this notice, if applicable. For grantees addressing flood risks, the grantee must describe how it will document its decision to elevate structures and how it evaluated and determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially-damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to reduce the risk of loss of life and property.

(10) Operation and maintenance plans. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must describe in its action

plan how it will fund long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority or retargeting of existing financial resources. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies or tax collection practices, those changes and relevant milestones should be expressly included in the action plan. Additionally, the grantee must describe any State or local resources that have been identified for the operation and maintenance costs of projects assisted with CDBG-MIT funds.

(11) Cost verification. Each grantee must describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. Grantees are encouraged to consider the use of an independent, qualified third-party architect, construction manager, or other professional (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract (e.g., change orders) during implementation are reasonable. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address controls for CDBG-MIT infrastructure projects above a certain total project cost threshold identified by the grantee and for Covered Projects as defined for CDBG-MIT funds. More detailed cost verification requirements for Covered Projects are provided in section V.A.2.h. of this notice.

(12) Building code and hazard mitigation planning. Grantees are encouraged to propose an allocation of CDBG-MIT funds for building code development and implementation, land use planning and/or hazard mitigation planning activities that may include but need not be limited to: (a) The development and implementation of modern and resilient building codes consistent with an identified model or standard, such as ASCE 24 and ASCE 7 as may be applicable, in order to mitigate against current and future hazards; (b) the development and implementation of land use plans to address natural hazards identified in the grantee's Mitigation Needs Assessment; (c) the update of State, local, or tribal FEMA HMPs, if necessary; (d) for states choosing to do so, the development of a FEMA-approved enhanced mitigation plan; or (e) the integration of mitigation plans with parallel CDBG-MIT planning efforts. If a grantee chooses to not allocate CDBG-MIT funds for these activities, the grantee must describe

other sources of funding identified for such activities. The grantee shall describe the specific building code, land use planning, hazard mitigation planning, or other activities to be funded with the CDBG-MIT grant or from other sources.

V.A.2.b. *Funds awarded directly to a State.* For State grantees that choose to allocate funds directly to a local government or Indian tribe, the action plan shall describe the method of distribution of funds and/or descriptions of specific mitigation programs or projects the grantee will carry out directly. If the State will carry out activities directly, the description must include the requirements at (1) through (6) below:

(1) How the Mitigation Needs Assessment will inform the grantee's funding determinations.

(2) The threshold factors and grant size limits that are to be applied.

(3) The projected uses for the CDBG-MIT funds, by responsible organization, activity, and geographic area, when the grantee carries out an activity directly.

(4) For each proposed mitigation activity carried out directly, its respective CDBG activity eligibility category (or categories) and associated national objective(s), including additional criteria.

(5) When funds are subgranted to local governments or Indian tribes, all criteria to be used to distribute funds to local governments or Indian tribes, including the relative importance of each criterion.

(6) When applications are solicited for programs to be carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

V.A.2.c. *Clarification of basic requirements for mitigation activities.* Unlike CDBG-DR funds where grantees must demonstrate that their disaster recovery activities "tie-back" to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, CDBG-MIT funds do not require such a "tie-back" to the specific qualified disaster that has served as the basis for the grantee's allocation of CDBG-MIT funds. Grantees must instead demonstrate that CDBG-MIT activities:

(1) Meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment in the most impacted and distressed areas; (3) are CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria

for mitigation activities and Covered Projects. The grantee can use CDBG-MIT funds for activities that meet these criteria even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for the grantee's CDBG-MIT allocation. Grantees may continue to categorize CDBG-MIT funds, to the extent appropriate, using the broader categories of activities that are associated with CDBG-DR awards: Infrastructure, economic development, housing, planning and administration, and public services.

(1) *Infrastructure.* Typical infrastructure mitigation programs may include regional investments in risk reduction for flood, fire, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

(2) *Economic development.* Examples of eligible programs include assistance to businesses for the installation of disaster mitigation improvements and technologies; financing to support the development of technologies, systems and other measures to mitigate future disaster impacts; "hardening" of commercial areas and facilities; and financing critical infrastructure sectors to allow continued commercial operations during and after disasters. Grantees are also strongly encouraged to leverage CDBG-MIT funds in economic development through coordination with Opportunity Zones established within the grantee's jurisdiction.

(3) *Housing.* Typical housing mitigation programs may include buyouts (potentially accompanied by additional housing or homeownership assistance for relocated families); elevation (which may be accompanied by rehabilitation, reconstruction, or new construction activities to support resilient housing); flood proofing; and wind, water, fire, earthquake retrofitting or "hardening" of single- and multi-family units to withstand future disasters.

(4) *Planning, administration and public services.* As noted in section V.A.2.a.(12) of this notice, CDBG-MIT funds may be used for the development of modernized and resilient building codes and land use plans, for the development and updating of FEMA-approved HMPs and for the development of State enhanced mitigation plans. Grantees may also use the CDBG-MIT funds for planning

activities that include the integration of mitigation planning with other local and regional mitigation community development, land use and other plans. CDBG-MIT funds may also be used to upgrade mapping, data and other capabilities to better understand evolving potential disaster risks.

Grantees may also fund planning and public service activities necessary to reduce flood insurance premiums in the NFIP voluntary Community Rating System's (CRS) incentive program (<https://www.fema.gov/national-flood-insurance-program-community-rating-system>).

Additional public service activities may include education and outreach campaigns designed to alert communities and beneficiaries to opportunities to further mitigate identified risks through insurance, best practices and other strategies.

(5) *Use of CDBG-MIT as match.* As provided by the HCDA, CDBG-MIT funds may be used to meet a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-MIT activity. This includes mitigation grants administered by FEMA or USACE. By law, (codified in the HCDA as a note to 105(a)), the maximum amount of CDBG-MIT funds that may be contributed to a USACE project is \$250,000. Note that the Appropriations Act prohibits the use of CDBG-MIT funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE. Grantees may only use CDBG-MIT funds to meet the match requirement of a program or project that meets the definition of a mitigation activity and other requirements of this notice and meet the eligibility requirements for a mitigation activity under the other federal program.

V.A.2.d. *Clarity of action plan.* Every grantee must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other category).

V.A.2.e. *Submission, review, and approval of action plan.* The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval. To ensure that grantees have adequate time to address the planning requirements of this notice and to ensure a comprehensive and effective review of initial CDBG-MIT

action plans, HUD is assigning each grantee to a cohort and will stagger the submission dates for those cohorts. Each of these grantees is in the early stage of implementing their long-term recovery efforts using CDBG-DR unmet needs funding and the extended timeframe will partially reduce the burden of developing a CDBG-MIT action plan while still launching broad recovery efforts. State grantees that are administering a CDBG-DR grant for a 2015 or 2016 disaster are viewed as having a greater amount of experience with both CDBG-DR requirements and aligning mitigation programs and projects with FEMA HMGP requirements. Local government CDBG-MIT grantees may need additional time to build capacity in order to ensure the alignment of CDBG-DR and FEMA HMGP funds. State grantees in receipt of CDBG-DR funds for only 2017 disasters are properly focused on the timely implementation of recovery efforts in response to those disasters. HUD's capacity to assist grantees in the development of CDBG-MIT action plans and to review those plans in a timely manner also requires rolling dates for the submission of action plans. Accordingly, HUD will accept an action plan from cohorts no later than the dates identified below, unless the grantee has requested, and HUD has approved an extension of its target submission deadline:

- State CDBG-MIT grantees that currently administer CDBG-DR grants provided in response to a 2015 or 2016 disaster shall submit no later than February 3, 2020: Florida; Louisiana; North Carolina, South Carolina; Texas; and West Virginia.
- Local government CDBG-MIT grantees shall submit on no later than March 2, 2020: Columbia, SC; Lexington County, SC; Richland County, SC; Houston, TX; and San Marcos, TX.
- State CDBG-MIT grantees that currently administer only a CDBG-DR grant provided in response to a 2017 disaster shall submit no later than April 6, 2020: California; Georgia; and Missouri.

HUD will review each action plan within 60 days from the date of receipt. HUD may disapprove an action plan as substantially incomplete if the action plan does not meet the requirements of this notice, including grant requirements imposed by applicable waivers and alternative requirements to address the Administration's policy priorities.

V.A.2.f. *Obligation and expenditure of funds.* After HUD makes the required certifications and approves the action plan, a grant agreement obligating

allocated funds to the grantee must be entered into between HUD and the grantee. Subsequently, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear and transparent communication to the public.

Each activity must meet the applicable environmental requirements before any funds are committed to the activity, consistent with 24 CFR 58.22. The grantee may not draw down funds from the line of credit for an activity until after the Responsible Entity (usually the grantee):

- (1) Completes required environmental review(s) pursuant to 24 CFR part 58 or adopts the environmental review performed by another federal agency, as authorized by the Appropriations Act; and
- (2) Receives from HUD or the Responsible Entity (as applicable) an approved Request for Release of Funds and certification.

V.A.2.g. *Amending the action plan.* The grantee must amend its action plan to update its Mitigation Needs Assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include: (1) A section that identifies exactly what content is being added, deleted, or changed; (2) a chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) a revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with a grantee's Mitigation Needs Assessment. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

- (1) Substantial amendment. The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on substantial amendments. In its action plan, each grantee must specify criteria for determining what changes in the

grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: The addition of a CDBG-MIT Covered Project; a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-MIT funds for the preparation and submission of an action plan, provided, however, that a substantial action plan amendment shall require a 30-day public comment period.

(2) Nonsubstantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. Nonsubstantial amendments shall be numbered in sequence with other nonsubstantial and substantial amendments and incorporated into the action plan.

V.A.2.h. *Additional action plan requirements for CDBG-MIT Covered Projects.*

Large-scale infrastructure projects that meet the definition of Covered Projects must be included in an action plan or substantial amendment. A Covered Project is an infrastructure project (as defined in V.A.2.h.(1) below) having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-NDR, CDBG-MIT, or CDBG)).

The Department recognizes that grantees may seek to use CDBG-MIT grants to implement large, transformative infrastructure projects that will provide long-term benefits and strengthen a community's resilience to future hazards. To support the successful implementation and operation of these large-scale projects, the Department is establishing alternative requirements that impose additional criteria for all CDBG-MIT Covered Projects. All CDBG-MIT Covered Projects must meet the additional criteria to meet a national objective.

- (1) Definition of an infrastructure project. This section defines an infrastructure project as it relates to

Covered Projects only. For purposes of this section of the notice, an infrastructure project is defined as an activity or group of related activities that develop the physical assets that are designed to provide or support services to the general public in the following sectors: Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the Federal Permitting Improvement Steering Council. Further, consistent with HUD's NEPA implementing requirements at 24 CFR 58.32(a), in responding to the requirements of this notice, a grantee must group together and evaluate as a single infrastructure project all individual activities which are related to one another, either on a geographical or functional basis, or are logical parts of a composite of contemplated infrastructure-related actions. Infrastructure improvements on private lands as authorized pursuant to section V.C.3 and that also meet the definition of a Covered Project shall also be subject to the Covered Project requirements of this notice.

(2) Covered Project action plan or substantial amendment requirements.

The following must be provided for each Covered Project proposed in an action plan or a substantial amendment:

(a) Project description and eligibility. A description of the Covered Project and how it meets the definition of a mitigation activity, including: Total project cost (including the CDBG-MIT grant as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA); and CDBG eligibility under the HCDA or a waiver and alternative requirement (*i.e.*, a citation to the paragraph in section 105 of the HCDA, applicable **Federal Register** notice, or a CDBG regulation).

(b) Consistency with the Mitigation Needs Assessment. A description of how the Covered Project addresses the current and future risks in the MID areas as identified in the grantee's Mitigation Needs Assessment.

(c) National objective, including additional criteria. The action plan must describe how the Covered Project will meet a national objective, including additional criteria for mitigation activities and Covered Projects. The national objectives for CDBG-MIT

projects are described in section V.A.13. HUD has established additional criteria for Covered Projects that require a plan for long-term efficacy and fiscal sustainability, a demonstration that benefits of the project outweigh the costs, and a demonstration that the Covered Project is consistent with other mitigation activities in the same MID area, as described below in (i) through (iii):

(i) Long-term efficacy and fiscal sustainability. A description of how the grantee plans to monitor and evaluate the efficacy and sustainability of the Covered Project, including its operation and maintenance of the Covered Project, how it will maintain documentation for the measurable outcomes or reduction in risk as discussed in section V.A.2.i. of this notice, and how it will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and/or alter funding sources if necessary.

(ii) Demonstration of benefits.

(ii.a.) *Demonstration of benefits through benefit cost analysis.* The action plan or substantial amendment must describe how the benefits of the Covered Project outweigh the costs of the Covered Project. Benefits outweigh costs if the Benefit Cost Analysis (BCA) results in a benefit-to-cost ratio greater than 1.0 (which aligns with FEMA's BCA ratio).

The action plan or substantial amendment must include a description of the methodology and the results of the BCA that has been conducted for the Covered Project. The grantee must indicate whether another Federal agency has rejected a BCA for the Covered Project (including any BCA for an earlier version of the current proposed Covered Project).

Grantees and subrecipients may use FEMA-approved methodologies and tools to demonstrate the cost-effectiveness of their projects. FEMA has developed the BCA Toolkit to facilitate the process of preparing a BCA. Using the BCA Toolkit will ensure that the calculations are prepared in accordance with OMB Circular A-94 and FEMA's standardized methodologies. It is imperative to conduct a BCA early in the project development process to ensure the likelihood of meeting the cost-effectiveness eligibility requirement.

A non-FEMA BCA methodology may be used when: (1) A BCA has already been completed or is in progress pursuant to BCA guidelines issued by other Federal agencies such as the Army Corps or the Department of Transportation; (2) it addresses a non-

correctable flaw in the FEMA-approved BCA methodology; or (3) it proposes a new approach that is unavailable using the FEMA BCA Toolkit. In order for HUD to accept any BCA completed or in progress pursuant to another Federal agency's requirements, that BCA must account for economic development, community development and other social/community benefits or costs and the CDBG-MIT project must be substantially the same as the project analyzed in the other agency's BCA.

(ii.b.) *Alternate demonstration of benefits.* Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate risks or respond to and recover from disasters, the grantee may demonstrate that benefits outweigh costs if the grantee completes a BCA as described above and provides HUD with a benefit-to-cost ratio (which may be less than one) and a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities.

The grantee shall include the BCA for a Covered Project, together with any qualitative description of benefits for projects benefitting low- and moderate-income persons and other persons that are less able to mitigate risks, or respond to and recover from disasters, as an appendix to the action plan or substantial amendment that proposes the project.

(iii) Consistency with other mitigation activities. The grantee's action plan must demonstrate that the project is consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the Covered Project must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

(3) HUD review of action plans and substantial amendments for Covered Projects. HUD will determine that a portion of an action plan or substantial amendment that proposes a Covered Project to be substantially incomplete if it does not meet the above criteria. In the course of reviewing an action plan or substantial amendment, HUD will advise a grantee of each deficiency and the grantee must revise the plan or

amendment to address the deficiency in order for HUD to resume consideration of this submission.

(4) **Implementation of Covered Projects.** Prior to the grantee's execution of a contract for the construction, rehabilitation, or reconstruction of an approved Covered Project the grantee shall have:

(a) Engaged an independent, third-party entity (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract during implementation to determine the costs of the contract and any changes to the contract are reasonable;

(b) Secured the certification of a licensed design professional stating that the project design or redesign meets a nationally recognized design and performance standard applicable to the project, including, if applicable, criteria recognized by FEMA for a project of its type, pursuant to FEMA's Hazard Mitigation Assistance Guidance and Hazard Mitigation Assistance Guidance Addendum; and

(c) Established a plan for financing the operation and maintenance of the project during its useful life.

V.A.2.i. Projection of expenditures and outcomes. Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The projections must also be clearly and conspicuously displayed on the grantee's website. If a grantee's performance indicates a pattern of deviation from projected expenditures and outcomes, HUD may review the grantee's capacity assessment and implementation plan and require an update to that plan or impose corrective actions to mitigate the risks associated with failure to meet projections. The published action plan must be amended for any subsequent changes, updates, or revision of the projections. Guidance on the preparation of projections is available on the HUD website: <https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>.

V.A.3. Citizen participation waiver and alternative requirement. To permit a more robust process and ensure mitigation activities are developed through methods that allow all stakeholders to participate, and because citizens recovering from disasters are best suited to ensure that grantees will

be advised of any missed opportunities and additional risks that need to be addressed, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 § 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. These revised requirements mandate public hearings (the number of which is based upon the amount of a grantee's CDBG-MIT allocation) across the HUD-identified MID areas and require the grantee to provide a reasonable opportunity (at least 45 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The revised citizen participation requirements for CDBG-MIT grantees are:

V.A.3.a. Publication of the action plan and opportunity for public comment. HUD continues to emphasize the importance of a robust citizen participation process, which shall include public hearings on the proposed action plan. Each grantee must either amend its existing citizen participation plan or adopt a new plan that incorporates the CDBG-MIT specific citizen participation requirements outlined in this section. The number of public hearings to be convened by a grantee shall be determined based upon the amount of the grantee's CDBG-MIT allocation: (1) CDBG-MIT grantees with allocations under \$500 million, are required to hold at least two public hearings in the HUD-identified MID areas in order to obtain citizens' views and to respond to proposals and questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened at different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (2) CDBG-MIT grantees with allocations of \$500 million or more shall convene at least three public hearings in the HUD-identified MID areas to obtain citizens' views and to respond to proposals and questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened in different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (3) CDBG-MIT grantees with allocations of \$1 billion or more shall hold at least four public hearings in the HUD-identified MID area to obtain citizens' views and to respond to proposals and questions.

At least two of these public hearings are to occur prior to a grantee's publication for public comment of its action plan on its website, and the hearings shall be held in different locations within the MID area in locations that ensure geographic balance and maximum accessibility. Public hearings must be held in facilities that are physically accessible to persons with disabilities. Existing federal requirements provide that where physical accessibility is not achievable, grantees must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate under HUD's implementing regulations for Section 504 of the Rehabilitation Act (See 24 CFR part 8, subpart C).

In addition to the above public hearings, before the grantee submits the action plan for this grant or any substantial amendment to the action plan to HUD, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster mitigation must be navigable by citizens from the grantee's (or relevant agency's) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees should also consider recording public hearings and making them available online for live viewing and creating archival video of the public meetings on the grantee's website. Plan publication efforts and public hearings must comply with civil rights requirements, including meeting the effective communications requirements under Section 504 of the Rehabilitation Act (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.160); and must provide meaningful access for persons with Limited English Proficiency (LEP) (see HUD's LEP Guidance, 72 FR 2732 (2007)).

Grantees are responsible for ensuring that all citizens have equal access to information about the CDBG-MIT programs, including persons with disabilities and persons with limited English proficiency (LEP). Each grantee must ensure that mitigation program information is available in the appropriate languages for the geographic areas to be served (see HUD's LEP

Guidance, 72 FR 2732 (2007)) and take appropriate steps to ensure effective communications with persons with disabilities under Section 504 (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.106). Since State grantees receiving CDBG-MIT funds may make grants throughout the State, including to Entitlement communities, States should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. In assessing its language needs for translation of notices and other vital documents for non-English speaking residents, the grantee should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

V.A.3.b. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

V.A.3.c. *Availability and accessibility of the action plan and the use of citizen advisory groups.* The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

Following approval of the action plan, each grantee shall form one or more citizen advisory committees that shall meet in an open forum not less than twice annually in order to provide increased transparency in the implementation of CDBG-MIT funds, to solicit and respond to public comment and input regarding the grantee's mitigation activities and to serve as an on-going public forum to continuously inform the grantee's CDBG-MIT projects and programs. The grantee may also choose to form one or more of these committees as part of its process for preparing the initial CDBG-MIT action plan submission to HUD.

V.A.3.d. *Public website.* HUD is requiring grantees to maintain a public website which provides information accounting for how all CDBG-MIT funds are used, managed and administered, including links to all action plans, action plan amendments, performance reports, CDBG-MIT citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its website: The action plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-MIT funds; and the status of services or goods currently being procured (e.g., phase of the procurement, requirements for proposals, etc.).

V.A.3.e. *Application status and transparency.* For applications received for CDBG-MIT assistance, the grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants with timely information to determine the status of their application for assistance, as provided for section V.A.1.b.(1) of this notice.

When a grantee seeks to competitively award CDBG-MIT funds, the grantee must publish on its CDBG-MIT website the eligibility requirements for such funding, all criteria to be used by the grantee in its selection of applications for funding (including the relative importance of each criterion) and the time frame for consideration of applications. The grantee shall maintain documentation to demonstrate that each funded and unfunded application was reviewed and acted upon by the grantee in accordance with the published eligibility requirements and funding criteria.

V.A.3.f. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.4. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

V.A.4.a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and

audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: <https://www.hudexchange.info/programs/drgr/>.

V.A.4.b. *DRGR action plan.* Each grantee must enter its action plan for mitigation, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear communication to the public.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-MIT funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD but will not be able to budget grant funds to these activities until after the grant agreement has been executed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each Responsible Organization identified in DRGR as carrying out a CDBG-MIT funded activity.

A grantee will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under a

"project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic development) or are based on an area of service (e.g., Community A). If a grantee describes just one program within a broader category (e.g., single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG-MIT programs and projects are identified for funding.

V.A.4.c. Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination. Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its mitigation programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring. Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

V.A.4.d. Tracking program income in the DRGR system. Grantees must use the DRGR system to draw grant funds. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a State provides CDBG-MIT funds to a local government and permits local governments to retain program income, or a State permits subrecipients to retain program income prior to grant closeout, the grantee must

establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

V.A.4.e. DRGR system Quarterly Performance Report (QPR). Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-MIT funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-MIT funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG-MIT assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, grantees must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. Each

grantee must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

V.A.5. Direct grant administration and means of carrying out eligible activities-applicable to State grantees only. Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow a State to use its CDBG-MIT grant allocation directly to carry out State-administered CDBG-MIT eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Eligible CDBG-MIT activities may be carried out by the State, subject to State law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 (g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in tribal areas. The State shall coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG-MIT assistance to beneficiaries in tribal areas. A State grantee carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the State to carry out or to fund CDBG-MIT projects in the area. Indian tribes that receive CDBG-MIT funding from a State grantee must comply with applicable nondiscrimination requirements (see 24 CFR 1003.601).

For activities carried out by entities eligible under section 105(a)(15) of the HCDA, such entities will be subject to the description of a nonprofit under that section rather than the description located in 24 CFR 570.204, even in a case in which the entity is receiving assistance through a local government that is an entitlement grantee.

V.A.5.a. Use of administrative funds across multiple grants. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116-20) approved June 6, 2019, authorizes

special treatment of grant administrative funds for grantees that received awards under certain CDBG-DR grants (this includes CDBG-MIT grants).

Accordingly, grantees that received funds under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, and 115-254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in V.A.1.a.(1).b. Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense. HUD will issue additional guidance on this provision that grantees will be required to follow to ensure compliance and maintain proper financial controls.

V.A.5.b. *Use of funds in response to Hurricane Matthew and Hurricane Florence (State of North Carolina and South Carolina only).* Public Law 116-20 provides that grantees that received an allocation for mitigation funding provided by Public Law 115-123 in response to Hurricane Matthew may use the CDBG-MIT funds for the same activities, consistent with the requirements of the CDBG-MIT grant, in the most impacted and distressed areas related to Hurricane Florence. Expenditures in the HUD-identified MID areas for Hurricane Florence count toward the 50 percent expenditure requirement for HUD-identified MID areas outlined in section II.C. of this notice.

V.A.6. *Consolidated plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review

grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3-5 year) consolidated plan, or for 24 months after the applicability date of this notice, whichever is sooner. If the grantee has not already updated its Analysis of Impediments to Fair Housing Choice or accepted Assessment of Fair Housing (AFH) in coordination with its post-waiver consolidated plan update, HUD strongly encourages the grantee do so to more accurately reflect housing conditions following the qualifying disaster(s) that served as the basis for the CDBG-MIT allocation.

V.A.7. *Requirement for consultation during plan preparation.* Currently, the HCDA and HUD regulations require a State grantee to consult with affected local governments in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and instituting the alternative requirement that States receiving a CDBG-MIT allocation consult with all disaster-affected local governments (including any CDBG Entitlement grantees), Indian tribes, and local public housing authorities in determining the use of funds. This ensures that State grantees sufficiently assess the impacts of all areas affected by the disaster. Additional guidance on consultation with local stakeholders can be found in the National Disaster Recovery Framework and its discussion of pre- and post-disaster planning at <https://www.fema.gov/national-disaster-recovery-framework>.

Grantees must consult with States, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency of the action plan with applicable regional redevelopment plans. As provided in sections V.A.1.b.(c) and V.A.2.a.(5), agencies that administer CDBG-MIT funds are required to consult with any separate agency of the jurisdiction that is responsible for development of the FEMA HMP for the grantee's jurisdiction, including coordinating with the State Hazard Mitigation Officer (SHMO).

Grantees are advised to maintain documentation of all consultations required by this paragraph to demonstrate compliance with this requirement.

V.A.8. *Grant administration responsibilities and general administration cap.*

V.A.8.a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all funds provided for CDBG-MIT funds.

V.A.8.b. *General administration cap.* For all CDBG-MIT grantees, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant and 5 percent of program income generated by the grant may be used for administrative costs by the grantee, units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any CDBG-MIT grantee must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only.* The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant amount plus 5 percent of program income generated by the grant. Under this alternative requirement, a State is limited to spending a maximum of 15 percent of its total grant amount or \$750 million, whichever is less, on planning costs. Planning costs subject to this cap are those defined in 42 U.S.C. 5305(a)(12).

V.A.9. *Operation and maintenance waiver for CDBG-MIT program income.* The provision of 24 CFR 570.207(b)(2) generally prohibits the use of CDBG funds for the repair, operation or maintenance of public facilities, improvements or services. With this first-time allocation of mitigation-only funds to CDBG-DR grantees, HUD seeks to help local government CDBG-MIT grantees to fulfill their commitment to fund the operation and maintenance of innovative projects financed with CDBG-MIT funds and to encourage new operating partnerships. HUD has determined that good cause exists for a waiver that will allow the limited use of CDBG-MIT program income to be used by CDBG-MIT grantees who are units of

local government, for the operation and maintenance of CDBG-MIT projects. Accordingly, HUD is waiving 24 CFR 570.207(b)(2) to the extent necessary to allow CDBG-MIT local government grantees to use program income generated by CDBG-MIT funds for the repair, operation, and maintenance of publicly owned projects financed with CDBG-MIT funds, as provided in section V.A.19.d. of this notice. This waiver shall apply only to program income generated by CDBG-MIT funds, and shall not apply to the initial disbursement of CDBG-MIT funds or to any CDBG-DR or CDBG funded activities or resulting CDBG-DR or CDBG program income.

V.A.10. *Planning-only activities-applicable to State grantees only.* The Department notes that effective mitigation relies on some form of area-wide or comprehensive planning activity independent of the ultimate source of implementation funds. To assist State grantees, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding mitigation, planning-only grants, or directly administering planning activities that guide mitigation in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205, which may include support for local and regional functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, resilience plans, development of building codes, zoning ordinances, and neighborhood plans. Such planning activities are strongly encouraged to be undertaken in partnership with local governments and regional planning entities, as these policies have critical impacts on long-term mitigation goals and objectives. Grantees are encouraged to fund planning activities that align and integrate with FEMA's pre-disaster mitigation grant program (PDM or BRIC) and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks. Grantees may use CDBG-MIT funds to enhance and update real property registration and land information systems at the state and local level. Grantees are expected to have land information systems which are sufficient to track requirements on

the use of CDBG-MIT funds that run with the land.

State grantees are also encouraged to use CDBG-MIT planning funds to establish programs and policies that would allow them to perform at an enhanced level as defined by FEMA requirements, as well as to meet the documentation requirements for a FEMA Enhanced Hazard Mitigation Plan. Grantees may also partner with agency staff responsible for community floodplain management activities to participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), which is a voluntary incentive program that recognizes floodplain management activities that exceed minimum NFIP requirements. Exceeding these requirements can result in discounted flood insurance premium rates which reflect a community's reduced flood risk. Plans shall include the required Mitigation Needs Assessment of disaster risks, including anticipated effects of future extreme weather events and other hazards, as described in section V.A.2.a.(1) of this notice. Additional resources to assist in this process are available on the HUD exchange website: <https://www.hudexchange.info/programs/CDBG-MIT/resources/#natural-hazard-risk-and-resilience-tools>.

V.A.11. *Overall benefit requirement.* The primary objective of the HCDA is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" (42 U.S.C. 5301(c)). This target is likely to be difficult to reach when grantees are pursuing community-wide or regional mitigation measures to protect entire regions or communities regardless of income. Therefore, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDBG-MIT funds must benefit low- and moderate-income persons. However, as provided in section V.A.2.a.(4), all grantees must prioritize the protection of LMI individuals, and describe in the action plan how their proposed programs and projects will reflect that priority.

V.A.12. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* Section 101(c) of the HCDA requires each funded activity to meet a national objective of the CDBG program,

including the national objective of benefiting low- and moderate-income persons. Grantees may meet this national objective on an area basis, through an activity which is available to benefit all the residents of an area where at least 51 percent of the residents are low- and moderate income. In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." A grantee qualifies for this exception when fewer than one quarter of the populated-block groups in its jurisdiction contain 51 percent or more low- and moderate-income persons. In such a community, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. CDBG-MIT grantees are required to use the most recent data available in implementing the exception criteria at <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees>. The "exception criteria" apply to mitigation activities funded pursuant to this notice in jurisdictions covered by such criteria, including jurisdictions that receive mitigation funds from a State.V.A.13. *National objective waivers and alternative requirements applicable to CDBG-MIT funds.* The following waivers and alternative requirements modify national objective criteria to ensure that the use of CDBG-MIT funds is consistent with mitigation purposes required by the Appropriations Act.

V.A.13.a. *Additional criteria applicable to all mitigation activities*

funded with CDBG-MIT funds. The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for all mitigation activities funded with CDBG-MIT funds. To meet a national objective, all CDBG-MIT activities must:

(i) Demonstrate the ability to operate for the useful life of the project. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority, or retargeting of existing financial resources.

(ii) Be consistent with other mitigation activities. The CDBG-MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the CDBG-MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

V.A.13.b. *Additional criteria applicable to Covered Projects funded with CDBG-MIT funds.* The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for Covered Projects funded with CDBG-MIT funds. To meet a national objective, all Covered Projects must:

(i) Demonstrate long-term efficacy and fiscal sustainability. The grantee must demonstrate the long-term efficacy and sustainability of the Covered Project by documenting measurable outcomes or reduction in risk as discussed in section V.A.2.i. of this notice, and documenting how the Covered Project will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and alter funding sources if necessary. The grantee also must establish a plan for the long-term operation and maintenance of the Covered Project and include a description of this plan in its action plan, as required by V.A.2.a.(10) and the additional criteria applicable to all CDBG-MIT activities.

(ii) Demonstrably benefit the MID area. The benefits of the Covered Project must outweigh the costs of the Covered Project. Benefits outweigh costs if the BCA results in a benefit-to-cost ratio greater than 1.0. Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate

risks or respond to and recover from disasters, benefits outweigh costs if the grantee supplements its BCA with a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities. BCAs must be completed consistent with the requirements of paragraph V.A.2.h.(2)(c)(ii).

V.A.13.c. *Additional urgent need national objective criteria for CDBG-MIT Activities.* In the context of disaster recovery and the allocation of CDBG-DR funds, the Department has historically provided waivers and established an alternative requirement to the urgent need national objective of the CDBG program as one means of helping communities to recover quickly. Specifically, the Department has waived the certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), recognizing that in the context of disaster recovery those requirements have proven burdensome and redundant.

The Appropriations Act directs the Department to allocate CDBG-MIT funds to grantees that received CDBG-DR funds to assist in recovery from major federally declared disasters occurring in 2015, 2016 and 2017. To reflect the direction of the Appropriations Act to allocate funds to grantees recovering from recent disasters and to address the demonstrable need for significant mitigation improvements by those grantees, the Department is waiving the criteria for the urgent national objective as provided at 24 CFR 570.208(c) and 24 CFR 570.483(d) and is establishing an alternative requirement to include new urgent need national objective criteria for CDBG-MIT activities.

To meet the alternative criteria for the urgent need mitigation (UNM) national objective, each grantee must document that the activity: (i) Addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas; and (ii) will result in a measurable and verifiable reduction in the risk of loss of life and property.

To meet the UNM national objective criteria, grantees must reference in their

action plan the risk identified in the Mitigation Needs Assessment that is addressed by the activity. Grantees must maintain documentation of the measurable and verifiable reduction in risk that will be achieved upon completion of the activity. Action plans must be amended, as necessary, to ensure that this information is included for each activity undertaken with CDBG-MIT funds.

V.A.13.d. *Additional LMI national objective criteria for CDBG-MIT activities.* In addition to other applicable criteria, CDBG-MIT activities can also meet an LMI national objective if they meet the criteria established in an alternative requirement in section V.B.5. of this notice applicable to buyout activities (LMB) and housing incentives (LMHI).

V.A.13.e. The UNM national objective and additional criteria for mitigation activities and Covered Projects shall be applicable only to funds allocated by this notice. Similarly, the alternative urgent need national objective criteria in the Prior Notices does not apply to CDBG-MIT funds.

V.A.13.f. Unless a grantee has received prior approval from HUD, CDBG-MIT activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of mitigation activities.

V.A.14. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* 42 U.S.C. 5302(a)(7) (definition of “nonentitlement area”) and provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit a State to distribute CDBG-MIT funds to units of local government and Indian tribes.

V.A.15. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

V.A.16. *Recordkeeping.* When a State carries out activities directly, 24 CFR

570.490(b) is waived, and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG-MIT funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. All grantees must report FHEO data in the DRGR system at the activity level.

V.A.17. *Change of use of real property, applicable to State grantees only.* This alternative requirement conforms the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as "State, unit of general local government (UGLG) or State subrecipient."

V.A.18. *Responsibility for review and handling of noncompliance-applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct CDBG-MIT grant: The State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Each CDBG-MIT grantee shall attend and require subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management

of CDBG-MIT grant funds. Additional information about this training will be posted on the HUD website.

V.A.19. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to State and local government as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

V.A.19.a. *Definition of program income.*

(1) For purposes of this notice, "program income" is defined as gross income generated from the use of CDBG-MIT funds received by a State, local government, or a subrecipient of a State or local government, except as provided in subparagraph (d) of this paragraph. When income is generated by an activity that is only partially assisted with CDBG-MIT funds, the income shall be prorated to reflect the percentage of CDBG-MIT funds used (e.g., a single loan supported by CDBG-MIT funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-MIT funds.

(b) Proceeds from the disposition of equipment purchased with CDBG-MIT funds.

(c) Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG-MIT funds, less costs incidental to generation of the income (i.e., net income).

(d) Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG-MIT funds.

(e) Payments of principal and interest on loans made using CDBG-MIT funds.

(f) Proceeds from the sale of loans made with CDBG-MIT funds.

(g) Proceeds from the sale of obligations secured by loans made with CDBG-MIT funds.

(h) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the

special assessments are used to recover all or part of the CDBG-MIT portion of a public improvement.

(j) Gross income paid to a State, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-MIT assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds that is less than \$35,000 received in a single year and retained by a State, local government, or a subrecipient thereof.

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

V.A.19.b. *Retention of program income.* State grantees may permit a local government or Indian tribe that receives or will receive program income to retain the program income but are not required to do so.

V.A.19.c. *Program income—use, close out, and transfer.*

(1) Program income received (and retained, if applicable) before or after close out of the CDBG-MIT grant that generated the program income, and used to continue mitigation activities, is treated as additional CDBG-MIT funds subject to the requirements of this notice and must be used for mitigation activities in accordance with the grantee's action plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in sections V.A.19.d. and e.

(2) In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A State grantee may transfer program income to its annual CDBG program before close out of the grant that generated the program income. In addition, a State grantee may transfer program income before close out to any annual CDBG-funded activities carried out by a local government within the State. Program income received by a grantee after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the mitigation activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

V.A.19.d. *Repair, operation and maintenance of certain CDBG-MIT projects.*

Local government CDBG-MIT grantees may use program income to reimburse its agencies for the repair, operation and maintenance of publicly owned and operated projects funded with CDBG-MIT funds, provided that: (1) The agency that owns and operates the project has entered into a written agreement with the grantee that commits the agency to providing not less than fifty percent of funds necessary for the annual repair, operating and maintenance costs of the project; and (2) the grantee adopts policies and procedures to provide for the grantee's regular, on-site inspection of the project in order to ensure its proper repair, operation and maintenance. State grantees may request a waiver from the Department for the use of program income for this purpose.

V.A.19.e. Revolving loan funds. State grantees and local governments may establish revolving funds to carry out specific, identified mitigation activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific mitigation activities. These activities generate payments used to support other mitigation activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional CDBG-MIT grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to local governments to carry out specific, identified mitigation activities. The same requirements, outlined above, apply to this type of revolving loan fund.

A revolving fund established by a grantee or local government *shall not* be directly funded or capitalized with grant funds.

V.A.20. Limitation on reimbursement. The provisions of 24 CFR 570.489(b) are applied to permit a State grantee to charge to the grant eligible pre-award costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) that are associated with CDBG-MIT funds and comply with grant requirements. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for eligible pre-award costs that are associated with CDBG-MIT funds and comply with grant requirements. Section 24 CFR 570.200(h)(1)(i) will not apply to the

extent that it requires pre-award activities to be included in a consolidated plan. Each grantee must include all pre-award activities in its action plan.

Under the Prior Notices, grantees were permitted to charge to grants the pre-award and preapplication costs of homeowners, businesses, and other qualifying entities for certain eligible recovery costs they incurred within one year of a qualified disaster. Because the one-year period has passed for all grantees receiving an allocation pursuant to this notice and because CDBG-MIT funds are provided in order to reduce risks from future disasters, CDBG-MIT funds *shall not* be used to reimburse homeowners, businesses or entities (other than grantees, local governments, and subrecipients described above) for mitigation activities completed prior to the applicability date of this notice.

V.A.21. Prohibition on forced mortgage payoff. In some instances, mortgage agreement terms require homeowners to repay the balance of the mortgage loan with assistance received to rehabilitate, reconstruct or elevate the home in order to make the home more resilient. CDBG-MIT funds, however, may not be used to repay a mortgage loan in whole or in part under this type of "forced mortgage payoff" provision. The ineligibility of a forced mortgage payoff with CDBG-MIT funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits.

V.A.22. One-for-one replacement housing, relocation, and real property acquisition Requirements. Activities and projects undertaken with CDBG-MIT funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCDA (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-MIT funds:

V.A.22.a. Section 104(d) one-for-one replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCDA and 24 CFR 42.375 are waived in connection with CDBG-MIT funds for lower-

income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies and procedures governing these activities. A grantee with questions about one-for-one replacement requirements is encouraged to contact the HUD regional relocation specialist responsible for its jurisdiction.

HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic development. Grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

V.A.22.b. Relocation assistance. The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to mitigation. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.*, buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive

a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance for CDBG-MIT funds.

V.A.22.c. Tenant-based rental assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede the grantee's actions whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

V.A.22.d. Arm's length voluntary purchase. The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who was allocated CDBG-MIT funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often-large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements to implement mitigation activities. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

V.A.22.e. Optional relocation policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out mitigation activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-MIT

funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide grantees with maximum flexibility in developing optional relocation policies with CDBG-MIT funds.

V.A.22.f. Waiver of Section 414 of the Stafford Act. Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]." Accordingly, homeowner occupants and tenants displaced from their homes because of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally-funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-MIT funded project commencing more than one year after the Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-MIT funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification, or (2) the date of completion of the site-specific review when a program utilizes Tiering, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that

the Secretary administers in connection with the obligation of funds made available by this notice, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA.

(1) The waiver will simplify the administration of mitigation programs and projects and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster.

(2) This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

V.A.23. Environmental requirements.

V.A.23.a. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a State distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

V.A.23.b. Adoption of another agency's environmental review. In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4) or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCDA. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The grant recipient must retain a copy of the review in the grantee's environmental records.

V.A.23.c. Unified federal review. Section 1106 of the Sandy Recovery

Improvement Act (Div. B of Pub. L. 113–2, enacted January 29, 2013) directed the establishment of an “expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.” The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects, including mitigation projects undertaken to avert the impact of future disasters. Grantees receiving an allocation of CDBG–MIT funds are encouraged to participate in this process as one means of expediting the implementation of mitigation projects that will assist in recovery from future disasters. Tools for the unified federal review process (UFR) process can be found here: <http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>.

V.A.23.d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–MIT funds if the recipient has adopted an environmental review, approval, or permit under section V.A.23.b. above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

V.A.23.e. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer/ Tribal Historic Preservation Officer to review CDBG–MIT projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

V.A.23.f. *Tiered environmental reviews.* HUD encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts (e.g. single-family housing programs). Tiering, as defined in 40 CFR 1508.28,

is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review” (40 CFR 1502.20). In addition, “tiering is appropriate when there is a requirement to evaluate a policy of proposal in the early stages of development a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date” (24 CFR 58.15). Tiering is appropriate when a Responsible Entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of 1 to 5 years) but where the specific sites and activities are not yet known.

A tiered review consists of two stages: A broad-level review and subsequent site-specific reviews. The broad-level review will identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. An 8-Step Decision Making Process for Floodplains and Wetlands, including early and final public notices can be completed on a county-wide basis for single-family housing programs funded with CDBG–MIT funds. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad-level, unless there are unanticipated impacts or impacts not adequately addressed in the prior review, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review have been completed for the site.

V.A.23.g. *Discipline and accountability in the environmental review and permitting of infrastructure projects.* Executive Order 13807, signed by the President on August 15, 2017, establishes a coordinated, predictable and transparent process for the review and permitting of infrastructure projects. E.O. 13807 requires Federal

agencies to process environmental reviews and authorization decisions for “major infrastructure projects” as One Federal Decision (OFD). As CDBG–MIT grantees assume authority to conduct environmental reviews, they should implement the following elements of the OFD policy set forth in E.O. 13807 for major infrastructure projects, and further clarified in M–19–20 Guidance on the Applicability of E.O. 13807 to Responsible Entities Assuming Department of Housing and Urban Development Environmental Review Responsibilities [<https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-20.pdf>]. CDBG–MIT grantees should: (1) Seek to complete environmental reviews and authorization decisions for major infrastructure projects in not more than an average of two years, measured from the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to the issuance of the Record of Decision (ROD); (2) Develop a Permitting Timetable that includes milestones for applicable environmental reviews and authorizations and is updated at least quarterly on the Permitting Dashboard (www.permits.performance.gov); (3) Coordinate with cooperating and participating Federal agencies, to develop a single EIS and coordinate a single ROD; (4) Seek to ensure that all necessary authorization decisions for the construction of the project are completed within 90 days of issuance of the ROD; and (5) Seek to ensure that there is an effective process in place to elevate instances in which a Permitting Timetable milestone is missed or extended, or is anticipated to be missed or extended, to higher officials (including senior responsible entity leadership) for timely resolution, and that it follow such process.

V.A.24. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met.

Accordingly, grantees must comply with the requirements of the 2019 DOB Notice. Requirements on CDBG–DR funds and CDBG–DR grants in the 2019

DOB Notice shall apply equally to CDBG-MIT funds and CDBG-MIT grants. As described in the 2019 DOB Notice, all CDBG-MIT grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: "Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b))."

The 2019 DOB Notice also implements requirements resulting from recent amendments to section 312 of the Stafford Act that only apply to CDBG-MIT grantees receiving an allocation as a result of disasters occurring in 2016 and 2017. FEMA, the agency that administers the Stafford Act, has advised that pursuant to recent amendments to Section 312 of the Stafford Act in the DRRRA, for disasters occurring between 2016 and 2021, a loan is not a duplication of other forms of financial assistance, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. The most common source of loans for physical and economic disaster recovery losses and related mitigation measures that have historically constituted a duplication of benefits are loans offered by the U.S. Small Business Administration (SBA). CDBG-MIT grantees receiving an allocation as a result of a 2015 disaster are not subject to the provisions of DRRRA.

V.A.25. Procurement. State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. State grantees shall establish requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services like legal services or case management). Additionally, if the State agency designated as the administering agency chooses to provide funding to another

State agency, the administering agency may specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other local governments and subrecipients are subject.

Local government grantees in direct receipt of CDBG-MIT funds must comply with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable).

HUD may request periodic updates from any grantee that uses contractors. A contractor is a third-party person or organization from which the grantee acquires goods or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD is establishing an additional alternative requirement for *all* contracts with contractors used to provide discrete services or deliverables only, as follows:

- The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;
- The grantee (or procuring entity) must incorporate performance requirements and liquidated damages or, for administrative and consultant contracts, penalties, into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and
- The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or a grantee.

V.A.26. Timely distribution of funds. The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has provided HUD with a waiver of this two-year expenditure requirement. HUD is also waiving the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds

and establishing an alternative requirement, providing that each grantee must expend fifty percent of its allocation of CDBG-MIT funds on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its allocation within twelve years of HUD's execution of the grant agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. A grantee request for a waiver of an expenditure deadline must document the grantee's progress in the implementation of the grant; outline the long-term nature and complexity of the mitigation programs and projects that have yet to be fully implemented; and propose an alternative deadline for the expenditure of the funds.

V.A.27. Review of continuing capacity to carry out CDBG-funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG-MIT activities and certifications in accordance with the requirements for CDBG-MIT funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in section V.A.28. below.

V.A.28. Corrective and remedial actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer CDBG-MIT grants in a manner that facilitates resilience, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction or limitation of payments to a grantee receiving CDBG-MIT funds.

V.A.29. *Noncompliance and grant conditions.* Failure to implement a CDBG-MIT grant in accordance with a grantee's approved financial certification, the capacity and implementation plan, the action plan, as well as grant conditions established by the Department or other applicable requirements, shall constitute a performance deficiency. To correct that deficiency, the Department may exercise any of the corrective and remedial actions authorized in subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised that such remedies may include suspension of administrative funds as well as a reduction of the grantee's CDBG-MIT grant, its CDBG-DR grants, or its annual CDBG grant.

The Department may also establish special grant conditions for individual CDBG-MIT grants to mitigate the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

V.A.30. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.*

Prior to a reduction, withdrawal, or adjustment of a CDBG-MIT grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described for CDBG-MIT funds, the Department may adjust, reduce, or withdraw the CDBG-MIT grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

V.A.31. *Federal accessibility requirements.* Grantees are reminded that the use of CDBG-MIT funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act. Grantees should review the Fair Housing Act Accessibility Guidelines at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhfhag, the Uniform Federal Accessibility Standards (UFAS) at <https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/>, and the

2010 ADA Standards. The HUD notice on "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671 (May 23, 2014), explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

The following portion of the notice details the waivers and alternative requirements typically established in CDBG-DR Federal Register notices, modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department continues to authorize these modified waivers and alternative requirements as this notice cannot anticipate every type of mitigation project that will be proposed by grantees. These activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects. A program or project that meets these criteria is eligible for mitigation funding even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for its CDBG-MIT allocation.

V.B. Housing and Related Floodplain Issues

V.B.1. *Housing-related eligibility waivers.* The broadening of eligible activities under the HCDA is necessary in the context of mitigation activities, to address the current and future risks arising from the disaster that qualified grantees for CDBG-MIT funds. As described in section II of this notice, all housing activities implemented with CDBG-MIT funds must include mitigation measures that address the current and future disaster risks as identified in the grantee's Mitigation Needs Assessment.

Therefore, 42 U.S.C. 5305(a)(24)(A) and (D) is waived to the extent necessary to allow: (1) Homeownership assistance for households earning up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment. While homeownership assistance may be provided to households earning up to 120 percent of the area median income, only those funds used for households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) is waived and alternative requirements adopted to the extent necessary to permit new housing construction that addresses disaster risks identified in the grantee's

Mitigation Needs Assessment and to require the following construction standards on structures constructed, reconstructed, or rehabilitated with CDBG-MIT funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted.

V.B.1.a. *Green building standard for replacement and new construction of residential housing.* Grantees are encouraged to meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

V.B.1.b. *Implementation of green building standard.* For purposes of this notice, the Green Building Standard means that the grantee will consider meeting one of the following industry recognized standards for all construction covered by section V.B.1.a. above through implementation of one or more of the following programs: (i) ENERGY STAR (Certified Homes and Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite) or (vi) any other equivalent comprehensive green building program acceptable to HUD. Grantees should identify, in each project file, which Green Building Standard will be used, if any, on any building covered by section V.B.1.a. above.

V.B.1.c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation activities undertaken to address risks identified in the grantee's Mitigation Needs Assessment (other than that described in V.B.1.a. above) grantees are encouraged to consider guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>. Grantees are encouraged to incorporate these guidelines on the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or

obsolete products are replaced as part of the rehabilitation work, it is encouraged that rehabilitation use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, it is encouraged that the replacements be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) are recommended to be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

V.B.1.d. Elevation standards for new construction, repair of substantial damage, or substantial improvement. The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures to mitigate risks identified in a grantee's Mitigation Needs Assessment, when those structures are located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 100-year (or 1 percent annual chance) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the base flood elevation. Alternatively, grantees may choose to adopt the design flood elevation standards of ASCE-24 if it results in an elevation higher than two feet above base flood elevation. Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as

an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

For elevation activities, grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

V.B.1.e. Broadband infrastructure in housing. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

V.B.2. Housing incentives in at-risk communities. Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Each grantee must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. Additionally, a grantee may require the housing incentive to be used for a particular purpose by the household receiving the assistance.

In undertaking a large-scale migration or relocation recovery effort that is intended to move households out of high-risk areas, the grantee must consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains.

When undertaking housing incentive activities, to demonstrate that an incentive meets the low- and moderate-income housing national objective and the LMI national objective, grantees must meet all requirements of the HCDA and the criteria for the Low/Mod Housing Incentive (LMHI) national objectives for the use of housing incentives as described in section V.B.5. of this notice.

V.B.3. Limitation on emergency grant payments—interim mortgage assistance. 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to the extent necessary to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or when the rehabilitation or reconstruction to enhance the resiliency of single-family housing extends beyond 3 months, during which mortgage payments may be due but the home is uninhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing mortgage assistance payments along with rehabilitation/reconstruction assistance to expedite mitigation assistance to homeowners but must establish performance milestones for the rehabilitation/reconstruction that are to be met by the homeowner to receive the interim mortgage assistance payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

V.B.4. Acquisition of real property; flood and other buyouts. CDBG-MIT grantees may carry out property acquisition for a variety of purposes. However, the term "buyouts" for CDBG-MIT funds refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk

Reduction Areas as designated by the grantee and defined below. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, a grantee should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program. Grantees are reminded that real property acquisition with CDBG-MIT funding, including buyout, is subject to the URA, including the real property acquisitions requirements at 49 CFR part 24, subpart B, as modified at section V.A.22.b. of this notice.

V.B.4.a. Clarification of "buyout" and "real property acquisition" activities.

Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-MIT funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-MIT assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by 42 U.S.C. 5305(a)(1)). However, only acquisitions that meet the definition of a "buyout" are subject to the post-acquisition land use restrictions imposed by this notice (section V.B.4.b. below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction Area. To conduct a buyout in a Disaster Risk Reduction

Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-MIT allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by best available data (e.g. FEMA Repetitive Loss Data) and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Real property acquisitions, including buyouts, undertaken with CDBG-DR and CDBG-MIT funds (even if funds are used only for acquisition costs other than the purchase price) are generally subject to the requirements in URA regulations at 49 CFR part 24, subpart B, unless they satisfy an exception at 49 CFR 24.101(b)(1)–(5). For acquiring entities with eminent domain authority, the most relevant exception is commonly 49 CFR 24.101(b)(1), which requires that the acquisition satisfy a four-part test. HUD is clarifying how the four-part test applies to buyouts conducted with CDBG-DR and CDBG-MIT funds. With respect to the buyout of properties, an "intended, planned, or designated project area," as referenced at 49 CFR 24.101(b)(1)(ii), shall be an area for which a clearly defined end use has been determined at the time that the property is acquired, in which all or substantially all of the properties within the area must be acquired within an established time period as determined by the grantee or acquiring entity for the project to move forward. Where moving forward with a project does not depend upon acquiring specific sites within established timeframes for a clearly defined end use, there is not an "intended, planned or designated project area." To illustrate this point, a grantee or acquiring entity's buyout would satisfy the criteria in 49 CFR 24.101(b)(1)(ii) with respect to the acquisition of property in the following examples: (1) A broad buyout eligibility area is identified by the need to reduce risk, but no specific property must be acquired or (2) a clearly defined end use (i.e., more specific than the categories of open space, recreational, or floodplain and wetlands management practices—see V.B.4.b., below) has not been determined at the time of acquisition.

Grantees are reminded that the distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an

acquired property if the property is *not* acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When properties are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

V.B.4.b. Buyout requirements:

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the owner of the buyout property (including subsequent owners) to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties, including nonprofit land conservation organizations, for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold.

In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-MIT funds for buyouts, the grantee must uniformly apply the valuation method it chooses.

(5) All buyout activities must be classified using the "buyout" activity type in the DRGR system.

(6) Any State grantee implementing a buyout program or activity must consult with affected local governments.

(7) When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the low- and moderate-income housing (LMH) national objective. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3), entitlement CDBG regulations at 24 CFR 570.208(a)(3), and Indian CDBG regulations at 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways:

(a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(b) The program meets the low- and moderate-income area (LMA) benefit criteria as defined for CDBG-MIT funds, to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, a grantee must define the service area based on the end use of the buyout properties; or

(c) The program meets the criteria for the low- and moderate-income limited clientele national objective (LMC) and does not provide benefits that are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate-income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

(d) The program meets the criteria for the Low/Mod Buyout (LMB) or Low/Mod Housing Incentive (LMHI) national objectives for buyouts and the use of housing incentives as authorized in the Department's August 7, 2017 **Federal Register** notice at 82 FR 36825 and described in section V.B.5. of this notice.

V.B.4.c. Redevelopment of acquired properties.

(1) A grantee may redevelop an acquired property as part of a mitigation activity if the property is not acquired through a buyout program and the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance or housing incentives to the owner of a property that will be redeveloped if the property is purchased by a grantee or subrecipient through voluntary acquisition, and the owner's need for additional assistance is documented.

(2) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans and hazard mitigation plans.

V.B.5. Additional LMI national objective criteria for buyouts and housing incentives. For CDBG-MIT funds, HUD is continuing its establishment of an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives for CDBG-MIT funds must follow guidelines outlined in section V.B.2. of this notice. The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet an LMI housing (LMH) national objective (80 FR

72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG-MIT grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG-MIT assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate-income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG-MIT grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs. This alternative requirement recognizes that the benefits received by those individuals that accept buyout and housing incentive awards allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)–(4) and 570.483(b)(1)–(4), HUD is establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-MIT funding provided pursuant to CDBG-MIT requirements.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG-MIT funds have been provided for an eligible activity that benefits LMI households supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-MIT funds:

(a) Low/Mod buyout (LMB). When CDBG-MIT funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.

(b) Low/Mod housing incentive (LMHI). When CDBG-MIT funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or

improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate-income persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-MIT grantee's overall LMI benefit.

V.B.6. *Alternative requirement for housing rehabilitation—assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: Properties that serve as second homes are not eligible for rehabilitation assistance or housing incentives provided through a CDBG-MIT program. For CDBG-MIT funds, a second home is defined as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the storm or at the time of application for assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses and rental agreements.

V.B.7. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website.

V.B.7.a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-MIT funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner of a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for HUD-assisted property within a Special Flood Hazard Area, when HUD assistance is used to finance acquisition or construction, including rehabilitation. HUD strongly

recommends the purchase of flood insurance *outside* of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

V.B.7.b. *Federal assistance to owners remaining in a floodplain.*

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide CDBG-MIT assistance for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement and must implement a process to check and monitor for compliance.

(2) The Department is instituting an alternative requirement to 42 U.S.C. 5305(a)(4) as follows: Grantees receiving CDBG-MIT funds are prohibited from providing CDBG-MIT assistance for the rehabilitation/reconstruction of a house, if (a) the combined household income is greater than 120 percent AMI or the national median, (b) the property was located in a floodplain at the time of the disaster, and (c) the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance. When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. HUD is establishing this alternative requirement to ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance,

should not be assisted at the expense of those lower income households.

Therefore, a grantee may only provide assistance for the rehabilitation or reconstruction of a house located in a floodplain if: (a) The homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs; or (b) the household earns less than the greater of 120 percent AMI or the national median and has unmet recovery needs.

(3) Section 582 also imposes a responsibility on a grantee that receives CDBG-MIT funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <http://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title42-section5154a&num=0&edition=prelim>.

V.C. *Infrastructure and Other Nonresidential Structures*

V.C.1. *Elevation of nonresidential structures.* Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain and may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to adapt to, withstand and rapidly recover flood a flood event. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions

include hospitals, nursing homes, police stations, fire stations and principal utility lines. Grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

V.C.2. Requirements for flood control structures. Grantees that use CDBG-MIT funds to assist flood control structures (*i.e.*, dams and levees) are prohibited from using CDBG-MIT funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG-MIT funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers Public Law 84-99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter into the DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures. CDBG-MIT funds may be used on the construction or demolition of a dam, levee or other flood control structure provided that construction or demolition shall be demonstrated to be an eligible mitigation activity pursuant to the requirements of this notice. Rehabilitation of dams, levees or flood control structures are also eligible, provided that the rehabilitation is demonstrated to be an eligible mitigation activity and for dams and

levees, that the rehabilitation may not exceed the original footprint of the structure as provided herein.

V.C.3. Waiver and alternative requirement to permit certain improvements on private lands. The Department recognizes that in order to achieve broad based and regional mitigation outcomes, it may be necessary to fund certain improvements on private lands that will yield public mitigation benefits. For instance, a grantee may seek to fund improvements and implement stormwater management practices on mostly privately-owned land to prevent or minimize the impact of downstream flooding. Under the Department's regulations and the HCDA, however, not all of these activities may be eligible under section 105(a)(2) of the HCDA, which permits the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. However, HUD recognizes that these improvements and management practices to be installed or applied on private lands can provide public benefits that are similar to the public benefits derived from public works, facilities, and other improvements generally eligible under section 105(a)(2). Accordingly, the Department is establishing a waiver and alternative requirement to expand section 105(a)(2) of the HCDA and to waive the provisions of 24 CFR 570.201(c) and 24 CFR 570.202(a)(1) to the extent necessary to permit CDBG-MIT grantees to carry out activities that provide for improvements on private lands that can be demonstrated to have a measurable public mitigation benefit. This eligible activity includes the expenditure of CDBG-MIT funds for actions necessary to obtain mandatory environmental permits (if approved by the permitting agency). CDBG-MIT grantees must demonstrate at a program level that such payments are necessary and reasonable and are required to secure the permits needed to implement its CDBG-MIT project.

V.C.4. Prohibiting assistance to private utilities. Funds made available under this notice may not be used to assist privately-owned utilities. A CDBG-MIT grantee that prioritizes a mitigation project where assistance to a privately-owned utility is necessary, may request a waiver of this prohibition.

V.C.5. Prohibition on emergency response services. CDBG-MIT funds shall not be used for programs and projects to provide emergency response services. Emergency response services shall mean those services that are carried out in the immediate response to a disaster or other emergency in order

to limit the loss of life and damage to assets by State and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities. However, CDBG-MIT funds may be used for mitigation activities to enhance the resilience of facilities used to provide emergency response services, provided that such assistance is not used for buildings for the general conduct of government as defined at 24 CFR 570.3.

V.D. Economic Development

V.D.1. National objective documentation for economic development activities. 24 CFR 570.483(b)(4)(i), 24 CFR 570.506(b)(5), and 24 CFR 1003.208(d) are waived to allow the grantees receiving CDBG-MIT funds to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.*, the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

V.D.2. Public benefit for certain economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f), 24 CFR 570.209(b) and (d), and 24 CFR 1003.302(c) for only those economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and

infrastructure projects). However, grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system. Paragraph (g) of 24 CFR 570.482 is also waived to the extent these provisions are related to public benefit.

V.D.3. Clarifying note on Section 3 resident eligibility and documentation requirements. The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. A section 3 resident means: (1) A public housing resident; or (2) an individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is: (i) A low-income person or (ii) a very-low-income person. Grantees should determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction—which is eighty percent of the median income for the area. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG-MIT funding must submit form HUD-60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's website: https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears.

V.D.4. Waiver and modification of the job relocation clause to permit assistance to help a business return. CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482, and 24 CFR 1003.209 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a

labor market area within the same State to continue business.

V.D.5. Prioritizing small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for businesses engaged in "farming operations" as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs. HUD advises grantees to pursue sources of assistance other than CDBG-MIT funds in order to address needs arising from crop loss or other agricultural losses attributable to the disaster.

V.D.6. Underwriting. Notwithstanding section 105(e)(1) of the HCDA, no CDBG-MIT funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) for evaluating and selecting economic development projects. States and their subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of Part 570. https://www.ecfr.gov/cgi-bin/text-id?SID=88dced3d630ad9fd8ab91268dd829f1e&mc=true&node=ap24.3.570_1913.a&rgn=div9.

V.D.7. Limitation on use of funds for eminent domain. No CDBG-MIT funds may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the

general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118) shall be considered a public use for purposes of eminent domain.

VI. Certifications and Collection of Information

VI.1. Certifications waiver and alternative requirement. 24 CFR 91.225 and 91.325 are waived. Each grantee receiving a direct allocation of CDBG-MIT funds must make the following certifications with its action plan:

- a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with CDBG-MIT funding.
- b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.
- c. The grantee certifies that the action plan is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with CDBG-MIT funds are consistent with its action plan.
- d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for CDBG-MIT funds.
- e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.
- f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to mitigation activities, as applicable, in the most impacted and distressed areas for which the President declared a major disaster in 2015, 2016, or 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG-MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-MIT funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the CDBG-MIT grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-MIT funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) CDBG-MIT funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments

that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out mitigation activities, as applicable, in a timely manner and that the grantee has reviewed the respective requirements of this notice. The grantee certifies to the accuracy of its Public Law 115–56 Financial Management and Grant Compliance certification checklist, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at section V.A.1.a of this notice and its implementation plan and capacity assessment and related submissions to HUD referenced at section V.A.1.b.

l. The grantee certifies that it considered the following resources in the preparation of its action plan, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf; DHS Office of Infrastructure Protection: <https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf>; National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf; the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>; the U.S. Forest Service's resources around wildland fire (<https://www.fs.fed.us/managing-land/fire/>); and HUD's CPD Mapping tool: <https://egis.hud.gov/cpdmaps/>.

m. The grantee certifies that it will not use CDBG-MIT funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this

provision is the State, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

n. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

o. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

p. The grantee certifies that it will comply with applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

VII. Duration of Funding

This notice requires each grantee to expend fifty percent of its CDBG-MIT grant on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its grant within twelve years of HUD's execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the grants under this notice are as follows: 14.218 for Entitlement CDBG grantees and 14.228 for State CDBG grantees.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: August 23, 2019.

Benjamin Carson, Sr.,

Secretary.

[FR Doc. 2019-18607 Filed 8-29-19; 8:45 am]

BILLING CODE 4210-67-P

**ATTACHMENT A
TO LOAN AGREEMENT
ASSIGNMENT OF PROJECT MANAGEMENT AGREEMENT
AND CONSENT**

**ASSIGNMENT OF PROJECT MANAGEMENT AGREEMENT
AND CONSENT**

FOR VALUE RECEIVED, **BUFFALO BAYOU PARTNERSHIP**, a Texas nonprofit corporation ("**BBP**"), whose mailing addresses is: 1019 Commerce Street, Suite 200, Houston, Texas 77002, as additional security for the obligations pursuant to that certain Contribution Agreement (as heretofore amended, extended, modified or renewed, the "**Contribution Agreement**"), between BBP and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which Contribution Agreement evidences the grant extended by City to BBP in the original principal amount of **\$5,453,853.00** ("**City Contribution**"), the proceeds of which were utilized by BBP for the purchase and improvements of certain real property for the project located at Lockwood Drive east of Drennan Street, Houston, Harris County, Texas ("**Project**"). BBP, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of BBP in and to that certain Project Management Agreement by and between BBP and _____ ("**Project Manager**"), dated _____ ("**Contract**"). Upon the satisfaction in full of the obligations of BBP to City evidenced by the Contribution Agreement and other documents executed in connection therewith ("**Contribution Documents**"), this Assignment of Engineer's Contract, Plans and Specifications, and Consent ("**Assignment**") shall become null and void.

BBP and Project Manager, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of BBP's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract, and upon such exercise City shall become responsible for BBP's obligations thereunder.

BBP hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce BBP's rights with respect to the Contract, to give appropriate receipts, releases and satisfactions for and on behalf of BBP and to do any and all acts in the name of BBP or in the name of City with the same force and effect as BBP could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred, as such is defined in the Contribution Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the Contribution Agreement), BBP hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and BBP agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms not otherwise defined herein shall have the meaning specified in the Contribution Agreement.

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Signature Page

Assignment of Project Management Agreement and Consent

BUFFALO BAYOU PARTNERSHIP, a Texas
non-profit corporation

By: _____
Name: Anne Olson
Title: President

[PROJECT MANAGER'S CONSENT FOLLOWS]

CONSENT OF PROJECT MANAGER

The undersigned ("**Project Manager**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Project Manager Agreement and Consent ("**Assignment**") which immediately precedes this Consent of Project Manager ("**Consent**") is the contract to be used in the actual project management of the construction of the Project; and Project Manager hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by BBP under the Contribution Documents, City is authorized to use the Contract for the purpose of completing the construction work on the Project contemplated by the Contribution Documents.

Project Manager acknowledges that City is relying and is entitled to rely on Project Manager's professional skill and competence in the provision of construction management services under the Contract.

To induce City to enter into the Contribution Documents with BBP evidencing the grant, Project Manager hereby agrees that all of the liens which Project Manager may have or be entitled to either against such Contract or against the Project contemplated by the Contribution Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the security interests securing the performance under the grant to be made pursuant to the Contribution Documents.

DATED to be effective as of _____, 20____.

PROJECT MANAGER:

By: _____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A
LEGAL DESCRIPTION

**ATTACHMENT B
TO CONTRIBUTION AGREEMENT**

**ASSIGNMENT OF ENGINEER'S
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

**ASSIGNMENT OF ENGINEER'S
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

FOR VALUE RECEIVED, **BUFFALO BAYOU PARTNERSHIP**, a Texas nonprofit corporation ("**BBP**"), whose mailing addresses is: 1019 Commerce Street, Suite 200, Houston, Texas 77002, as additional security for the obligations pursuant to that certain Contribution Agreement (as heretofore amended, extended, modified or renewed, the "**Contribution Agreement**"), between BBP and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which Contribution Agreement evidences the grant extended by City to BBP in the original principal amount of **\$5,453,853.00** ("**City Contribution**"), the proceeds of which were utilized by BBP for the purchase and improvements of certain real property for the project located at Lockwood Drive east of Drennan Street, Houston, Harris County, Texas ("**Project**"). BBP, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of BBP in and to that certain Engineering Contract by and between BBP and _____ ("**Engineer**"), dated _____ ("**Contract**") and in and to those certain drawings and plans and specifications ("**Plans and Specifications**") therefor, all inclusive, all of which were prepared by engineer, a true and correct copy of the Contract and Plans and Specifications having been deposited with and held by City. Upon the satisfaction in full of the obligations of BBP to City evidenced by the Contribution Agreement and other documents executed in connection therewith ("**Contribution Documents**"), this Assignment of Engineer's Contract, Plans and Specifications, and Consent ("**Assignment**") shall become null and void.

BBP and Engineer, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of BBP's obligations or duties concerning the Contract and Plans and Specifications, including, but not limited to, the obligation to pay for the preparation of the Contract and Plans and Specifications, until and unless City shall exercise its rights, granted hereby, to the use of the Contract and Plans and Specifications.

BBP hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce BBP's rights with respect to the Contract and Plans and Specifications, to give appropriate receipts, releases and satisfactions for and on behalf of BBP and to do any and all acts in the name of BBP or in the name of City with the same force and effect as BBP could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred, as such is defined in the Contribution Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the Contribution Agreement), BBP hereby represents and warrants to City that no previous assignment of its interest in the Contract and Plans and Specifications has been made; and BBP agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract and Plans and Specifications so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the Contribution Agreement.

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Signature Page

Assignment of engineer's Contracts, Plans and Specifications and Consent

[The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature]

DATED to be effective as of _____, 2023.

BUFFALO BAYOU PARTNERSHIP, a Texas
non-profit corporation

By: _____
Name: Anne Olson
Title: President

[ENGINEER'S CONSENT FOLLOWS]

CONSENT OF ENGINEER

The undersigned ("**engineer**") represents to City that (i) to the best of Engineer's knowledge, the Plans and Specifications are the plans and specifications to be used in the actual construction of the Project; (ii) Engineer, or all applicable principals or agents of Engineer, are duly licensed to perform, conduct and engage in such activities and business as are contemplated under the Contract in the jurisdiction or jurisdictions where such activities, business or work is to be performed and in which the Project is, or will be, located or constructed; (iii) the Project has been designed, as evidenced by the Plans, in accordance with all applicable engineering laws including, without limitation, the Americans With Disabilities Act (42 U.S.C. §§ 12131-12165; 47 U.S.C. §§ 155, 201, 218 and 255), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) and Tex. Gov't Code Ann. § 469.001 et seq., as amended, ordinances, rules and regulations, and that all permits, certificates or other licenses evidencing same have been obtained and will be delivered to City upon request therefore; and (iv) the Contract is in full force and effect and is valid, binding and enforceable against engineer in accordance with its terms and there is no default by engineer thereunder.

Engineer hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any default by BBP under the Contribution Agreement or any Contribution Document executed pursuant thereto, City is authorized to use the Contract and Plans and Specifications for the purpose of the inspection or completion of the construction of the Project and for the maintenance and protection of the Project contemplated by the Contribution Agreement.

To induce City to enter into the Contribution Agreement with BBP, engineer hereby agrees that all of the liens which Engineer may have or be entitled to either against such Contract and Plans and Specifications or against the Project contemplated by the Contribution Agreement (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to security interests securing the performance of the BBP grant.

ENGINEER acknowledges that City is relying and is entitled to rely on ENGINEER's professional skill and competence in the provision of construction management services under the Contract.

[The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature]

DATED to be effective as of _____, 20____.

ENGINEER:

By: _____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A
LEGAL DESCRIPTION

ATTACHMENT C
TO LOAN AGREEMENT

**ASSIGNMENT OF CONSTRUCTION
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

**ASSIGNMENT OF CONSTRUCTION
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

FOR VALUE RECEIVED, **BUFFALO BAYOU PARTNERSHIP**, a Texas non-profit corporation ("**BBP**"), whose mailing addresses is: 1019 Commerce Street, Suite 200, Houston, Texas 77002, as additional security for the obligations pursuant to that certain Contribution Agreement (as heretofore amended, extended, modified or renewed, the "**Contribution Agreement**"), between BBP and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which Contribution Agreement evidences the grant extended by City to BBP in the original principal amount of **\$5,453,853.00** ("**City Contribution**"), the proceeds of which were utilized by BBP for the purchase and improvements of certain real property for the project located at Lockwood Drive east of Drennan Street, Houston, Harris County, Texas ("**Project**"). BBP, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of BBP in and to that certain Engineering Contract by and between BBP and _____ ("**Engineer**"), dated _____ ("**Contract**") and in and to those certain drawings and plans and specifications ("**Plans and Specifications**") therefor, all inclusive, all of which were prepared by engineer, a true and correct copy of the Contract and Plans and Specifications having been deposited with and held by City. Upon the satisfaction in full of the obligations of BBP to City evidenced by the Contribution Agreement and other documents executed in connection therewith ("**Contribution Documents**"), this Assignment of Engineer's Contract, Plans and Specifications, and Consent ("**Assignment**") shall become null and void.

Contractor and BBP, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of BBP's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract.

BBP hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce BBP's rights with respect to the Contract to give appropriate receipts, releases and satisfactions for and on behalf of BBP and to do any and all acts in the name of BBP or in the name of City with the same force and effect as BBP could do if this Assignment had not been made.

Contractor hereby irrevocably constitutes and appoints City as its attorney in fact to demand, receive and enforce Contractor's rights with respect to the Contract to give appropriate receipts, releases and satisfactions for and on behalf of Contractor and to do any and all acts in the name of Contractor or in the name of City with the same force and effect as Contractor could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred, as such is defined in the Contribution Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the Contribution Agreement), BBP hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and BBP agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the Contribution Agreement.

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Signature Page

Assignment of Construction Contract and Consent

DATED to be effective as of _____, 2023.

BUFFALO BAYOU PARTNERSHIP, a Texas
non-profit corporation

By: _____
Name: Anne Olson
Title: President

[CONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF CONTRACTOR

The undersigned ("**Contractor**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Construction Contract and Consent ("**Assignment**") which immediately precedes this Consent of Contractor (this "**Consent**") is the contract to be used in the actual construction and completion of the work for the Project; and Contractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by BBP under the Contribution Agreement or any document or instrument executed pursuant thereto, City is authorized to use the Contract for the purpose of completing construction work for the Project contemplated by the Contribution Agreement.

Contractor acknowledges that City is relying and is entitled to rely on Contractor's professional skill and competence in the provision of construction services under the Contract. To induce City to enter into the Contribution Agreement and the other Contribution Documents with Borrower, Contractor hereby agrees that all of the liens which Contractor may have or be entitled to either against such Contract or against the Project contemplated by the Contribution Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the security interests of the liens and security interests securing the payment of the loan or loans to be made pursuant to the Contribution Documents.

DATED to be effective as of _____, 2023.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Exhibit List

Exhibit A - Legal Description

**EXHIBIT A
LEGAL DESCRIPTION**

ATTACHMENT D
TO CONTRIBUTION AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

This ENVIRONMENTAL INDEMNITY AGREEMENT ("**Environmental Indemnity Agreement**") is executed effective as of _____, 20____, by **BUFFALO BAYOU PARTNERSHIP**, a Texas non-profit corporation ("**BBP**") for the benefit of **THE CITY OF HOUSTON** ("**City**").

W I T N E S S E T H:

WHEREAS, City is making a contribution in the form of a Community Development Block Grant-Mitigation grant ("**Grant**") to BBP in the original principal amount of **\$5,453,853.00** and further evidenced by that certain Contribution Agreement entered into by and between City, BBP and Owner ("**Contribution Agreement**"), for the purchase of certain real property ("**Land**") described in Exhibit "A" attached hereto, together with the improvements, buildings, facilities located thereon (the Land, together with said improvements, buildings, facilities and personal property referred to herein as the "**Property**") The Contribution Agreement and all other documents or instruments evidencing, securing or pertaining to the Grant shall be collectively referred to as the "**Contribution Documents**"; and

WHEREAS, as a material inducement in order for City to make the Grant to BBP, BBP has agreed to execute and deliver this Environmental Indemnity Agreement to and for the benefit of City.

NOW, THEREFORE, for and in consideration of extending the Grant by City to BBP, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, BBP hereby agrees as follows:

A G R E E M E N T:

Article I. DEFINITIONS

The following terms shall have the defined meanings ascribed to such terms, as set forth below:

"**Environmental Laws**" shall mean any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; Resource, Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("**CWA**"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 et seq.; any related federal laws and authorities as required by the Housing and Community Development Act of 1974, as listed in 24 CFR § 58 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("**TWC**") § 26.001 et seq.; Texas Health & Safety Code ("**THSC**") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

["**Environmental Report**"] means the Phase I environmental report delivered to City in connection with the Grant.]

"**Hazardous Substances**" shall mean any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or

similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(9) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(13) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

"Hazardous Substances Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Substances, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Substances at any time (whether before or after the date of the Note) emanating from the Property.

Article II. REPRESENTATIONS AND WARRANTIES

[Except as set forth in the Environmental Report,] BBP unconditionally represents and warrants to City as follows:

(a) The Property does not contain any Hazardous Substances, and the Property is not subject to any Hazardous Substances Contamination.

(b) The Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority or any Environmental Laws.

(c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of any Hazardous Substances into the environment, have been duly obtained or filed.

(d) Neither BBP nor, to the best knowledge of BBP, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, under, from or about the Property of any Hazardous Substances or the transportation to or from the Property of any Hazardous Substances.

(e) To BBP's knowledge, no property adjoining the Property is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Substances, nor, to BBP's knowledge, is any other property adjoining the Property affected by Hazardous Substances Contamination.

(f) Neither BBP nor, to the best knowledge of BBP, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or

disposal of any Hazardous Substances on, under, from or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by BBP in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

(g) To BBP's knowledge, no inquiry, investigation, administrative order, consent order and agreement, litigation or settlement is proposed, threatened, anticipated or in existence with respect to any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property. BBP has not received any notice, and has no actual or constructive knowledge, that any governmental authority has determined, or threatens to determine, or is investigating any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property.

(h) BBP has taken all steps reasonably necessary to determine that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.

Article III. COVENANTS

BBP unconditionally covenants that and agrees with City as follows:

(a) BBP will not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Property or transport to or from the Property any Hazardous Substances or allow any other person or entity to do so. Notwithstanding the foregoing or anything to the contrary set forth in this Environmental Indemnity Agreement, reasonable quantities of Hazardous Substances as are customarily used in the construction, habitation, maintenance and/or operation of an apartment project, properly used and/or stored, shall be permitted (collectively, the "**Permitted Substances**").

(b) BBP will keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law.

(c) BBP will establish and maintain, at BBP's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators, including tenants, of the Property, which system shall include annual reviews of such compliance by employees or agents of BBP who are familiar with the requirements of the Environmental Laws and, at the request of City no more than once each year, a detailed review of such compliance of the environmental condition of the Property (the "**Environmental Report**") in scope satisfactory to City by an environmental consulting firm approved in advance by City; provided, however, that if any Environmental Report indicates any violation of any Environmental Laws or a need for remedial work ("**Remedial Work**"), such system shall include at the request of City a detailed review of the status of such violation (a "**Supplemental Report**") by such environmental consultant. BBP shall furnish an Environmental Report or such Supplemental Report to the City within sixty (60) days after City so requests, together with such additional information as City may reasonably request.

(d) BBP will give prompt written notices to City of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substances on, under, from or about the Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substances generated or used on, under or about the

Property, (ii) all claims made or threatened by any third party against BBP or the Property or any other owner or operator, including a tenant, of the Property relating to any loss or injury resulting from any Hazardous Substances, and (iii) BBP's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any investigation or cleanup of the Property pursuant to any Environmental Laws.

(e) BBP will permit City to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Laws or Hazardous Substances, and BBP shall pay all attorneys' fees incurred by City in connection therewith.

(f) In the event that any Remedial Work is reasonably necessary or desirable, BBP shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by City for performance thereof (or such shorter period of time as may be required under any Environmental Laws). All Remedial Work shall be performed by contractors approved in advance by City, and under the supervision of a consulting engineer approved by City. All costs and expenses of such Remedial Work shall be paid by BBP including, without limitation, City's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event BBP shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, City may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured by the Deed of Trust ("**Indebtedness**") and shall be payable to City upon demand.

Article IV. DEFAULT

The term "Default", as used herein, shall mean the occurrence at any time and from time to time, of any one or more of the following:

(a) If either BBP or City acquires knowledge or receives notice that Hazardous Substances or Hazardous Substances Contamination exists in, on, about or under any of the Property, and BBP fails, within thirty (30) days after acquisition of such knowledge or of such notice, to commence and thereafter diligently prosecute to completion any necessary remedial actions in compliance with Environmental Laws.

(b) If any representation or warranty contained herein shall be false or misleading, or erroneous in any material respect.

Article V. REMEDIES

If a Default shall occur, City may, at City's sole election and by or through Trustee or otherwise, exercise any or all of the following:

(a) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by BBP), whereupon the same shall become immediately due and payable.

(b) Exercise any and all other rights, remedies and recourses granted under the Contribution Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise, including actions for damages and specific performance.

Article VI. SITE ASSESSMENTS

If City shall ever have reason to believe that there are Hazardous Substances or Hazardous Substances Contamination affecting any of the Property, City (by its officers, employees and agents) at

any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "**Site Reviewers**") to perform environmental site assessments ("**Site Assessments**") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by BBP which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of any Hazardous Substances on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. BBP will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, City shall make the results of such Site Assessments fully available to BBP, which (prior to a Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by BBP upon demand of City and any such obligations shall be Indebtedness secured by the Deed of Trust.

Article VII. INDEMNIFICATION

REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, BBP SHALL JOINTLY AND SEVERALLY PROTECT, INDEMNIFY, AND HOLD HARMLESS TRUSTEE AND CITY, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER, ABOUT OR FROM THE PROPERTY OTHER THAN PERMITTED SUBSTANCES, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF AND REGARDLESS OF WHETHER OR NOT CAUSED BY, OR WITHIN THE CONTROL OF BBP, INCLUDING WITHOUT LIMITATION (I) DAMAGES FOR PERSONAL INJURY, OR INJURY TO PROPERTY OR NATURAL RESOURCES OCCURRING UPON OR OFF THE PROPERTY, FORESEEABLE OR UNFORESEEABLE, INCLUDING, WITHOUT LIMITATION, THE COST OF DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS ON THE REAL PROPERTY, INTEREST AND PENALTIES; (II) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS INCLUDING FEES INCURRED FOR ATTORNEYS, CONSULTANTS, CONTRACTORS, EXPERTS AND LABORATORIES; AND (III) LIABILITY TO ANY THIRD PERSON OR ANY GOVERNMENTAL AUTHORITY TO INDEMNIFY SUCH PERSON OR GOVERNMENTAL AUTHORITY FOR COST EXPENDED IN CONNECTION WITH THE ITEMS REFERENCED IN SUBPARAGRAPH (II) IMMEDIATELY ABOVE. THIS COVENANT AND THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE RELEASE OF THE LIEN OF THE DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN OF THE DEED OF TRUST BY FORECLOSURE OR ACTION IN LIEU THEREOF AND SHALL CONTINUE IN EFFECT SO LONG AS A VALID CLAIM MAY BE LAWFULLY ASSERTED AGAINST CITY.

Article VIII.

CITY'S RIGHT TO REMOVE HAZARDOUS MATERIALS

City shall have the right but not the obligation, without in any way limiting City's other rights and remedies under the Contribution Documents, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal

with, any Hazardous Substances or Hazardous Substances Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Substances or Hazardous Substances Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property or other action and/or which, in City's reasonable opinion, could jeopardize City's security under the Contribution Documents; provided, however, City shall have no right to proceed with any of the rights granted to it in this paragraph until City has provided BBP with written notice of City's intent to take any of the actions described in this paragraph and BBP fails to commence within thirty (30) days following BBP's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing. All reasonable costs and expenses paid or incurred by City in the exercise of any such rights shall be included in the indebtedness secured by the Contribution Documents and shall be payable by BBP upon demand.

Article IX. MISCELLANEOUS

This Environmental Indemnity Agreement are joint, several and unconditional and shall not be subject to any exculpation, non-recourse or other limitation of liability provisions in the Contribution Documents, and BBP acknowledges that its obligations under this Environmental Indemnity Agreement are not limited by such exculpation, non-recourse or similar limitation of liability provisions in the Contribution Documents (if any).

Those costs, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) for which City is indemnified hereunder shall be reimbursable to City after being paid by City, and BBP shall pay such costs, expenses, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) to City within ten (10) days after notice from City itemizing the amounts paid to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at the Default Rate (as defined in the Note) of interest specified in the Contribution Documents. Payment by City shall not be a condition precedent to the obligations of BBP under this Environmental Indemnity Agreement.

Any notice, communication, request or other documents or demand permitted or required hereunder shall be in writing and given in accordance with the provisions of the Contribution Documents.

THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN TEXAS PROVIDED, HOWEVER, THAT EITHER FEDERAL LAW OR, TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE LAW OF THE SITUS OF THE PROPERTY SHALL BE APPLIED TO DETERMINE THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS. PROVIDED FURTHER, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED SHALL APPLY TO THE CREATION, PERFECTION, AND PRIORITY OF LIENS AND SECURITY INTERESTS AND TO ANY FORECLOSURE, TRUSTEE'S SALE, APPOINTMENT OF RECEIVER OR OTHER REMEDY WITH RESPECT TO THE PROPERTY. ANY PROCEDURES PROVIDED HEREIN FOR SUCH REMEDIES SHALL BE MODIFIED BY AND REPLACED WITH, WHERE INCONSISTENT WITH OR REQUIRED BY, ANY PROCEDURES OR REQUIREMENTS OF THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

ANY LEGAL ACTION TO INTERPRET OR ENFORCE ANY TERM OR CONDITION OF THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN THE TEXAS STATE COURTS SITUATED IN THE CITY OF HOUSTON AND COUNTY OF HARRIS, TEXAS. BY EXECUTING THIS ENVIRONMENTAL INDEMNITY AGREEMENT, BBP EXPRESSLY (A) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF SUCH TEXAS AND FEDERAL COURTS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT HARRIS COUNTY, TEXAS IS NOT A PROPER OR CONVENIENT VENUE OR FORUM, AND (C) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

BBP waives any acceptance of this Environmental Indemnity Agreement by City.

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Environmental Indemnity Agreement is subject to enforcement at law and/or equity, including actions for damages and/or specific performance.

Time is of the essence in the performance of the terms, conditions and covenants herein contained.

This Environmental Indemnity Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive any exercise of any remedy by City under the Contribution Documents, including foreclosure of the liens of the Contribution Documents (or deed in lieu thereof), even if, as part of such foreclosure or deed in lieu of foreclosure, the Grant amount is satisfied in full.

All terms not defined in this Environmental Indemnity Agreement shall have the same meanings as given them in the Contribution Documents.

[SIGNATURE PAGE FOLLOWS]

Signature Page

Environmental Indemnity Agreement

[The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.]

EXECUTED to be effective as of the date first set forth above.

BUFFALO BAYOU PARTNERSHIP, a Texas non-profit
corporation

By: _____

Name: Anne Olson

Title: President

**EXHIBIT A
LEGAL DESCRIPTION**

**ATTACHMENT I
AFFIDAVIT OF USE OF FUNDS**

BEFORE ME, on this day personally appeared Anne Olson, the undersigned affiants, who, being by me duly sworn on their oath, deposed and stated as follows:

"My name is Anne Olson. I am the President of BUFFALO BAYOU PARTNERSHIP, INC., a Texas non-profit corporation ("BBP"), and I state the following:

In connection with the **\$5,453,853.00** grant made by the City of Houston to BBP, the undersigned hereby certifies to the City of Houston that the funds advanced by the City of Houston have been or shall be utilized solely for the purposes set forth in the Contribution Agreement between the City of Houston and the undersigned."

In connection with the **\$5,453,853.00** grant made by the City of Houston to BBP, the undersigned hereby certifies to the City of Houston that the funds advanced by the City of Houston have been or shall be utilized solely for the purposes set forth in the Contribution Agreement between the City of Houston and the undersigned."

Further Affiant sayeth not.

SIGNED this _____ day of _____, 2023.

BUFFALO BAYOU PARTNERSHIP,
a Texas non-profit corporation

By: _____
Name: Anne Olson
Title: _____

STATE OF TEXAS

COUNTY OF HARRIS

SWORN and SUBSCRIBED by me on the ____ day of _____, 2023, by Anne Olson the President of Buffalo Bayou Partnership, a Texas non-profit corporation, on behalf of said nonprofit corporation.

Notary Public, State of Texas

Printed Name of Notary
My commission expires: _____

**ATTACHMENT E
TO CONTRIBUTION AGREEMENT
BONDS**

Project No.

ONE YEAR MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "**Contractor**", and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to _____, a _____ ("**Obligee**"), in the sum of _____ Dollars (\$_____) for the payment of which sum to be made to the Obligee and its successors, Contractor and Surety do bind themselves, their successors and assigns jointly and severally. The conditions of this obligation are such that:

WHEREAS, the Contractor has entered into that certain construction contract with the Obligee, dated of even date herewith, for the construction of a _____ (____) unit apartment complex located at _____, Houston, Harris County, Texas ("**Contract**"), with all of such work to be done in accordance with the documents executed in connection with the Contract (collectively, the "**Contract Documents**"), and referred to in the loan agreement dated of approximate even date herewith between the City of Houston and Obligee which was adopted by the City Council of the City of Houston.

NOW THEREFORE, if the Contractor shall comply with the provisions of the general conditions of that certain construction contract by and between _____ and _____, dated as of _____, and correct work which is not in accordance with the Contract Documents discovered within the established one (1) year period, then this obligation shall become null and void and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

IN WITNESS THEREOF, the Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached their current Power of Attorney.

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

(Contractor)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE OWNER:

By: _____

Name: _____

Title: _____

Date: _____

**TEXAS STATUTORY PAYMENT BOND
(Property Code - Private Work)**

[NOTE: Penalty of this bond must be 100% of Contract amount. This bond and copy or memorandum of the construction contract must be filed with County Clerk of County where owner's property is located.]

KNOW ALL MEN BY THESE PRESENTS:

That, _____,
_____, the original contractor (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____ and duly authorized and admitted to do business in, and licensed to execute surety bonds by, the State of Texas (hereinafter called the "Surety"), as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner"), as Owner, in the amount of _____ Dollars (\$ _____) for the payment whereof the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, to _____, to be located on the land described in Exhibit "A" attached hereto (hereinafter called the "Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length hereto, and a copy of said Contract (but without the plans, specifications and general conditions of said Contract) or a memorandum of the Contract is attached hereto as Exhibit "B".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall well and faithfully make prompt payment to each and every claimant for labor, subcontracts, materials, and specially fabricated materials performed or furnished under or by virtue of said contract and duly authorized normal and usual extras thereto (not to exceed 15% of said contract price), then this obligation shall be void; otherwise to remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Sections 53.001, *et seq.* of the Texas Property Code, as amended.

PROVIDED, HOWEVER, that the Owner having required the said Principal to furnish this bond in order to comply with the provisions of Sections 53.201 *et seq.* of the Texas Property Code, as currently amended, all rights and remedies under this bond shall be determined in accordance with the provisions, conditions, and limitations of said statute to the same extent as if it were copied at length herein.

Any notices of claims under this Bond should be sent to:

[Mailing & Physical Address]

Telephone No. for Claims: _____ - _____ - _____

STATEMENT: The address of the Surety to which any notices of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number maintained by the Texas Department of Insurance as follows:

Texas Department of Insurance
Toll free Telephone Number: 800-252-3439

[The undersigned Surety hereby certifies that it currently holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law.]

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument, this _____ day of _____, 20____.

PRINCIPAL:

_____,
a _____

By: _____ (Seal)
Name: _____
Title: _____

SURETY:

_____,
a _____

By: _____
Name: _____
Title: _____

[Attach Power of Attorney for Surety's Attorney-in-Fact.]

The foregoing bond is hereby approved.

OWNER:

_____,
a _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was ACKNOWLEDGED before me on _____, 20____, by
_____, _____ of
_____, a _____, on behalf of
said _____.

[S E A L]

My Commission Expires:

Notary Public - State of Texas

Printed Name of Notary Public

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was ACKNOWLEDGED before me on _____, 20____, by
_____, _____ of
_____, a _____, on behalf of
said _____.

[S E A L]

My Commission Expires:

Notary Public - State of Texas

Printed Name of Notary Public

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was ACKNOWLEDGED before me on _____, 20____, by
_____, _____ of
_____, a _____, on behalf of
said _____.

[S E A L]

My Commission Expires:

Notary Public - State of Texas

Printed Name of Notary Public

ATTACHMENTS:
Power of Attorney

Exhibit "A" – Land Description
Exhibit "B" – Contract of Memorandum

Document ____

PERFORMANCE BOND

THAT WE, _____, as Principal, (the "Contractor"), and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, and _____, a _____ (individually, "Owner" and collectively with the City, the "Obligees"), in the penal sum of \$_____ for the payment of which sum, well and truly to be made to Obligees, their successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with _____ for the construction of a ____-unit apartment complex located at _____, Houston, Harris County, Texas, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that Obligees may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the Obligees or their representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that Owner will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the Obligor's benefit, and the Obligees will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the Obligees or their representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the Obligees from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the Obligor/s gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the Obligees, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the Obligees shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

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

By: _____
Name:
Title:

Name of Contractor

By: _____
Name:
Title:
Date:

ATTEST/SURETY WITNESS:

(SEAL)

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____
Name:
Title:
Date:

By: _____
Name:
Title: Attorney-in-Fact
Date:

ATTACHMENT F

RESERVED

**ATTACHMENT G
FORM OF BILL OF SALE**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BILL OF SALE

WHEREAS, by Agreement ("Agreement") dated _____, the City of Houston (the "City"), Harris County (the "County") and The Buffalo Bayou Partnership ("BBP"), have agreed to provide for the (Name of the Project) and the surrounding area (location) (the "Project"); and

WHEREAS, pursuant to such Agreement, BBP is obligated to transfer ownership of the Project to the City; NOW THEREFORE,

KNOW ALL MEN BY THESE PRESENTS:

That BBP, by and through its duly authorized representatives whose names and signatures as duly affixed hereto, for and in consideration of TEN DOLLARS (\$10.00), and other good and valuable consideration in hand paid to it by City, the receipt and adequacy of which are hereby acknowledges, and grants, sells, conveys, transfers, assigns and delivers to the City all of its right, title and interest in the Project and does hereby grant, sell, convey, transfer, assign and deliver the Project unto City, free and clear of all liens and encumbrances thereof;

TO HAVE AND TO HOLD the Project, together with all and singular the rights and appurtenances thereto, unto the City, its successors and assigns, forever, and BBP does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto City, against every person claiming or to claim the same, or any part hereof.

BBP has executed this Bill of Sale and delivered the Project to the City, and the City has accepted this Bill of Sale and acquired the Project from BBP, AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, IT BEING THE INTENTION OF BBP AND THE CITY TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROJECT OR BY ANY SAMPLE OR MODE, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY LAW, INCLUDING THE TEXAS UNIFORM COMMERCIAL CODE, except the warranty of title set forth above. This disclaimer of warranties shall have no effect on the warranties and guarantees described in Section 5.06 of the Agreement.

From and after the date hereof, BBP shall be released and discharged of all of its obligations, duties and responsibilities under the Agreement, save and except the duty of indemnification contained in Section 8.01 of the Agreement.

[Remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Bill of Sale has been executed by _____
by its duly authorized officer on _____, 20__.

BUFFALO BAYOU PARTNERSHIP, a Texas
non-profit corporation

By: _____

Name: Anne Olson

Title: President

ACCEPTED ON BEHALF OF

The City of Houston

By: _____

Name: _____

Title: _____

ATTACHMENT H
FORM OF NOTICE TO PROCEED

[Date]

[Name], Director
[Address]

RE: Marron Park way

Dear [Director]:

In accordance with the Development, Construction, Operations, Maintenance and Concession Agreement Relating to Buffalo Bayou Redevelopment from the Union Pacific Railroad Bridge Immediately East of U.S. 59/I-69 to Mack Street which took effect on [Effective Date], [Project Manager Organization Name] formally requests a Notice-to-Proceed (NTP) for the subject project and respectfully submits the following information for your review:

- Plans – Included as an attachment: (1) half size set of 100% Construction Drawings and (1) set of 100% Project Specifications.
- Funding – [Project Manager Organization Name] confirms funding is in place for [%] of Secured Funds necessary during the Project Manager's current fiscal year.
- Schedule – [Project Manager Organization Name] has awarded the contract to [Contractor]. Contractor's NTP is pending a formal NTP from the Director. The project is anticipated to be substantially complete by [Date]

Per the Agreement, within 14 business days of the request to proceed, the Director shall provide a written response to approve or deny the request. However, if no response is given within the 14-business day review period, the request as submitted shall be deemed to have been approved by the Director.

Please let me know of any questions. We look forward to your response.

Sincerely,

[Contact Name]
[Title]
[Project Manager Organization Name]

Attachments

cc: [Name] (Buffalo Bayou Partnership)
[Name] (COH - General Services Division)
Project File

**ATTACHMENT J
AFFIDAVIT OF NO COMMISSIONS**

BEFORE ME, on this day personally appeared, Anne Olson, the undersigned affiant, who, being by me duly sworn on his oath, deposed and stated as follows:

My name is Anne Olson. I am over the age of twenty-one years, have never been convicted of a felony and am fully competent to make this affidavit.

The following statements are true and within my personal knowledge:

I am the President of Buffalo Bayou Partnership, a Texas non-profit corporation ("BBP"). My responsibilities include oversight of the day-to-day operations of BBP.

I am familiar with all of the business and transactions of BBP, including the project known as the Marron Park Way for which the City of Houston is contributing **\$5,453,853.00** in CDBG-MIT funds ("City Contribution"). I am familiar with the terms of the Contribution Agreement ("Contribution Agreement") made by the City of Houston and BBP in connection with the City Contribution, and am making this affidavit as a requirement of the documentation for the City Contribution.

I hereby certify that, as of the date of closing of the City Contribution, no commissions, fees or other payments of any kinds have been made to BBP, or any employees or directors of BBP, or any company or individual related to or affiliated with BBP, except as may be allowed pursuant to the terms of the Contribution Agreement."

Further Affiant sayeth not.

SIGNED this _____ day of _____, 2023.

BUFFALO BAYOU PARTNERSHIP,
a Texas non-profit corporation

By: _____
Name: Anne Olson
Title: President

STATE OF TEXAS

COUNTY OF HARRIS

SWORN and SUBSCRIBED by me on the ____ day of _____, 2023, by Anne Olson, the President of Buffalo Bayou Partnership, a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public, State of Texas

Printed Name of Notary
My commission expires: ____

APPENDIX 1 FEDERAL PROVISIONS

Version 03/16/2023

GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS ("GENERAL FEDERAL REQUIREMENTS")

Subrecipient must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this **Appendix**, the following terms have the meanings set forth in this Appendix.

- "Agreement" means the Agreement, Addendum, or Purchase Order to which this **Appendix** is attached.
- "Subrecipient" means BBP or Vendor as defined in the Agreement to which this **Appendix** is attached and any subrecipient, contractor, or subcontractor performing work on behalf of the Subrecipient pursuant to the foregoing Agreement.
- "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Appendix** is attached as a source of funding.

Subrecipient also acknowledges that the City is using federal funds attached to a federal program ("Program") for all or a portion of this Agreement. Subrecipient therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions or websites required by the CPO, and any specific terms and conditions set forth in the grant as specified by the CPO ("Funding Law, Regulations and Guidelines").

Subrecipient also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this **Appendix** in any agreements it enters into with other parties relating to the federal funds.

1. Subrecipient acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Subrecipient shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
 - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
 - c. Generally applicable federal environmental laws and regulations
2. Subrecipient acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Subrecipient, or any other party pertaining to any matter resulting from this Agreement.
 3. Subrecipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Subrecipient's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
 4. Use of Funds. Subrecipient understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.
 5. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.
 6. Period of Performance. The Period of Performance of this Agreement will begin on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Subrecipient signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.
 7. Subrecipient shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
 8. Access to Records. The following access to records requirements apply to this Agreement:
 - a. Subrecipient agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Subrecipient which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Subrecipient shall keep its books, documents, papers, and records available for this purpose for at

least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.

- b. Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. Subrecipient agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
 - d. In compliance with the Disaster Recovery Act of 2018, the City and Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
 - e. Within ten days of written request by the City, Subrecipient agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.
6. Environmental Compliance – Applicable only to Agreements over \$150,000.
- a. Subrecipient shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
 - b. Subrecipient shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. Subrecipient shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
7. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.
- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such

workweek.

- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
 - c. Withholding for unpaid wages and liquidated damages. The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
 - d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
8. Equal Employment Opportunity. During the performance of this Agreement, Subrecipient agrees as follows:
- a. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer; recruitment or

recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Subrecipient's legal duty to furnish information.
- d. Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Subrecipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in

accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. Subrecipient will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Subrecipient will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

- i. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- j. The City agrees that it will assist and cooperate actively with the Federal Agency, and the Secretary of Labor in obtaining the compliance of subrecipients and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.
- k. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a subrecipient or vendor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon subrecipients and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses

to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

9. Procurement of Recovered Materials.

- a. In the performance of this Agreement, Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Domestic Preference Requirements

- a. Domestic Preference Requirement – 2 C.F.R. §200.322
 - i. As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
 - 1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

b. Domestic Content Procurement Preference Requirement for Infrastructure Projects

- i. For all infrastructure projects funded by Federal financial assistance, except for certain projects funded by a federal agency that constitute pre- and post-disaster or emergency expenditures as defined in OMB Guidance M-22-11 or otherwise falls under a waiver approved by the Federal Agency, Subrecipient shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:

1. "Domestic Content Procurement Preference" means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.

2. "Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.

3. "Produced in the United States" means—

- a. in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. in the case of manufactured products, that— (i) the

manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

c. in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

4. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use would not constitute an infrastructure project under OMB Guidance M-22-11. Projects that will serve a public function, are publicly owned and operated, privately operated on behalf of the public, or are a place of public accommodation are indicia of infrastructure.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

a. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

b. Prohibitions

i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii. Unless an exception in this paragraph applies, Subrecipient and its subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:

1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions

- i. This paragraph does not prohibit subrecipients from providing—
 1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 1. Covered telecommunications equipment or services that:
 - a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system.
 2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
 3. That which 2 C.F.R. Section 200.216 does not apply.

d. Reporting requirement

- i. In the event Subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Subrecipient is notified of such by a Subcontractor at any tier or by any other source, Subrecipient shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.
- ii. Subrecipient shall report the following information pursuant to paragraph (e):
 1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- e. Subcontracts. Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

12. Remedies. If any work performed and/or goods delivered by Subrecipient fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

- a. elect to have Subrecipient re-perform or cause to be re-performed, at Subrecipient's sole expense, any of the work which failed to meet the requirements of the contract;
- b. in the case of goods, reject the goods and require Subrecipient to provide

replacement goods that meet the needs of the City and the terms of the Agreement;

- c. hire another subrecipient or vendor to perform the work and deduct any additional costs incurred by the City as a result of substituting a third party or vendors from any amounts due to Subrecipient; or
- d. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Subrecipient.

13. Suspension and Debarment.

- a. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Subrecipient can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.
- b. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Subrecipient is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- c. Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- d. This certification, found in Exhibit 1, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Subrecipient did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- e. Subrecipient agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. §

75.213, while this offer is valid and throughout the period of this purchase order. Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14. Byrd Anti-Lobbying Amendment.

- a. A subrecipient who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Exhibit 2 of this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

15. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- a. If Subrecipient intends to subcontract any portion of the work covered by this Agreement, Subrecipient must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

16. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work

in excess of \$2,000.00 and not funded by FEMA-PA Program.

- a. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Subrecipient shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - b. Subrecipient is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - c. Additionally, Subrecipient is required to pay wages not less than once a week.
17. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.0 and when the Davis-Bacon Act also applies.
 - a. Subrecipient. Subrecipient shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
 - b. Subcontracts. Subrecipient or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Subrecipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.
18. Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Subrecipient, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Subrecipient.
19. Protections for Whistleblowers.
 - a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of

law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
 - c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
20. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Subrecipient-owned, rented, or personally-owned vehicles.
21. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving.
22. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.
- Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.
23. Debts Owed to the City.
- a. Any funds paid to Subrecipient (1) in excess of the amount to which

Subrecipient is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the City and to the Federal government.

- b. Any debts determined to be owed the City must be paid promptly by Subrecipient for repayment to the federal government.
 - c. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.
24. Disclaimer. The United States expressly disclaims any and all responsibility or liability to Recipient and Subrecipient or third persons for the actions of Recipient, Subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Subrecipient does not in any way establish an agency relationship between the United States and Recipient or Subrecipient.
25. Subrecipient understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Subrecipient. Subrecipient must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the U.S. Department of Housing and Urban Development ("HUD"), Subrecipient shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any agreements Subrecipient enters into with other parties relating to these funds.

1. Civil Rights Compliance. Subrecipient shall not deny benefits or services, or

otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Subrecipient shall submit to the City's Chief Procurement Officer or designee the required assurances as set out in Exhibit 3 of this Agreement. Subrecipient is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:

- a. title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
- b. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
- c. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
- d. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Subrecipient to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
- e. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
- f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
- g. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
- h. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
- i. By signing this Agreement, Subrecipient understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs)

or equally effective communication system

2. National Flood Insurance Program.

- a. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
- b. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

3. Displacement, Relocation, Acquisition and Replacement of Housing

- a. Subrecipient understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

4. Section 3 of the Housing and Urban Development Act of 1968

- a. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon any Subrecipients and subcontractors. Failure to fulfill these requirements shall subject any Subrecipients and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided.
- b. Subrecipients agree to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is subject to the

requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Agreement. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations")."

- c. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").
- d. Subrecipient agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Subrecipient certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.
- e. Subrecipient shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.
- f. Subrecipient will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontractor in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The

Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.

- g. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (i) after Subrecipient is selected but before the Agreements executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under Section 3 Regulations
 - h. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- 5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.
- 6. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Subrecipient shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, as applicable.
- 7. Conflict of Interest
 - a. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.
 - b. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its contractors, subcontractors, subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
 - i. No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year

thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.

- ii The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, contractor, subcontractor, or subrecipient which receives funds under the federal grant.

8. Eligibility of Aliens Not Lawfully Present in U.S. Subrecipient understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.
9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 101-19.6, for general type buildings).
10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Subrecipient shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a contractor pursuant to 2 C.F.R. §200.333. Subrecipient shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Subrecipient will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.
11. Audit Requirements.
 - a. Limited Scope Audit - Subrecipient understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for

review and audit as described hereinabove at Section 17. Subrecipient further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.

- b. Single Audit - Single Audit - Subrecipient further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Agreement is executed, Subrecipient understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.
- 12. Rights to Inventions made under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
 - 13. Energy Policy and Conservation Act. Subrecipient must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).
 - 14. Procurement of Recovered Materials. See 2 C.F.R. §200.322.
 - 15. Subrecipient shall not use HUD seal(s), logos, crests, or reproductions of flags or likenesses of HUD agency officials without specific the HUD's written pre-approval.

APPLICABLE LAW - CDBG-MIT

1. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR Part 25 Universal Identifier and System for Award Management (SAM). The Grantee must have an active registration in SAM in accordance with 2 CFR Part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Grantee must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR Part 170 Reporting Subaward and Executive Compensation Information.

1. **Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Subrecipient and sub-awardees at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. The Subrecipient will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.
2. **Federal Award Number:** As per the Federal Funding Accountability and Transparency Act, federal agencies will assign a Federal Award Identification Number (FAIN) to each federal award. The FAINs are intended to increase transparency in federal spending and allow the American public to hold the government accountable for spending decisions. Each Subrecipient and sub-awardee should be aware of this identification number and ensure the FAIN is incorporated into all sub- grants under the Agreement.

2. Displacement, Relocation, Acquisition and Replacement of Housing

Subrecipient understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), 24 CFR Part 42 and 24 CFR 570.606; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

In addition to other URA requirements, these regulations (49 CFR 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

3. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of the Architectural Barriers Act and the Americans with Disabilities Act.

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR Part 40 for residential structures, and appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense

4. Conflict of Interest under 24 CFR 570.611

The subrecipient shall ensure that no employee, agent, or officer of your organization with decision-making responsibility for CDBG funds and activities is allowed to benefit from CDBG activities or have a financial interest in any agreement regarding those activities or in the proceeds of the activities. This requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s). The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or the subrecipient organization. Upon written request, exceptions may be granted by HUD on a case-by-case basis, after consideration of the cumulative effect of various factors listed in 24 CFR 570.611(d), and only with: (a) full disclosure of the potential conflict and (b) a legal opinion of the grantee's attorney that there would be no violation of state or local laws in granting the exception.

5. Religious Activities

The Subrecipient agrees that Grant Funds provided under this Agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship,

religious instruction, or proselytization. Religious Organizations are allowed to participate in CDBG-MIT grant programs to support Mitigation and any eligible activity.

6. Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22, which imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making, and action (see 24 CFR part 58) and is not delegated the Subrecipient's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

7. Duplication of Benefits

The Subrecipient shall not carry out any of the activities under the Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. Specifically, Section 312 prohibits any person, business concern, or other entity from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 USC 5155 (a). A duplication occurs when a beneficiary receives assistance from multiple sources of cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. If a duplication of benefits occurs, funds may be recaptured per the terms and conditions of the subrogation agreement (Attachment D). Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011).

APPENDIX 2

INSURANCE REQUIREMENTS FOR THE APPROVED CONSTRUCTION CONTRACT AND THE OTHER CONSTRUCTION AND SUPPLY CONTRACT

I. GENERAL INSURANCE REQUIREMENTS

A. **COVERAGES.** With no intent to limit Owner's liability under the indemnification provisions set forth above, Owner covenants to provide and maintain (or where applicable, ensure its Contractor provides and maintains) in full force and effect for the periods stated below (or if no period is stated for the longer of any statutory period or the construction phase of this project), at least the following insurance and available limits of liability:

REQUIRED COVERAGES

(Coverage)	(Limit of Liability)
1. Workers' Compensation:* Including All States Insurance, United States Longshoremen and Harbor Workers Compensation Act	Statutory Limits for Workers' Compensation
*See Additional Insurance Requirements Below	
2. Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
3. Commercial General Liability: Including Owner's and Contractor's Protective Liability or Owner's Interest, Broad Form Property Damage, Contractual Liability, Bodily Injury, Personal Injury and Products and Completed Operations (for a period of one-year following completion of the Work under this Agreement)	Combined single limit of \$1,000,000 each occurrence, subject to general aggregate \$2,000,000; Productions and Completed Operations, \$1,000,000 aggregate
4. Owner's and Contractor's Protective Liability <i>or</i> Owner's Interest	100% of Contract Price, including change orders
5. Flood Hazard Insurance **	
**See Additional Insurance Requirements Below	
6. Automobile Liability Insurance	\$1,000,000 combined single limit each occurrence
7. Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability

- | | |
|---|---|
| | Commercial General Liability and Automobile Liability |
| 8. Property & Casualty Coverage "All Causes of Loss" Builders Risk Form | 100% of Contract Price, including change orders |

OPTIONAL COVERAGES

- | | |
|---|---|
| 1. Pollution Legal Liability | \$1,000,000 per occurrence/aggregate |
| 2. Coverage for tools, equipment, etc., not included in cost of the Work | Value of items covered |
| 3. Equipment floater policy to cover equipment in transit, at warehouse job site or elsewhere until Work is turned over to the City | Value of Equipment |
| 4. Increased Excess Coverage | In addition to specified coverage, as appropriate for Project |
| 5. Other insurance | As appropriate for Project |

If any of the above insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Owner's insurance shall include a two (2)-year extended discovery period after the last date that Owner provides any Work under this Agreement.

"Aggregate" amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed twelve (12)-month policy period.

B. POLICY REQUIREMENTS

1. **Form of Policies:** The insurance may be in one or more policies of insurance, the form of which is subject to reasonable approval by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Owner from its duties to provide the required coverage hereunder and Director's actions or inactions will never be construed as waiving City rights hereunder.

2. **Issuers of Policies:** The issuer of any policy must have a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least **B+** and a financial size of **Class VI** or better according to the most current Edition Key Rating Guide, Property Casualty United States. Each issuer must be responsible and reputable and must be subject to approval by the Director in his/her sole discretion as to conformance with these requirements.

3. **Insured Parties:** Each policy, except those for Workers' Compensation and Professional Liability, must name the City (and its officers, agents and employees) as additional insured parties on the original policy and all renewals or replacements during the term of this Agreement. The City's status as an additional insured under the Owner's insurance does not

extend to instances of sole negligence of the City unmixed with any fault of the Owner or general contractor.

4. **Deductibles:** Owner shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents and employees.

5. **Cancellation:** Each policy must expressly state that it may not be cancelled, or materially modified, or non-renewed unless thirty (30) days advance notice of cancellation is given in writing to the City by the insurance company.

6. **Subrogation:** Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

7. **Endorsement of Primary Insurance:** Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.

8. **Liability for Premium:** The Owner shall be solely responsible for payment of all insurance premium requirements hereunder and the City shall not be obligated to pay any premiums.

C. **PROOF OF INSURANCE.** Owner shall provide proof of insurance as indicated below.

1. Prior to commencing any Work under this Agreement, Owner shall furnish the Director with Certificates of Insurance, along with an affidavit from the Owner confirming that the Certificate accurately reflects the insurance coverage that will be available during the term of the Agreement. If requested in writing by the Director, the Owner shall furnish the City with certified copies of Owner's actual insurance policies. Failure of Owner to provide certified copies, as requested, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Agreement.

2. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Owner, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of the Owner to comply with this requirement shall constitute a default of Owner under this Agreement. Owner agrees that the City shall never be argued to have waived or be estopped to assert its rights to terminate this Agreement because of any acts of omissions by the City regarding its review of insurance documents provided by the Owner, its general contractor, or any agents, employees or assigns.

II. ADDITIONAL INSURANCE REQUIREMENTS:

A. **WORKMAN'S COMPENSATION.** Owner agrees to comply with the Worker's Compensation insurance requirements set forth below.

1. **Workers' Compensation Insurance Coverage.** Owner shall, in addition to meeting the obligations set forth in Article I, Required Coverages, maintain throughout the term of the Agreement Workers' Compensation as required by statute and Owner shall specifically comply with all requirements set forth in this Section. The definitions set out below shall apply only for the purposes of this Section:

Definitions:

Certificate of coverage (Certificate): A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission (included in original definition under Rule 110.110 but excluded from this Agreement), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory Workers' Compensation insurance coverage for the Owner's, Subcontractor's, or Supplier's employees providing service on a Project, for the duration of the Project.

Duration of the Project: Includes the time from the beginning of the Work on the Project until the Owner's Work on the Project has been completed and accepted by the City.

Persons providing services on the Project (Subcontractor in Texas Labor Code § 406.096): Includes all persons or entities performing all or part of the services the Owner has undertaken to perform on the Project, regardless of whether that person contracted directly with the Owner and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.

2. The Owner shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Owner providing services on the Project, for the duration of the Project.

3. The Owner must provide a certificate of coverage to the City prior to receiving funds under the Agreement.

4. If the coverage period shown on the Owner's current certificate of coverage ends during the duration of the Project, the Owner must file a new certificate of coverage with the City showing that coverage has been extended.

5. The Owner shall obtain from each person providing services on a Project and provide to the City:

- (i) a certificate of coverage, prior to that person beginning Work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- (ii) no later than seven (7) days after receipt by the Owner, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

6. The Owner shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

7. The Owner shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Owner knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

8. The Owner shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

9. The Owner shall contractually require each person with whom it contracts to provide services on a Project to:

- (i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- (ii) provide to the Owner, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- (iii) provide to the Owner, prior to the end of the coverage period, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- (iv) obtain from each other person with whom it contracts and provide to the Owner: (1) a certificate of coverage, prior to the other person beginning Work on the project; and (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (v) retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- (vi) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the Project; and
- (vii) contractually require each person with whom it contracts, to perform as required under this Subparagraph 5.1 A-G, with the certificates of coverage to be provided to the persons for whom they are providing services.

10. By signing this Agreement or providing or causing to be provided a certificate of coverage, the Owner is representing to the City that all employees of the Owner who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Owner shall not be allowed to self-insure Workers' Compensation. Providing false or misleading information may subject the Owner to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. The Owner's failure to comply with any of these provisions is a breach of contract by the Owner which entitles the City to declare the Agreement void if the Owner does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

B. FLOOD AND HAZARD INSURANCE REQUIREMENTS. Owner must comply with the flood hazard insurance requirements set forth below.

1. Flood hazard insurance is required for projects located in a Special Flood Area (or 100-year floodplain). The Owner shall apply for flood insurance on all insurable structures built under this Agreement, if applicable. A copy of the completed application must be provided to the City before commencing construction on the Project. The Owner shall obtain flood hazard insurance as soon as possible and submit a copy of the policy to the City, if applicable. The Owner also has a statutory responsibility to inform any transferee who receives or purchases the project of any applicable requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap68-subchapIII-sec5154a.pdf>.

APPENDIX 2 cont'd

RELEASE AND INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACT

I. RELEASE

OWNER, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "OWNER") HEREBY RELEASE, RELINQUISH AND DISCHARGE THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS ARTICLE AS "CITY") FROM ANY LIABILITY AS A RESULT OF THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THIS AGREEMENT.

II. INDEMNIFICATION

OWNER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH OWNER'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE OWNER IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF FIVE (5) YEARS AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, OWNER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND OWNER, WHETHER OWNER IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE OWNER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE OWNER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE OWNER UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000.00 PER OCCURRENCE.

APPENDIX 3

CONSTRUCTION CONTRACT REQUIREMENTS

1. **Davis-Bacon.** Compliance with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act shall be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. Each Construction Contract should include as an attachment HUD 4010 Federal Labor Provisions and HUD Handbook 1344 –Davis Bacon Act. In addition, each Construction Contract must require compliance with CDBG Regulations at 24 C.F.R. 570.603 and Department of Labor regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

2. **Release and Indemnity Provisions In Contracts.** Inclusion of a release and indemnity in favor of the City in substantially the same text as set forth in these Appendices (when the terms "Owner"/"Agreement" are used below, they encompass the terms "Contractor"/"Contract" and "Subcontractor"/"Subcontract" "Supplier/Supply Contract" where applicable).

3. **Insurance.** Inclusion of the requirement that the contractor, subcontractor, or supplier maintain insurance described in these Appendices (although the Appendices contain these insurance requirements as of the Effective Date of this Agreement, the version of insurance requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Loan shall supersede the requirements set forth in the Appendices).

4. **MWSBE Requirements.** Owner shall require written contracts and supply agreements with all MWSBE contractors and suppliers and such contracts and supply agreements shall comply with Section 12.19 of this Agreement.

5. **Disputes.** Subject to the requirements of Section 4 above, all disputes concerning the quantity, quality and completion or sufficiency of work performed or materials supplied pursuant to the Approved Construction Contract shall be submitted to the Director for resolution,

and the Director may order the parties to mediation, at his option, to attempt to resolve the dispute in accordance with Section 18, Paragraph 18.18 of this Agreement. The Director may declare a default under the City Loan if any dispute referred to mediation is not resolved within sixty (60) days after submission to non-binding mediation. The Approved Construction Contract and each subcontract will include a requirement that the Director shall have the authority to require any disputes thereunder be submitted to nonbinding mediation, but nothing shall require the City to participate in such mediation. Neither the decision of the Director nor the issuance of a Certificate of Completion shall be construed to release the Borrower, Owner or any surety from liability under any bond, warranty or guaranty to be provided under this Agreement.

6. **Compliance With Minimum Property And Rehabilitation Standards.** The

Approved Construction Contract shall provide that the entire Project be constructed or brought up to the standards required by the City's Minimum Property Standards and (b) all applicable local codes, construction standards, ordinances, and zoning ordinances (including without limitation, the City's Building, Housing and Fire Codes). All newly constructed and reconstructed housing units must meet the current requirements of the Model Energy Code (<http://www.energycodes.gov/implement/pdfs/modelcode.pdf>).

7. **Bidding Requirements (if applicable).**

(a) The Contractor shall send an invitation to bid to construction and repair businesses that are listed in the City's Office of Business Opportunity ("OBO"). The Owner also may solicit invitations to bid from other sources.

(b) The Contractor shall solicit at least 3 bids for all Work.

(c) The Contractor shall provide a bid package to all prospective bidders. The Contractor may charge bidders the cost of copying the bid package. The bid package shall contain

the Approved Final Plans, Specifications, and Drawings and shall contain the Construction Contract Requirements set forth as an exhibit to this Agreement.

(d) The Contractor shall select the lowest responsible and responsive bidder for award of the contract.

(e) The Contractor shall give the selected bidder written notice of the award. The notice shall state that the award is conditioned upon the bidder's compliance with this Agreement, including, without limitation, compliance with the MWSBE provisions.

8. **Audit Rights.** Each Construction Contract and subcontract shall contain provisions granting GLO and the City the right to review, audit and monitor any construction contracts and subcontracts.

9. **Cost-Plus Contracts Prohibited.** Neither Borrower nor Owner nor Owner's contractors or any subcontractors will enter into contract types prohibited by the U.S. Department of Housing and Urban Development and the regulations at 2 CFR Part 200. Specifically, as required by the GLO, no party will enter into a cost-plus or cost-plus percentage of cost contract in connection with work at the Development.

10. **Penalties.** Each Construction Contract and subcontract shall include a clause that failure to adequately perform under the contract may result in penalties including the possibility of debarment from future GLO or City work.

APPENDIX 4

SURVEY REQUIREMENTS

- (1) Prepared by a licensed Texas surveyor;
- (2) in form and content satisfactory to the Director;
- (3) in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors, or the Texas Surveyors' Association;
- (4) in form necessary for the title company issuing title insurance to amend the survey exception to read "shortages in area";
- (5) containing a certificate which includes a statement as to whether any portion of the Land is located within a flood plain, flood hazard or flood prone area;
- (6) certified to the title company and the City and their respective successors and assigns;
- (7) containing the same legal description contained in the Senior Loan Documents;
- (8) including, a metes and bounds description of the real property comprising the Land,
- (9) with the surveyor's seal affixed; and
- (10) with a certification for the Survey in the form set forth below or such other form acceptable to the Director:

The undersigned hereby certifies to the City of Houston, _____ (Owner), and _____ (Title Company) that this survey: (i) was made on the ground as per the field notes shown thereon and correctly shows the boundary lines and dimensions and the area of the land indicated thereon and each individual parcel thereof indicated thereon; (ii) correctly shows the location of all buildings, structures, and other improvements and visible items on the subject property; (iii) correctly shows the location and dimension of all alleys, streets, roads, rights-of-way, easements, and other matters of record of which the undersigned has been advised by the title commitment issued by Title Company, Commitment No. _____ affecting the subject property according to the legal description in such recorded easements and other recorded matters; (iv) correctly shows the location of all streets and roads providing access to the subject property, and that such streets and roads that provide such access have been dedicated for public use in Book _____, Page _____, Plat Records of _____ County, _____, and are built and are being maintained by _____; there are no encroachments or overhangs on adjoining premises, streets, or alleys by any of said buildings, structures, or other improvements, rights of way, party walls, or boundary conflicts and there are no

visible encroachments or overhangs on the subject property by buildings, structures, or other improvements situated on adjoining premises; the distance to the nearest intersecting street or road is as shown hereon; there is physical ingress and egress to the subject property by paved, dedicated public streets maintained by the city or county in which the subject property is located; and there is no visible use of ingress-egress across the subject tract by an adjoining property; and (v) was performed in accordance with the standards of a Category 1A survey under the Manual of Practice for Land Surveying in Texas.

SURVEYED BY: _____

SEAL

Date of Survey

Reg. Professional Land Surveyor No. _____

Note: This copy of this plat is not valid unless an original signature through an original seal appears on its face.

FLOOD PLAIN NOTE: This tract is not within an identified (shaded) special flood hazard area (including the 100-year flood), but is within zone X, areas determined to be outside 500 year flood-plain, as identified by the Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map for _____ County, _____, and incorporated Areas Map No. _____ dated _____.

The above statement is for information only and this surveyor assumes no liability for the correctness of the cited map(s). In addition, the above statement does not represent this surveyor's opinion of the probability of flooding.

APPENDIX 6
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Subrecipient certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31.U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Name of Subrecipient

RFP, ITB, EPO or PO No., or Project
Name

Signature

Printed Name

Title

Date

☐ I am unable to certify to the above statements. My explanation is attached.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6109-N-02]

RIN 2506-ZA02

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$6.875 billion in Community Development Block Grant Mitigation (CDBG-MIT) funds to grantees recovering from qualifying 2015, 2016, and 2017 disasters. Funds allocated by this notice were made available by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (approved February 9, 2018) (the "Appropriations Act"). This notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to CDBG-MIT funds only. The Department acknowledges the governance and financial management challenges of the Commonwealth of Puerto Rico and the on-going capacity considerations in the U.S. Virgin Islands. Accordingly, the allocation of funds to the Commonwealth of Puerto Rico and the U.S. Virgin Islands for mitigation and electrical power system improvements shall be governed by subsequent notices in order to provide additional time to Puerto Rico and the U.S. Virgin Islands to work with the Department to address these issues.

DATES: *Applicability Date:* September 4, 2019.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-708-0033. [Except for the "800" number, these telephone numbers are not toll-free]. Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview and Policy Objectives
- II. Use of CDBG-MIT Funds

- A. Mitigation Definition
- B. Action Plan, Substantial Amendments, and Covered Projects
- C. Most Impacted and Distressed Areas
- III. Allocations
- IV. Overview of Grant Process
- V. Applicable Rules, Statutes, Waivers, and Alternative Requirements
- A. Grant Administration and Action Plan Requirements
- B. Housing and Related Floodplain Issues
- C. Infrastructure
- D. Economic Development
- VI. Certifications and Collection of Information
- VII. Duration of Funding
- VIII. Catalog of Federal Domestic Assistance
- IX. Finding of No Significant Impact

I. Overview and Policy Objectives

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, approved February 9, 2018) (the "Appropriations Act"), made available \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds, and directed HUD to allocate not less than \$12 billion for mitigation activities proportional to the amounts that CDBG-DR grantees received for qualifying disasters in 2015, 2016, and 2017. This notice accordingly allocates \$6,875,044,000 in CDBG-MIT funds for mitigation activities consistent with the Appropriations Act.

CDBG-MIT funds represent a unique and significant opportunity for grantees to use this assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses. While it is impossible to eliminate all risks, CDBG-MIT funds will enable grantees to mitigate against disaster risks, while at the same time allowing grantees the opportunity to transform State and local planning.

Through this allocation for mitigation, HUD seeks to:

- Support data-informed investments in high-impact projects that will reduce risks attributable to natural disasters, with particular focus on repetitive loss of property and critical infrastructure;
- Build the capacity of States and local governments to comprehensively analyze disaster risks and to update hazard mitigation plans through the use of data and meaningful community engagement;
- Support the adoption of policies that reflect local and regional priorities that will have long-lasting effects on community risk reduction, to include the risk reduction to community lifelines such as Safety and Security, Communications, Food, Water, Sheltering, Transportation, Health and

Medical, Hazardous Material (management) and Energy (Power & Fuel); and future disaster costs (e.g., adoption of forward-looking land use plans that integrate the hazard mitigation plan, latest edition of the published disaster-resistant building codes and standards (to include wildland urban interface, flood and all hazards, ASCE-24, and ASCE-7 respectively), vertical flood elevation protection, and policies that encourage hazard insurance for private and public facilities); and

- Maximize the impact of available funds by encouraging leverage, private-public partnerships, and coordination with other Federal programs.

The guiding structure and objectives established for CDBG-MIT funds bear similarities to other federal programs that address hazard mitigation, particularly FEMA's Hazard Mitigation Grant Program (HMGP). Accordingly, HUD has structured this notice and its requirements to complement HMGP policies and processes where possible. For example, both CDBG-MIT funds and FEMA HMGP funds require grantees to conduct a multi-hazard risk assessment to inform projects and programs. Additionally, grantee use of CDBG-MIT funds will be focused on effectively addressing risks to indispensable services that enable the continuous operation of critical business and government functions, and that are critical to the protection of human health and safety, or economic security, as described in section V.A.2.a.(1) of this notice.

The Appropriations Act provides CDBG-MIT funds as a supplemental appropriation to the Community Development Block Grant (CDBG) program. Accordingly, the alignment of CDBG-MIT funds with other federal mitigation programs must also occur within the basic CDBG framework. The national objectives of the CDBG program are: (a) Providing benefit to low- and moderate-income persons; (b) preventing or eliminating slum and blighting conditions; or (c) addressing a severe and recently arising urgent community welfare or health need. Unlike other forms of Federal disaster recovery assistance, CDBG-DR and CDBG-MIT grants have a statutory focus on benefiting vulnerable lower-income people and communities and targeting the most impacted and distressed areas.

The Appropriations Act requires that prior to the obligation of CDBG-DR funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds including the criteria for eligibility and how the use of these funds will address

mitigation in the most impacted and distressed (MID) areas. The Appropriations Act also provides HUD with waiver authority that enabled HUD to modify the basic CDBG requirements to support hazard mitigation when needed. However, there are several statutory requirements under the basic CDBG framework (e.g., requirements related to labor standards, nondiscrimination, the environment and fair housing) which HUD is not authorized to waive. Because this framework will largely remain intact throughout this notice and to ensure compliance with all applicable program requirements, HUD strongly encourages grantees to designate the agency that administers its CDBG-DR funds to also administer this CDBG-MIT grant.

The notice also balances the goals of aligning mitigation policies across federally-funded programs, maximizing efficiencies, and preserving critical aspects of the CDBG structure. As discussed in section V.A. of this notice, Grant Administration and Action Plan Requirements, grantees are encouraged to use CDBG-MIT planning funds to update the FEMA-approved Hazard Mitigation Plans (HMP) and are required to reference the applicable FEMA HMP in their action plan and describe how the HMP has informed the CDBG-MIT action plan. Grantees may also use these funds for planning activities, including but not limited to regional mitigation planning, the integration of mitigation plans with other planning initiatives, activities related to FEMA's Pre-Disaster Mitigation (PDM, to be renamed Building Resilient and Infrastructure Communities (BRIC) as part of implementation of section 1234 of the Disaster Recovery Reform Act of 2018, which amended section 203 of the Stafford Act (42 U.S.C. 5133)) and Flood Mitigation Assistance (FMA), modernizing building codes and regional land-use plans, and upgrading mapping, data, and other capabilities to better understand evolving disaster risks. For example, in wildland fire risk areas, grantees may use these funds to develop a Community Wildfire Protection Plan (CWPP). Additionally, State grantees are encouraged to use CDBG-MIT planning funds to meet the additional requirements for an *enhanced* HMP and for eligible CDBG-MIT activities that increase a grantee's capacity to participate in FEMA's HMGP Program Administration by States (PAS) initiative. This use of CDBG-MIT funds, in combination with FEMA HMGP assistance, will have long-term benefits by supporting high-quality mitigation planning, building a

foundation for continuous coordination and data-driven outcomes, and providing common goals for selecting high impact projects across multiple programs and funding sources.

HUD recognizes that this first-time appropriation of mitigation-only CDBG funds may pose challenges to grantees in aligning their mitigation strategies and activities with their obligation to use most of their CDBG-MIT funds to benefit low- and moderate-income persons and to use the funds in the MID areas resulting from a disaster. Accordingly, this notice provides grantees with flexibility on the percentages related to a CDBG-MIT grant's overall benefit requirement and MID expenditure requirement. As with CDBG-DR, HUD encourages CDBG-MIT grantees to consider a wide range of community development objectives related to recovery and economic resilience. This notice provides a waiver and establishes an alternative requirement to include new urgent need national objective criteria that are applicable to CDBG-MIT funds only, as described in section V.A.13. of this notice. This urgent need mitigation (UNM) national objective requires activities funded with the CDBG-MIT grant to result in measurable and verifiable reductions in the risk of loss of life and property from future disasters and yield community development benefits. The waiver and alternative requirement in section V.A.13. also explains that grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD, because this national objective generally is not appropriate in the context of mitigation activities.

CDBG-MIT funds are to be used for distinctly different purposes than CDBG-DR funds. The amount of funding provided through this CDBG-MIT allocation and the nature of the programs and projects that are likely to be funded requires that CDBG-MIT grantees and their subrecipients strengthen their program management capacity, financial management, and internal controls. Each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The Department also intends to establish special grant conditions for individual CDBG-MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects

proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

While CDBG-DR and CDBG-MIT funding are valuable resources for long-term recovery and mitigation in the wake of major disasters, HUD concurrently expects that grantees will take steps to set in place substantial governmental policies and infrastructure to enhance the impact of HUD-funded investments. In some instances, this goal may be achieved through the development and application of more stringent building and zoning codes which will help to limit damage from future severe weather events. It should be noted that these actions are eligible costs under CDBG-DR or CDBG-MIT funding.

Consistent with prior CDBG-DR notices, HUD restates that disaster recovery is a partnership between Federal, state, and local government and CDBG-MIT grantees should invest in their own recovery. To sustain CDBG-MIT physical investments in the future, it is imperative that grantees collect and apply sufficient revenues for operation and maintenance costs in the outyears. HUD expects grantees to contribute to their recovery through the use of reserve or "rainy day" funds, borrowing authority, or retargeting of existing resources. The ultimate value of this mitigation funding appropriation is not limited to the projects and activities implemented with the funds but will also encompass how state and local partners are motivated to improve many of their governmental functions to better position jurisdictions to be resilient in the face of future disasters. HUD will examine how grantees plan to achieve this broader benefit and will promote best practices to future CDBG-DR grantees.

It is the policy of the Administration that this first implementation of CDBG-MIT funding be implemented in a manner that mandates careful planning, adequate oversight, and increased reporting of anticipated and actual outcomes of the uses of the mitigation funds, to inform future Federal disaster mitigation efforts, to encourage private sector funding of mitigation projects, and to maximize the benefits of CDBG-MIT funding.

The Administration cannot emphasize strongly enough the need for grantees to fully and carefully evaluate the projects that will be assisted with CDBG-MIT funds. One of the goals of CDBG-MIT is to set a nationwide standard that will

help guide not just future Federal investments in mitigation and resilience activities—to include the mitigation of community lifelines, but state and local investments as well. The level of CDBG-MIT funding available to most grantees cannot address the entire spectrum of known mitigation and resilience needs. Accordingly, HUD expects that grantees will rigorously evaluate proposed projects and activities and view them through several lenses before arriving at funding decisions, including ensuring that already committed public or private resources are not supplanted by CDBG-MIT funds.

One such lens could be a thorough consideration of projects and activities encompassed within the applicable FEMA HMP and a judgment of whether those projects/activities represent targeted strategic investments for the grantee based on current or foreseeable risks. This judgment would stand in contrast to the funding of projects/activities identified in such plans where, for example, there has been no recent review of the risk reduction value of the investment or the project/activity has been carried in the plan for years but has limited risk reduction value.

A second lens could be a consideration of the status of necessary planning and permitting efforts. To ensure that CDBG-MIT investments have the highest possible impact on long-term mitigation and resilience needs, each grantee should conduct a careful status review of planning and permitting actions for proposed projects/activities and identify those that can move forward quickly. Concurrently, this exercise can help to identify Federal regulatory relief that is critical to helping clear the path for these projects/activities. In this vein, the Administration expects that grantees will conduct a review of and make necessary changes and exceptions to their own permitting and related processes to expedite funded projects/activities. In undertaking this analysis, grantees should not succumb to the urge to select projects/activities solely because they are the most advanced in the planning and permitting process but should focus on high impact investments and a thorough understanding of what will be necessary to move those investments forward rapidly.

The notice includes several waivers and alternative requirements typically established in CDBG-DR **Federal Register** notices but modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department cannot anticipate every type of mitigation project or program that will

be proposed by grantees, but these activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects.

For purposes of this notice, HUD is using the terms CDBG-MIT programs and projects to refer to the means by which grantees implement CDBG eligible activities. This notice also references the general categories of infrastructure and public facilities, housing, planning and administration, public services, and economic development that grantees often use to group activities in an action plan, in the DRGR action plan, and in quarterly performance reports.

II. Use of CDBG-MIT Funds

II. A. Mitigation Definition

For the purposes of this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

II. B. Action Plan, Substantial Amendments, and Amendments for Covered Projects

Before the Secretary obligates CDBG-MIT funds to a grantee, the Appropriations Act requires the grantee to submit a plan to HUD for approval detailing the proposed use of all funds. All or a portion of an action plan or substantial amendment will be substantially incomplete if the plan does not include the elements required by this notice. A grantee's use of CDBG-MIT funds must be consistent with its action plan.

All CDBG-MIT activities must: (1) Meet the definition of mitigation activities above; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas (described below); (3) be CDBG-eligible activities under title I of the Housing and Community Development Act of 1974 (HCDA) or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and Covered Projects. The action plan must describe how funded activities satisfy these requirements.

As mentioned above, the action plan must include a risk-based Mitigation Needs Assessment that identifies and analyzes all significant current and

future disaster risks and provides a substantive basis for the activities proposed. To complete this assessment, grantees must consult with other jurisdictions, the private sector and other government agencies, including State and local emergency management agencies that have primary responsibility for the administration of FEMA mitigation funds, including the State Hazard Mitigation Officer (SHMO), for HMGP alignment. Grantees must also use the most recent risk assessment completed or currently being updated through the FEMA HMP process to inform the use of CDBG-MIT funds. Therefore, the grantee must use the risks identified in the FEMA approved HMP as the starting point for its Mitigation Needs Assessment unless the jurisdiction is in the process of updating the HMP. If a jurisdiction is currently updating an expired HMP, the grantee administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. The action plan must describe proposed allocations of CDBG-MIT funds that meet all of the requirements listed above in this section.

To maximize the impact of all available funds, grantees must coordinate and align these CDBG-MIT funds with other mitigation projects funded by FEMA, the U.S. Army Corps of Engineers (USACE), the U.S. Forest Service, and other agencies as appropriate. For example, in wildland fire prone areas, this would include federal and state forestry and fire agencies that carry out activities related to fire risk reduction.

Grantees must describe in their action plan how they have coordinated and will continue to coordinate with other partners who manage FEMA and USACE funds and describe the actions that they have taken to align their planned CDBG-MIT activities with other federal, state, and local mitigation projects and planning processes.

To allow for a more detailed review of larger projects, this notice requires that infrastructure projects that also meet the definition of a Covered Project be included in an action plan or a substantial action plan amendment. For purposes of this notice, a Covered Project is defined as an infrastructure project having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-National Disaster Resilience (NDR), CDBG-MIT, or CDBG)). For grantees that are considered by HUD to have "unmitigated high risks" that impact

their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the definition of a Covered Project.

As described in section V.A.2.h. below, when a grantee proposes a Covered Project, the action plan or substantial amendment must include a description of the project and the information required for other CDBG-MIT activities (how it meets the definition of a mitigation activity, consistency with the Mitigation Needs Assessment provided in the grantee's action plan, eligibility under section 105(a) of the HCDA or a waiver or alternative requirement, and national objective, including additional criteria for mitigation activities). Additionally, the action plan must describe how the Covered Project meets additional criteria for national objectives for Covered Projects (described in V.A.13. below) including: Consistency with other mitigation activities in the same MID area; demonstrated long-term efficacy and sustainability of the project including its operations and maintenance; and a demonstration that the benefits of the Covered Project outweigh the costs (through the methods described in V.A.2.h.).

II. C. Most Impacted and Distressed Areas

The Appropriations Act made CDBG-MIT funds available for eligible activities related to the mitigation of risks within the MID areas. This notice lists the HUD-identified MID areas for each CDBG-DR grantee receiving an allocation of CDBG-MIT funds. The HUD-identified MID areas for each CDBG-MIT grant are those identified by

HUD in the following **Federal Register** notices for the grantee's 2015, 2016, or 2017 CDBG-DR grants (collectively, the "Prior Notices"):

- *2015 Disasters*: 81 FR 39687; 82 FR 36812;
- *2016 Disasters*: 81 FR 83254; 82 FR 5591; 82 FR 36812; and
- *2017 Disasters*: 82 FR 61320; 83 FR 5844; 83 FR 40314.

The amount of CDBG-MIT funding grantees must expend to mitigate risks within the HUD-identified MID areas is listed in Table 1. In some instances, HUD previously identified the entire jurisdiction of a grantee as the MID area. For all other CDBG-MIT grantees, HUD is requiring that at least 50 percent of all CDBG-MIT funds must be used for mitigation activities that address identified risks within the HUD-identified MID areas. HUD will include 50 percent of a grantee's expenditures for grant administration in its determination that 50 percent of the total award has been expended in the HUD identified MID areas. Additionally, expenditures for planning activities may be counted towards a grantee's 50 percent MID expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD identified MID areas.

HUD may approve a grantee's request to add other areas to the HUD-identified MID areas based upon the grantee's submission of a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster. As the HUD-identified MID areas for CDBG-MIT funds are the same as those identified for each grantee in the Prior Notices, a

grantee seeking to amend its HUD-identified MID area for purposes of its CDBG-MIT grant, must also amend the HUD-identified MID area for its corresponding 2015, 2016, or 2017 CDBG-DR grant. Grantees proposing to add to the HUD-identified MID area for their existing CDBG-DR grant shall do so through a substantial amendment that includes a consideration of unmet housing recovery needs. The grantee must also undertake a substantial amendment to its CDBG-MIT action plan so that the HUD-identified MID areas are the same across both grants. The grantee may submit the substantial amendments for both grants simultaneously.

Grantees may determine where to use the remaining 50 percent of the CDBG-MIT grant (the grantee-identified MID areas), but that portion of the grant must be used for mitigation activities that address identified risks within those areas that the grantee determines are most impacted and distressed resulting from the major disasters identified by the disaster numbers listed in Table 1. The grantee-identified MID areas must be determined through the use of quantifiable and verifiable data.

Grantee expenditures for eligible mitigation activities outside of the HUD-identified or grantee-identified MID area may be counted toward the MID area expenditure requirements provided that the grantee can demonstrate how the expenditure of CDBG-MIT funds outside of this area will measurably mitigate risks identified within the HUD-identified or grantee-identified MID area (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

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III. Allocations: TABLE 1 – ALLOCATIONS FOR MITIGATION ACTIVITIES

Disaster No.	State	Grantee	CDBG-MIT Allocation	Minimum amount that must be expended in the HUD-identified "most impacted and distressed" areas listed herein	HUD-identified "most impacted and distressed" areas
4344; 4353	California	State of California	\$88,219,000.00	\$44,109,500.00	Sonoma and Ventura counties; 93108, 94558, 95422, 95470, and 95901 Zip Codes.
4280; 4283; 4337; 4341	Florida	State of Florida	\$633,485,000.00	\$316,742,500.00	Brevard, Broward, Clay, Collier, Duval, Hillsborough, Lee, Miami Dade, Monroe, Orange, Osceola, Palm Beach, Polk, St. Johns, St. Lucie, and Volusia counties; 32084, 32091, 32136, 32145, 32771, 33440, 33523, 33825, 33870, 32068, 33935, and 34266 Zip Codes.
4294; 4297; 4338	Georgia	State of Georgia	\$26,961,000.00	\$13,480,500.00	31520, 31548, and 31705 Zip Codes.
4263; 4277; 4272	Louisiana	State of Louisiana	\$1,213,917,000.00	\$606,958,500.00	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes
4317	Missouri	State of Missouri	\$41,592,000.00	\$20,796,000.00	63935, 63965, 64850, 65616, and 65775 Zip Codes.
4285	North Carolina	State of North Carolina	\$168,067,000.00	\$84,033,500.00	Bladen, Columbus, Cumberland, Edgecombe, Robeson, and Wayne Counties.
4241; 4286	South Carolina	State of South Carolina	\$157,590,000.00	\$50,978,000.00	Charleston, Clarendon, Dorchester, Florence, Georgetown, Horry, Marion, Sumter, and Williamsburg Counties.
4241		Columbia	\$18,585,000.00	\$18,585,000.00	Columbia.
4241		Lexington County (Urban County)	\$15,185,000.00	\$15,185,000.00	Lexington County Urban County Jurisdictions.
4241		Richland County (Urban County)	\$21,864,000.00	\$21,864,000.00	Richland County Urban County Jurisdictions.
4223; 4245; 4266; 4269; 4272; 4332	Texas	State of Texas	\$4,297,189,000.00	\$2,105,646,500.00	Aransas, Brazoria, Chambers, Fayette, Fort Bend, Galveston, Hardin, Harris, Hays, Hidalgo, Jasper, Jefferson, Liberty, Montgomery, Newton, Nueces, Orange, Refugio, San Jacinto, San Patricio, Travis, Victoria, and Wharton counties; 75979, 77320, 77335, 77351, 77414, 77423, 77482, 77493, 77979, 78934, 78945, 77612, 75956, 77632, and 78377 Zip Codes.
4223; 4245		Houston	\$61,884,000.00	\$61,884,000.00	Houston.
4223; 4245		San Marcos	\$24,012,000.00	\$24,012,000.00	San Marcos.
4273	West Virginia	State of West Virginia	\$106,494,000.00	\$53,247,000.00	Greenbrier, Clay, Kanawha and Nicholas Counties.
Total*:			\$6,875,044,000.00		

*The remaining \$9,059,472,000 will be allocated at a later date.

CDBG-DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

IV. Overview of Grant Process

The grant process outlined below aligns with the typical order employed for CDBG-DR grants. However, the Department recognizes the potentially broad range of mitigation activities that may be funded pursuant to this notice and the critical importance of coordinating those investments across multiple jurisdictions. Accordingly, the Department is providing extended time frames and mechanisms for on-going citizen participation in the development and implementation of plans for mitigation activities funded pursuant to this notice.

To begin expending CDBG-MIT funds, the following steps are necessary:

- Grantee develops or amends its citizen participation plan for disaster recovery per the requirements in section V.A.3 to provide for the mitigation funding.

- Grantee consults with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities (as identified in section V.A.7.).

- In accordance with the requirements in section V.A.1.a., 60 days prior to the deadline for the submission of an action plan as prescribed in section V.A.2.e, the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management.

- Grantee publishes its action plan for mitigation on the grantee's required public website for no less than 45 calendar days to solicit public comment and convenes the required amount of public hearings on the proposed plan.

- Pursuant to the date prescribed in section V.A.2.e., grantee responds to public comment and submits its action plan (which includes Standard Form 424 (SF-424) and certifications), its implementation plan and capacity assessment submissions in accordance with the requirements in section V.A.1.b., and projection of expenditures and outcomes to HUD.

- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the action plan to HUD. Any activities that are changed as a result of HUD's review must be updated once HUD approves the action plan.

- HUD reviews (within 60 days from date of receipt) the action plan

according to criteria identified for CDBG-MIT funds, and either approves or disapproves the plan. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the action plan within 45 days of the notification.

- After the action plan is approved, HUD sends an action plan approval letter.

- Prior to transmittal of the grant agreement, HUD notifies grantees of its certification of the grantee's financial controls, procurement processes and grant management procedures and its acceptance of the implementation plan and capacity assessment.

- HUD sends the grant agreement to the grantee.

- Grantee signs and returns the grant agreement to HUD.

- Grantee posts the final HUD-approved action plan on its official website.

- HUD establishes the grantee's line of credit.

- Grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).

- The grantee must publish (on its website) policies for programs and activities implemented by the grantee with CDBG-MIT funds.

- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by the Appropriations Act and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification.

- Substantial amendments are subject to a 30-day public comment period, including posting to grantee's website, followed by a 60-day review period for HUD.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, as well as waivers and alternative requirements that apply to the CDBG-MIT funds provided in the Appropriations Act. The waivers and alternative requirements provide flexibility in program design and implementation to support the prudent implementation of mitigation activities to lessen the impact of future disasters, while ensuring that statutory requirements are met. For each waiver and alternative requirement, the Secretary has determined that good

cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the HCDA.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their mitigation activities. Grantee requests for waivers and alternative requirements must be accompanied by relevant data to support the request and must demonstrate to the satisfaction of the Department that there is good cause for the waiver or alternative requirement. Grantees must work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Except where noted, the waivers and alternative requirements described below apply only to the CDBG-MIT funds. Under the requirements of the Appropriations Act, waivers and alternative requirements must be published in the **Federal Register** and are effective five days after publication. Considering the time necessary for the development and publication of **Federal Register** notices, grantees are advised to allow sufficient time for consideration, approval and publication of requests for waivers and alternative requirements.

Except as described for CDBG-MIT funds, statutory and regulatory provisions governing the State CDBG program apply to States receiving a CDBG-MIT grant, including but not limited to, the principle of maximum feasible deference as provided at 24 CFR 570.480. In addition, except as provided herein, the statutory and regulatory provisions governing the Entitlement CDBG program apply only to local governments receiving a CDBG-MIT grant. Statutory provisions (title I of the HCDA) can be found at 42 U.S.C. 5301 *et seq.* State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations refer to the action plan required by this notice. All **Federal Register** notice references to timelines and/or deadlines are calendar days unless otherwise noted.

V.A. Grant Administration and Action Plan Requirements

V.A.1. Pre-award evaluation of management and oversight of funds.

The Administration intends to closely monitor all aspects of the CDBG-MIT effort. This approach fits with the view that the CDBG-MIT initiative will require a high level of interaction between HUD and grantees to ensure performance and compliance across the implementation spectrum. Consistent with this approach, HUD will place great focus on the question of whether grantees have developed and submitted CDBG-MIT plans consistent with the requirements for CDBG-MIT funds, with particular attention to implementation plans and capacity assessments. The Department encourages grantees to identify in their plan any management and administrative reforms that have or will be implemented to improve accountability and outcomes associated with the use of CDBG-MIT funds.

Consistent with 2 CFR part 200, HUD will use grant conditions to the fullest extent possible to effectuate grantee policies that will contribute not only to improved outcomes in the use of CDBG-MIT funding but also help strengthen grantee management practices and long-term resilience. The Department may, if warranted, restrict the availability of funds until such time as various grant conditions are met by individual grantees. Grantees are reminded that HUD may, at any time, add new grant conditions based on performance or lack thereof or may pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.1.a. Certification of financial controls and procurement processes, and adequate procedures for proper grant management. The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all mitigation activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the

certification documentation listed below. This information must be submitted 60 days prior to the deadline for the submission of an action plan. Grant agreements will not be executed until HUD has approved the grantee's certifications. Grantees must implement the CDBG-MIT grant consistent with the controls, processes and procedures as certified by HUD.

For each of the items (1) through (6) below, the grantee must also provide a table that clearly indicates which agency and personnel are responsible for each task along with contact information. All grantees must certify to the accuracy of its documentation and must submit this certification with its action plan, as required in section VI.1.

(1) Proficient financial management controls. The grantee must submit information upon which HUD can make the determination of proficient financial controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) Single audit report and consolidated annual financial report. The grantee submits its most recent single audit and consolidated annual financial report (CAFR), which indicates, in HUD's determination, that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the grant. If the grantee's most recent single audit or CAFR identified material weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed; and

(b) Grantee assessment of its financial standards and completed Public Law 115-123 Financial Management and Grant Compliance Certification and supporting documentation. The grantee has assessed its financial standards and has submitted a completed Public Law 115-123 Financial Management and Grant Compliance Certification (Compliance Certification) available on the HUD Exchange website at <https://www.hudexchange.info/CDBG-MIT/CDBG-MIT-laws-regulations-and-federal-register-notices/>, together with all documentation required in the Compliance Certification to comply with the requirements and standards of the Compliance Certification. The grantee must identify which sections of its financial standards address applicable questions in the Compliance Certification and must continue to maintain such standards until grant closeout.

(2) Procurement processes/standards. HUD will determine whether the overall

effect of the grantee's procurement processes/standards upholds the principles of full and open competition and whether the procurement processes/standards require an evaluation of the cost or price of the property or service. A grantee must submit its procurement policies and procedures and must demonstrate that the grantee will comply with the procurement requirements in section V.A.25. of this notice. The grantee must also provide a legal opinion that it has proficient procurement policies and procedures.

A State has proficient procurement policies and processes if HUD determines that its procurement processes/standards uphold the principles of full and open competition and include an evaluation of the cost or price of the property or service, and if its procurement processes/standards either (a) adopted 2 CFR 200.318 through 200.326; or (b) follows its own procurement policies and procedures and establishes requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements applicable to the State, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or (c) adopted 2 CFR 200.317, meaning that it will follow its own State procurement policies and procedures and will evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.326 on its subrecipients.

Local governments have proficient procurement policies and processes if those policies and processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326. When the grantee provides a copy of its procurement standards, it must indicate the sections of its procurement standards that incorporate these provisions.

(3) Duplication of benefits procedures. A grantee has adequate procedures to prevent the duplication of benefits if the grantee submits uniform processes that reflect the requirements of section V.A.24. of this notice, including: (a) Verifying all sources of assistance received by the grantee or applicant, as applicable, prior to the award of CDBG-MIT funds; (b) determining a grantee's or an applicant's remaining funding need(s) for CDBG-MIT assistance before committing funds or awarding assistance; and (c) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive

additional assistance for the same purpose for which the CDBG-MIT award was provided. The grantee must identify a method to monitor compliance with the terms of the agreement for a reasonable period and must articulate this method in its written procedures, including the basis for the period of time in which the grantee will monitor for compliance. This agreement must also include the following language: "*Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.*"

Policies and procedures of the grantee submitted to support the certification must provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state and federal sources of funding to prevent the duplication of benefits. In developing these policies and procedures, grantees are directed to the **Federal Register** notice published on June 20, 2019 entitled, "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (2019 DOB Notice) (84 FR 28836). A grantee's policies and procedures are adequate if they reflect the treatment of loans that is consistent with the requirements of the Declined Loans Provision and the Disaster Recovery Reform Act (Pub. L. 115-254, Division D, "DRRA ") as explained in section V.A.24. of this notice and the 2019 DOB Notice.

(4) Timely expenditures. A grantee has adequate procedures to determine timely expenditures if it submits procedures that indicate the following to HUD: How the grantee will track expenditures each month; how it will monitor expenditures of its subrecipients; how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; how it will ensure that contracts and bills that require payment will be timely paid; how it will project expenditures of all CDBG-MIT funds within the period provided for in section V.A.26. of this notice; how it will ensure that its actual and projected expenditure of funds is accurately reported to HUD in its DRGR Quarterly Performance Report (QPR). The grantee shall also identify the personnel or organizational unit responsible for ensuring timely expenditures.

(5) Comprehensive mitigation website linked to the grantee's disaster recovery

website. A grantee has adequate procedures to maintain a comprehensive website regarding all disaster recovery and mitigation activities funded under the Prior Notices and this notice, if it submits procedures that indicate that the grantee will have a separate page dedicated to CDBG-MIT activities that includes the information described in section V.A.3.d. of this notice and any additional information subsequently required by HUD. The procedures must also indicate the frequency of website updates. At a minimum, a grantee must update its website monthly and must link its CDBG-MIT website with the website required for its CDBG-DR grant. Additionally, HUD may require grantees to publish additional reports or dashboards on the grantee's website.

(6) Procedures to detect and prevent fraud, waste, and abuse. A grantee has adequate procedures to detect and prevent fraud, waste and abuse if it submits policies or procedures that enhance those previously certified by the Department for the grantee's CDBG-DR grant and if those policies or procedures include:

- (i) The criteria to be used to evaluate the capacity of potential subrecipients;
- (ii) The frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG-MIT funds, how it will enhance its monitoring of subrecipients, contractors and other program participants, how and why monitoring is to be conducted and which items are to be monitored;
- (iii) Enhancements to the internal auditor function established for the grantee's CDBG-DR grant; or if the CDBG-MIT grant is to be administered by an agency that does not administer the CDBG-DR grant, how the internal auditor function is to be established and resourced. The internal audit function must provide both programmatic and financial oversight of grantee activities and the submission must include a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse. Additionally, grantees may, as a special grant condition, be required to submit internal audit reports directly to HUD;
- (iv) A conflict of interest policy and the process for promptly identifying and addressing such conflicts; and
- (v) Information on how the grantee will verify the accuracy of information provided by applicants.

Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.1.b. *Implementation plan and capacity assessment.* CDBG-MIT funds

will typically require grantees to adopt new roles and responsibilities within their organization and to establish new working relationships with other entities external to the organization. Before signing a grant agreement, HUD requires each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks. Evidence of grantee management capacity must be provided through the grantee's implementation plan and capacity assessment submissions. These submissions must meet the criteria in (1) and (2) below and must be submitted with the grantee's action plan. The grantee must certify to the accuracy of its documentation as required by section VI.1. of this notice. Grantees must implement the CDBG-MIT grant consistent with the implementation plan and capacity assessment as approved by HUD pursuant to this paragraph.

A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria are satisfied:

(1) Timely information on application status. A grantee has adequate procedures to enable applicants to determine the status of their applications for mitigation assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or agency is responsible for informing applicants of the status of applications.

(2) Implementation plan. To enable HUD to assess risk as described in 2 CFR 200.205(c), the grantee must submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out mitigation activities, how it will address any capacity gaps, and how agency staff that administer CDBG-DR and CDBG-MIT funds will work with their counterparts who manage the grantee's FEMA-funded mitigation activities. If a grantee chooses to designate the agency that administers its FEMA funds as the entity for administration of its CDBG-MIT funds, the implementation plan must indicate how that agency will coordinate its activities with the agency that administers its CDBG-DR grant and will ensure compliance with all generally applicable CDBG requirements. HUD will determine a plan is adequate to reduce risk if, at a minimum it adequately addresses (a) through (e) below:

(a) Capacity assessment. The grantee has assessed its capacity to carry out mitigation activities and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR findings and an update on the corrective actions undertaken to address each finding. HUD may include additional requirements in the grantee's grant terms and conditions to prevent similar findings for this grant.

(b) Staffing. The plan shows that the grantee has accurately assessed staff capacity and identified adequate personnel who: Have documented experience in the timely development and implementation of mitigation programs particularly as it relates to activities in infrastructure, housing, and economic development (if applicable); are responsible for procurement/contract management, compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 135) (Section 3), fair housing compliance, and environmental compliance; and are responsible for monitoring and quality assurance, and financial management. An adequate plan must also describe the agency's internal audit function, including responsible audit staff reporting independently to the chief elected official or executive officer or governing board of the designated administering entity. To help complete this exercise, grantees may choose to use the "Staffing Analysis Worksheet" available on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/#capacity>.

(c) Internal and interagency coordination. The plan describes how the grantee will ensure effective communication and coordination between State and local departments and divisions involved in the design and implementation of mitigation planning and projects, including, but not limited to the following: Departments responsible for developing the HMP for applicable jurisdictions; departments implementing the HMGP; subrecipients responsible for implementing the grantee's action plan; and local and regional planning departments to ensure consistency and the integration of CDBG-MIT activities with those planning efforts.

(d) Technical assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise

required for successful and timely implementation where identified in the capacity assessment.

(e) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG-MIT grant and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction.

During the course of the CDBG-MIT grant, HUD will continually monitor each grantee's use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein. A material failure to comply with the grantee's implementation plan, as approved by HUD, will prompt HUD to exercise any of the corrective or remedial actions authorized pursuant to subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.2. CDBG-MIT Action Plan waiver and alternative requirement.

Requirements for CDBG action plans, in 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), 24 CFR 91.320, and 24 CFR 91.220, are waived for CDBG-MIT grants. Instead, grantees must submit to HUD an action plan for the use of CDBG-MIT funds which will describe programs and projects that conform to applicable requirements as specified for CDBG-MIT funds. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy some or all the required elements identified for CDBG-MIT funds. HUD will monitor the grantee's actions and use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein.

V.A.2.a. Action plan. The action plan must identify how the proposed use of all funds: (1) Meets the definition of mitigation activities; (2) addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas as defined in section II.C.; (3) will be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) will meet a national objective, including additional criteria for mitigation activities and Covered Projects.

The action plan must describe the impacts of the use of CDBG-MIT funds geographically by type at the lowest

level practicable (e.g., county level, zip code, neighborhood, or census tract). A grantee must also identify any CDBG-MIT projects that are to be used in combination with CDBG-DR funds allocated to the grantee to address unmet disaster recovery needs. This combination of funds is possible because a mitigation project or program that meets the requirements for CDBG-MIT funds, remains eligible for CDBG-MIT funding even if it also responds to a remaining unmet recovery need of the qualified disasters.

Several resources are available to grantees to assist in the development of the Mitigation Needs Assessment and corresponding proposed activities required in the action plan, as appropriate, including: The FEMA Hazard Mitigation Plan Resources website: <https://www.fema.gov/hazard-mitigation-planning-resources>; the FEMA State Mitigation Planning Resources website: <https://www.fema.gov/state-mitigation-planning-resources>; The FEMA State Mitigation Planning Key Topics Bulletins: <https://www.fema.gov/media-library/assets/documents/115780>; the FEMA Local Mitigation Planning Resources website: <https://www.fema.gov/local-mitigation-planning-resources>; the U.S. Forest Service's resources on wildland fire (<https://www.fs.fed.us/managing-land/fire>); and the National Interagency Coordination Center (NICC) which is the focal point for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>.

Grantees that have a FEMA-approved standard State HMP pursuant to 44 CFR 201.4, an enhanced HMP in accordance with 44 CFR 201.5 or other FEMA-approved mitigation plan, are required to use those plans and each plan's risk assessment to inform its response to the action plan requirements below. Grantees must reference these plans and indicate how the risks identified in the Mitigation Needs Assessment have been informed by the risks identified in the FEMA mitigation plan.

Mitigation needs evolve over time and grantees are to amend the Mitigation Needs Assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.

In addition to the waiver and alternative requirement established for CDBG-MIT action plans in this section of the notice, HUD is establishing an alternative requirement that grantees shall implement CDBG-MIT programs and projects in accordance with their action plan and with the descriptions provided by the grantee in the action

plan in response to elements (1) through (12) below:

(1) A Mitigation Needs Assessment. Each grantee must assess the characteristics and impacts of current and future hazards identified through its recovery from the qualified disaster and any other Presidentially-declared disaster. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When risks are identified among other vulnerabilities during the framing and design of mitigation projects, implementation of those projects can enhance protection and save lives, maximize the utility of scarce resources, and benefit the community long after the projects are complete. Accordingly, each grantee receiving a CDBG-MIT allocation must conduct a risk-based assessment to inform the use of CDBG-MIT funds to meet its mitigation needs, considering identified current and future hazards.

Grantees must assess their mitigation needs in a manner that effectively addresses risks to indispensable services that enable continuous operation of critical business and government functions, and are critical to human health and safety, or economic security. The Mitigation Needs Assessment must quantitatively assess the significant potential impacts and risks of hazards affecting the following seven critical service areas, or community lifelines:

- Safety and Security
- Communications
- Food, Water, Sheltering
- Transportation
- Health and Medical
- Hazardous Material (Management)
- Energy (Power & Fuel)

CDBG-MIT funds activities that ensure that these critical areas are made more resilient and are able to reliably function during future disasters, can reduce the risk of loss of life, injury, and property damage and accelerate recovery following a disaster.

In the Mitigation Needs Assessment, each grantee must cite data sources and must at a minimum, use the risks identified in the current FEMA-approved state or local HMP. If a jurisdiction is currently updating an expired HMP, the grantee's agency administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. A grantee may identify additional risks that are not included in its jurisdiction's

HMP but must at a minimum address the risks included in its jurisdiction's HMP. Grantees must include citations from the State or local HMP as evidence that the Mitigation Needs Assessment is consistent with such plan.

In responding to this action plan requirement and presenting the required information, grantees must review and certify to HUD that they have considered, at a minimum, the following resources, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf; DHS Office of Infrastructure Protection (<https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf>); National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf); the U.S. Forest Service's resources around wildland fire (<https://www.fs.fed.us/managing-land/fire/>); the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>; and HUD's CPD Mapping tool: <https://egis.hud.gov/cpdmaps/>.

(2) Long-term planning and risk mitigation considerations. The grantee must describe how it plans to: Promote local and regional long-term planning and implementation informed by its Mitigation Needs Assessment, including through the development and enforcement of building codes and standards (such as wildland urban interface; and flood and all hazards, including ASCE-24 and ASCE-7, as may be applicable), vertical flood elevation protection, and revised land use and zoning policies; coordinate with other planning efforts by local and regional entities to ensure alignment of CDBG-MIT activities with those plans; and support actions to promote an increase in hazard insurance coverage.

For flood mitigation efforts: Grantees must consider high wind and continued sea level rise and ensure responsible floodplain and wetland management based on the history of flood mitigation efforts and the frequency and intensity of precipitation events. For wildfire mitigation efforts: Grantees must consider land-use plans that address density and quantity of development, as well as emergency access, landscaping, and water supply considerations. For tornado mitigation efforts: Grantees must consider promoting the construction and use of safe rooms and require or encourage wind engineering

measures and construction techniques into building codes. CDBG-MIT funds may be used to reimburse planning and administrative costs for developing the action plan, including the Mitigation Needs Assessment, for the preparation or update of a State, local or tribal FEMA HMPs, and for compliance with environmental review and citizen participation requirements.

(3) Connection of mitigation programs and projects to identified risks. For each proposed program or project in the action plan, the grantee must address how the program or project mitigates specific current and future risks identified in the Mitigation Needs Assessment.

(4) Low- and moderate-income priority. Proposed mitigation programs and projects must prioritize the protection of low-and-moderate income (LMI) individuals. Each grantee must describe in its action plan how it will prioritize programs and projects that will protect LMI persons in order to meet the overall benefit requirement pursuant to this notice.

Additionally, if the grantee's programs or projects will increase the resiliency of housing, the grantee must describe how the programs or projects will do so for housing that typically serves vulnerable populations, including the following housing: Transitional housing, permanent supportive housing, permanent housing serving individuals and families (including subpopulations) that are homeless and at-risk of homelessness, and public housing developments.

Grantees must also assess how the use of CDBG-MIT funds may affect members of protected classes under fair housing and civil rights laws, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote more resilient affordable housing and will respond to natural hazard related impacts.

(5) Coordination of mitigation projects and leverage. Each grantee must propose mitigation programs or projects that advance long-term resilience to current and future hazards. Additionally, each grantee must align its CDBG-MIT programs or projects with other planned federal, state, regional, or local capital improvements. In order to meet these requirements, each grantee must describe how the proposed mitigation programs or projects will: (a) Advance long-term resilience; (b) align with other planned capital improvements; and (c) promote community-level and regional (e.g., multiple local jurisdictions) planning for current and future disaster recovery efforts and additional mitigation investments.

Additionally, each grantee must describe how it will leverage CDBG-MIT funds with other funding provided through public-private partnerships and by other Federal, State, local, private, and nonprofit sources to generate more effective and comprehensive mitigation outcomes. Examples of other Federal sources are additional funding provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, U.S. Army Corps of Engineers (USACE), the Department of Transportation, and the Department of Agriculture including the U.S. Forest Service's Good Neighbor Authority (GNA), Stewardship Contracts, and Wildfire Resilience Treatments. The grantee must describe how it will seek to maximize the outcomes of investments and the degree to which CDBG-MIT funds are effectively leveraged, including through public-private partnerships and a commitment of funding by the grantee. Grantees shall identify any leveraged funds for each activity in the DRGR system.

(6) Plans to minimize displacement and ensure accessibility. Each grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its mitigation activities (except for mitigation through voluntary buyout activities that are designed to move households out of harm's way). This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. Grantees are reminded that they must take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 (available on the HUD Exchange website at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780).

(7) Maximum award amounts, necessary, and reasonable assistance. For each mitigation program providing a direct benefit to a person, household or business, the action plan must specify the maximum amount of assistance available to a beneficiary under each of the grantee's mitigation programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such

exceptions in its action plan. At minimum, each grantee must indicate that it will adopt policies and procedures governing maximum award amounts, describe how it will communicate the maximum amounts and any exceptions, how it will analyze the circumstances under which an exception is needed and how it will demonstrate that cost of providing assistance is necessary and reasonable. Each grantee must also indicate that it will make exceptions to the maximum award amounts when necessary to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.

(8) Natural infrastructure. Grantees are encouraged to develop a process to incorporate nature-based solutions and natural or green infrastructure in the selection and/or design of CDBG-MIT projects. Each grantee is encouraged to describe how it will consider natural infrastructure during the project selection process (e.g., alternatives and benefit-cost analysis); or propose projects and programs in the action plan that incorporate natural infrastructure. Natural or green infrastructure is defined as the integration of natural processes or systems (such as wetlands or land barriers) or engineered systems that mimic natural systems and processes into investments in resilient infrastructure, including, for example, using permeable pavements and amended soils to improve infiltration and pollutant removal.

(9) Construction standards. Each grantee must describe how it will: (a) Emphasize quality, durability, energy efficiency, sustainability, and mold resistance, as applicable; (b) consider application of the Green Building Standards as amended from the Prior Notices and as explained in section V.B.1.a. of this notice; and (c) adhere to the advanced elevation requirements established in section V.B.1.d. of this notice, if applicable. For grantees addressing flood risks, the grantee must describe how it will document its decision to elevate structures and how it evaluated and determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially-damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to reduce the risk of loss of life and property.

(10) Operation and maintenance plans. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must describe in its action

plan how it will fund long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority or retargeting of existing financial resources. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies or tax collection practices, those changes and relevant milestones should be expressly included in the action plan. Additionally, the grantee must describe any State or local resources that have been identified for the operation and maintenance costs of projects assisted with CDBG-MIT funds.

(11) Cost verification. Each grantee must describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. Grantees are encouraged to consider the use of an independent, qualified third-party architect, construction manager, or other professional (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract (e.g., change orders) during implementation are reasonable. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address controls for CDBG-MIT infrastructure projects above a certain total project cost threshold identified by the grantee and for Covered Projects as defined for CDBG-MIT funds. More detailed cost verification requirements for Covered Projects are provided in section V.A.2.h. of this notice.

(12) Building code and hazard mitigation planning. Grantees are encouraged to propose an allocation of CDBG-MIT funds for building code development and implementation, land use planning and/or hazard mitigation planning activities that may include but need not be limited to: (a) The development and implementation of modern and resilient building codes consistent with an identified model or standard, such as ASCE 24 and ASCE 7 as may be applicable, in order to mitigate against current and future hazards; (b) the development and implementation of land use plans to address natural hazards identified in the grantee's Mitigation Needs Assessment; (c) the update of State, local, or tribal FEMA HMPs, if necessary; (d) for states choosing to do so, the development of a FEMA-approved enhanced mitigation plan; or (e) the integration of mitigation plans with parallel CDBG-MIT planning efforts. If a grantee chooses to not allocate CDBG-MIT funds for these activities, the grantee must describe

other sources of funding identified for such activities. The grantee shall describe the specific building code, land use planning, hazard mitigation planning, or other activities to be funded with the CDBG-MIT grant or from other sources.

V.A.2.b. *Funds awarded directly to a State.* For State grantees that choose to allocate funds directly to a local government or Indian tribe, the action plan shall describe the method of distribution of funds and/or descriptions of specific mitigation programs or projects the grantee will carry out directly. If the State will carry out activities directly, the description must include the requirements at (1) through (6) below:

(1) How the Mitigation Needs Assessment will inform the grantee's funding determinations.

(2) The threshold factors and grant size limits that are to be applied.

(3) The projected uses for the CDBG-MIT funds, by responsible organization, activity, and geographic area, when the grantee carries out an activity directly.

(4) For each proposed mitigation activity carried out directly, its respective CDBG activity eligibility category (or categories) and associated national objective(s), including additional criteria.

(5) When funds are subgranted to local governments or Indian tribes, all criteria to be used to distribute funds to local governments or Indian tribes, including the relative importance of each criterion.

(6) When applications are solicited for programs to be carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

V.A.2.c. *Clarification of basic requirements for mitigation activities.* Unlike CDBG-DR funds where grantees must demonstrate that their disaster recovery activities "tie-back" to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, CDBG-MIT funds do not require such a "tie-back" to the specific qualified disaster that has served as the basis for the grantee's allocation of CDBG-MIT funds. Grantees must instead demonstrate that CDBG-MIT activities: (1) Meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment in the most impacted and distressed areas; (3) are CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria

for mitigation activities and Covered Projects. The grantee can use CDBG-MIT funds for activities that meet these criteria even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for the grantee's CDBG-MIT allocation. Grantees may continue to categorize CDBG-MIT funds, to the extent appropriate, using the broader categories of activities that are associated with CDBG-DR awards: Infrastructure, economic development, housing, planning and administration, and public services.

(1) *Infrastructure.* Typical infrastructure mitigation programs may include regional investments in risk reduction for flood, fire, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

(2) *Economic development.* Examples of eligible programs include assistance to businesses for the installation of disaster mitigation improvements and technologies; financing to support the development of technologies, systems and other measures to mitigate future disaster impacts; "hardening" of commercial areas and facilities; and financing critical infrastructure sectors to allow continued commercial operations during and after disasters. Grantees are also strongly encouraged to leverage CDBG-MIT funds in economic development through coordination with Opportunity Zones established within the grantee's jurisdiction.

(3) *Housing.* Typical housing mitigation programs may include buyouts (potentially accompanied by additional housing or homeownership assistance for relocated families); elevation (which may be accompanied by rehabilitation, reconstruction, or new construction activities to support resilient housing); flood proofing; and wind, water, fire, earthquake retrofitting or "hardening" of single- and multi-family units to withstand future disasters.

(4) *Planning, administration and public services.* As noted in section V.A.2.a.(12) of this notice, CDBG-MIT funds may be used for the development of modernized and resilient building codes and land use plans, for the development and updating of FEMA-approved HMPs and for the development of State enhanced mitigation plans. Grantees may also use the CDBG-MIT funds for planning

activities that include the integration of mitigation planning with other local and regional mitigation community development, land use and other plans. CDBG-MIT funds may also be used to upgrade mapping, data and other capabilities to better understand evolving potential disaster risks.

Grantees may also fund planning and public service activities necessary to reduce flood insurance premiums in the NFIP voluntary Community Rating System's (CRS) incentive program (<https://www.fema.gov/national-flood-insurance-program-community-rating-system>).

Additional public service activities may include education and outreach campaigns designed to alert communities and beneficiaries to opportunities to further mitigate identified risks through insurance, best practices and other strategies.

(5) *Use of CDBG-MIT as match.* As provided by the HCDA, CDBG-MIT funds may be used to meet a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-MIT activity. This includes mitigation grants administered by FEMA or USACE. By law, (codified in the HCDA as a note to 105(a)), the maximum amount of CDBG-MIT funds that may be contributed to a USACE project is \$250,000. Note that the Appropriations Act prohibits the use of CDBG-MIT funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE. Grantees may only use CDBG-MIT funds to meet the match requirement of a program or project that meets the definition of a mitigation activity and other requirements of this notice and meet the eligibility requirements for a mitigation activity under the other federal program.

V.A.2.d. *Clarity of action plan.* Every grantee must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other category).

V.A.2.e. *Submission, review, and approval of action plan.* The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval. To ensure that grantees have adequate time to address the planning requirements of this notice and to ensure a comprehensive and effective review of initial CDBG-MIT

action plans, HUD is assigning each grantee to a cohort and will stagger the submission dates for those cohorts. Each of these grantees is in the early stage of implementing their long-term recovery efforts using CDBG-DR unmet needs funding and the extended timeframe will partially reduce the burden of developing a CDBG-MIT action plan while still launching broad recovery efforts. State grantees that are administering a CDBG-DR grant for a 2015 or 2016 disaster are viewed as having a greater amount of experience with both CDBG-DR requirements and aligning mitigation programs and projects with FEMA HMGP requirements. Local government CDBG-MIT grantees may need additional time to build capacity in order to ensure the alignment of CDBG-DR and FEMA HMGP funds. State grantees in receipt of CDBG-DR funds for only 2017 disasters are properly focused on the timely implementation of recovery efforts in response to those disasters. HUD's capacity to assist grantees in the development of CDBG-MIT action plans and to review those plans in a timely manner also requires rolling dates for the submission of action plans. Accordingly, HUD will accept an action plan from cohorts no later than the dates identified below, unless the grantee has requested, and HUD has approved an extension of its target submission deadline:

- State CDBG-MIT grantees that currently administer CDBG-DR grants provided in response to a 2015 or 2016 disaster shall submit no later than February 3, 2020: Florida; Louisiana; North Carolina, South Carolina; Texas; and West Virginia.
- Local government CDBG-MIT grantees shall submit on no later than March 2, 2020: Columbia, SC; Lexington County, SC; Richland County, SC; Houston, TX; and San Marcos, TX.
- State CDBG-MIT grantees that currently administer only a CDBG-DR grant provided in response to a 2017 disaster shall submit no later than April 6, 2020: California; Georgia; and Missouri.

HUD will review each action plan within 60 days from the date of receipt. HUD may disapprove an action plan as substantially incomplete if the action plan does not meet the requirements of this notice, including grant requirements imposed by applicable waivers and alternative requirements to address the Administration's policy priorities.

V.A.2.f. Obligation and expenditure of funds. After HUD makes the required certifications and approves the action plan, a grant agreement obligating

allocated funds to the grantee must be entered into between HUD and the grantee. Subsequently, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear and transparent communication to the public.

Each activity must meet the applicable environmental requirements before any funds are committed to the activity, consistent with 24 CFR 58.22. The grantee may not draw down funds from the line of credit for an activity until after the Responsible Entity (usually the grantee):

(1) Completes required environmental review(s) pursuant to 24 CFR part 58 or adopts the environmental review performed by another federal agency, as authorized by the Appropriations Act; and

(2) Receives from HUD or the Responsible Entity (as applicable) an approved Request for Release of Funds and certification.

V.A.2.g. Amending the action plan. The grantee must amend its action plan to update its Mitigation Needs Assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include: (1) A section that identifies exactly what content is being added, deleted, or changed; (2) a chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) a revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with a grantee's Mitigation Needs Assessment. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

(1) Substantial amendment. The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on substantial amendments. In its action plan, each grantee must specify criteria for determining what changes in the

grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: The addition of a CDBG-MIT Covered Project; a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-MIT funds for the preparation and submission of an action plan, provided, however, that a substantial action plan amendment shall require a 30-day public comment period.

(2) Nonsubstantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective.

However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. Nonsubstantial amendments shall be numbered in sequence with other nonsubstantial and substantial amendments and incorporated into the action plan.

V.A.2.h. Additional action plan requirements for CDBG-MIT Covered Projects.

Large-scale infrastructure projects that meet the definition of Covered Projects must be included in an action plan or substantial amendment. A Covered Project is an infrastructure project (as defined in V.A.2.h.(1) below) having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-NDR, CDBG-MIT, or CDBG)).

The Department recognizes that grantees may seek to use CDBG-MIT grants to implement large, transformative infrastructure projects that will provide long-term benefits and strengthen a community's resilience to future hazards. To support the successful implementation and operation of these large-scale projects, the Department is establishing alternative requirements that impose additional criteria for all CDBG-MIT Covered Projects. All CDBG-MIT Covered Projects must meet the additional criteria to meet a national objective.

(1) Definition of an infrastructure project. This section defines an infrastructure project as it relates to

Covered Projects only. For purposes of this section of the notice, an infrastructure project is defined as an activity or group of related activities that develop the physical assets that are designed to provide or support services to the general public in the following sectors: Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the Federal Permitting Improvement Steering Council. Further, consistent with HUD's NEPA implementing requirements at 24 CFR 58.32(a), in responding to the requirements of this notice, a grantee must group together and evaluate as a single infrastructure project all individual activities which are related to one another, either on a geographical or functional basis, or are logical parts of a composite of contemplated infrastructure-related actions. Infrastructure improvements on private lands as authorized pursuant to section V.C.3 and that also meet the definition of a Covered Project shall also be subject to the Covered Project requirements of this notice.

(2) Covered Project action plan or substantial amendment requirements.

The following must be provided for each Covered Project proposed in an action plan or a substantial amendment:

(a) Project description and eligibility. A description of the Covered Project and how it meets the definition of a mitigation activity, including: Total project cost (including the CDBG-MIT grant as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA); and CDBG eligibility under the HCDA or a waiver and alternative requirement (*i.e.*, a citation to the paragraph in section 105 of the HCDA, applicable **Federal Register** notice, or a CDBG regulation).

(b) Consistency with the Mitigation Needs Assessment. A description of how the Covered Project addresses the current and future risks in the MID areas as identified in the grantee's Mitigation Needs Assessment.

(c) National objective, including additional criteria. The action plan must describe how the Covered Project will meet a national objective, including additional criteria for mitigation activities and Covered Projects. The national objectives for CDBG-MIT

projects are described in section V.A.13. HUD has established additional criteria for Covered Projects that require a plan for long-term efficacy and fiscal sustainability, a demonstration that benefits of the project outweigh the costs, and a demonstration that the Covered Project is consistent with other mitigation activities in the same MID area, as described below in (i) through (iii):

(i) Long-term efficacy and fiscal sustainability. A description of how the grantee plans to monitor and evaluate the efficacy and sustainability of the Covered Project, including its operation and maintenance of the Covered Project, how it will maintain documentation for the measurable outcomes or reduction in risk as discussed in section V.A.2.i. of this notice, and how it will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and/or alter funding sources if necessary.

(ii) Demonstration of benefits.

(i.a.) *Demonstration of benefits through benefit cost analysis.* The action plan or substantial amendment must describe how the benefits of the Covered Project outweigh the costs of the Covered Project. Benefits outweigh costs if the Benefit Cost Analysis (BCA) results in a benefit-to-cost ratio greater than 1.0 (which aligns with FEMA's BCA ratio).

The action plan or substantial amendment must include a description of the methodology and the results of the BCA that has been conducted for the Covered Project. The grantee must indicate whether another Federal agency has rejected a BCA for the Covered Project (including any BCA for an earlier version of the current proposed Covered Project).

Grantees and subrecipients may use FEMA-approved methodologies and tools to demonstrate the cost-effectiveness of their projects. FEMA has developed the BCA Toolkit to facilitate the process of preparing a BCA. Using the BCA Toolkit will ensure that the calculations are prepared in accordance with OMB Circular A-94 and FEMA's standardized methodologies. It is imperative to conduct a BCA early in the project development process to ensure the likelihood of meeting the cost-effectiveness eligibility requirement.

A non-FEMA BCA methodology may be used when: (1) A BCA has already been completed or is in progress pursuant to BCA guidelines issued by other Federal agencies such as the Army Corps or the Department of Transportation; (2) it addresses a non-

correctable flaw in the FEMA-approved BCA methodology; or (3) it proposes a new approach that is unavailable using the FEMA BCA Toolkit. In order for HUD to accept any BCA completed or in progress pursuant to another Federal agency's requirements, that BCA must account for economic development, community development and other social/community benefits or costs and the CDBG-MIT project must be substantially the same as the project analyzed in the other agency's BCA.

(i.b.) *Alternate demonstration of benefits.* Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate risks or respond to and recover from disasters, the grantee may demonstrate that benefits outweigh costs if the grantee completes a BCA as described above and provides HUD with a benefit-to-cost ratio (which may be less than one) and a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities.

The grantee shall include the BCA for a Covered Project, together with any qualitative description of benefits for projects benefitting low- and moderate-income persons and other persons that are less able to mitigate risks, or respond to and recover from disasters, as an appendix to the action plan or substantial amendment that proposes the project.

(iii) Consistency with other mitigation activities. The grantee's action plan must demonstrate that the project is consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the Covered Project must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

(3) HUD review of action plans and substantial amendments for Covered Projects. HUD will determine that a portion of an action plan or substantial amendment that proposes a Covered Project to be substantially incomplete if it does not meet the above criteria. In the course of reviewing an action plan or substantial amendment, HUD will advise a grantee of each deficiency and the grantee must revise the plan or

amendment to address the deficiency in order for HUD to resume consideration of this submission.

(4) **Implementation of Covered Projects.** Prior to the grantee's execution of a contract for the construction, rehabilitation, or reconstruction of an approved Covered Project the grantee shall have:

(a) Engaged an independent, third-party entity (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract during implementation to determine the costs of the contract and any changes to the contract are reasonable;

(b) Secured the certification of a licensed design professional stating that the project design or redesign meets a nationally recognized design and performance standard applicable to the project, including, if applicable, criteria recognized by FEMA for a project of its type, pursuant to FEMA's Hazard Mitigation Assistance Guidance and Hazard Mitigation Assistance Guidance Addendum; and

(c) Established a plan for financing the operation and maintenance of the project during its useful life.

V.A.2.i. Projection of expenditures and outcomes. Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The projections must also be clearly and conspicuously displayed on the grantee's website. If a grantee's performance indicates a pattern of deviation from projected expenditures and outcomes, HUD may review the grantee's capacity assessment and implementation plan and require an update to that plan or impose corrective actions to mitigate the risks associated with failure to meet projections. The published action plan must be amended for any subsequent changes, updates, or revision of the projections. Guidance on the preparation of projections is available on the HUD website: <https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>.

V.A.3. Citizen participation waiver and alternative requirement. To permit a more robust process and ensure mitigation activities are developed through methods that allow all stakeholders to participate, and because citizens recovering from disasters are best suited to ensure that grantees will

be advised of any missed opportunities and additional risks that need to be addressed, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 § 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. These revised requirements mandate public hearings (the number of which is based upon the amount of a grantee's CDBG-MIT allocation) across the HUD-identified MID areas and require the grantee to provide a reasonable opportunity (at least 45 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The revised citizen participation requirements for CDBG-MIT grantees are:

V.A.3.a. Publication of the action plan and opportunity for public comment.

HUD continues to emphasize the importance of a robust citizen participation process, which shall include public hearings on the proposed action plan. Each grantee must either amend its existing citizen participation plan or adopt a new plan that incorporates the CDBG-MIT specific citizen participation requirements outlined in this section. The number of public hearings to be convened by a grantee shall be determined based upon the amount of the grantee's CDBG-MIT allocation: (1) CDBG-MIT grantees with allocations under \$500 million, are required to hold at least two public hearings in the HUD-identified MID areas in order to obtain citizens' views and to respond to proposals and questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened at different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (2) CDBG-MIT grantees with allocations of \$500 million or more shall convene at least three public hearings in the HUD-identified MID areas to obtain citizens' views and to respond to proposals and questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened in different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (3) CDBG-MIT grantees with allocations of \$1 billion or more shall hold at least four public hearings in the HUD-identified MID area to obtain citizens' views and to respond to proposals and questions.

At least two of these public hearings are to occur prior to a grantee's publication for public comment of its action plan on its website, and the hearings shall be held in different locations within the MID area in locations that ensure geographic balance and maximum accessibility. Public hearings must be held in facilities that are physically accessible to persons with disabilities. Existing federal requirements provide that where physical accessibility is not achievable, grantees must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate under HUD's implementing regulations for Section 504 of the Rehabilitation Act (See 24 CFR part 8, subpart C).

In addition to the above public hearings, before the grantee submits the action plan for this grant or any substantial amendment to the action plan to HUD, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster mitigation must be navigable by citizens from the grantee's (or relevant agency's) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees should also consider recording public hearings and making them available online for live viewing and creating archival video of the public meetings on the grantee's website. Plan publication efforts and public hearings must comply with civil rights requirements, including meeting the effective communications requirements under Section 504 of the Rehabilitation Act (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.160); and must provide meaningful access for persons with Limited English Proficiency (LEP) (see HUD's LEP Guidance, 72 FR 2732 (2007)).

Grantees are responsible for ensuring that all citizens have equal access to information about the CDBG-MIT programs, including persons with disabilities and persons with limited English proficiency (LEP). Each grantee must ensure that mitigation program information is available in the appropriate languages for the geographic areas to be served (see HUD's LEP

Guidance, 72 FR 2732 (2007)) and take appropriate steps to ensure effective communications with persons with disabilities under Section 504 (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.106). Since State grantees receiving CDBG-MIT funds may make grants throughout the State, including to Entitlement communities, States should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. In assessing its language needs for translation of notices and other vital documents for non-English speaking residents, the grantee should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

V.A.3.b. Consideration of public comments. The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

V.A.3.c. Availability and accessibility of the action plan and the use of citizen advisory groups. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

Following approval of the action plan, each grantee shall form one or more citizen advisory committees that shall meet in an open forum not less than twice annually in order to provide increased transparency in the implementation of CDBG-MIT funds, to solicit and respond to public comment and input regarding the grantee's mitigation activities and to serve as an on-going public forum to continuously inform the grantee's CDBG-MIT projects and programs. The grantee may also choose to form one or more of these committees as part of its process for preparing the initial CDBG-MIT action plan submission to HUD.

V.A.3.d. Public website. HUD is requiring grantees to maintain a public website which provides information accounting for how all CDBG-MIT funds are used, managed and administered, including links to all action plans, action plan amendments, performance reports, CDBG-MIT citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its website: The action plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-MIT funds; and the status of services or goods currently being procured (e.g., phase of the procurement, requirements for proposals, etc.).

V.A.3.e. Application status and transparency. For applications received for CDBG-MIT assistance, the grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants with timely information to determine the status of their application for assistance, as provided for section V.A.1.b.(1) of this notice.

When a grantee seeks to competitively award CDBG-MIT funds, the grantee must publish on its CDBG-MIT website the eligibility requirements for such funding, all criteria to be used by the grantee in its selection of applications for funding (including the relative importance of each criterion) and the time frame for consideration of applications. The grantee shall maintain documentation to demonstrate that each funded and unfunded application was reviewed and acted upon by the grantee in accordance with the published eligibility requirements and funding criteria.

V.A.3.f. Citizen complaints. The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.4. HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.

V.A.4.a. Performance review authorities. 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and

audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: <https://www.hudexchange.info/programs/drgr/>.

V.A.4.b. DRGR action plan. Each grantee must enter its action plan for mitigation, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear communication to the public.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-MIT funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD but will not be able to budget grant funds to these activities until after the grant agreement has been executed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each Responsible Organization identified in DRGR as carrying out a CDBG-MIT funded activity.

A grantee will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under a

"project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic development) or are based on an area of service (e.g., Community A). If a grantee describes just one program within a broader category (e.g., single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG-MIT programs and projects are identified for funding.

V.A.4.c. Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination. Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its mitigation programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring. Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

V.A.4.d. Tracking program income in the DRGR system. Grantees must use the DRGR system to draw grant funds. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a State provides CDBG-MIT funds to a local government and permits local governments to retain program income, or a State permits subrecipients to retain program income prior to grant closeout, the grantee must

establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

V.A.4.e. DRGR system Quarterly Performance Report (QPR). Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-MIT funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-MIT funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG-MIT assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, grantees must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. Each

grantee must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

V.A.5. Direct grant administration and means of carrying out eligible activities-applicable to State grantees only. Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow a State to use its CDBG-MIT grant allocation directly to carry out State-administered CDBG-MIT eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Eligible CDBG-MIT activities may be carried out by the State, subject to State law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 (g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in tribal areas. The State shall coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG-MIT assistance to beneficiaries in tribal areas. A State grantee carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the State to carry out or to fund CDBG-MIT projects in the area. Indian tribes that receive CDBG-MIT funding from a State grantee must comply with applicable nondiscrimination requirements (see 24 CFR 1003.601).

For activities carried out by entities eligible under section 105(a)(15) of the HCDA, such entities will be subject to the description of a nonprofit under that section rather than the description located in 24 CFR 570.204, even in a case in which the entity is receiving assistance through a local government that is an entitlement grantee.

V.A.5.a. Use of administrative funds across multiple grants. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116-20) approved June 6, 2019, authorizes

special treatment of grant administrative funds for grantees that received awards under certain CDBG-DR grants (this includes CDBG-MIT grants).

Accordingly, grantees that received funds under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, and 115-254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in V.A.1.a.(1).b. Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense. HUD will issue additional guidance on this provision that grantees will be required to follow to ensure compliance and maintain proper financial controls.

V.A.5.b. *Use of funds in response to Hurricane Matthew and Hurricane Florence (State of North Carolina and South Carolina only).* Public Law 116-20 provides that grantees that received an allocation for mitigation funding provided by Public Law 115-123 in response to Hurricane Matthew may use the CDBG-MIT funds for the same activities, consistent with the requirements of the CDBG-MIT grant, in the most impacted and distressed areas related to Hurricane Florence. Expenditures in the HUD-identified MID areas for Hurricane Florence count toward the 50 percent expenditure requirement for HUD-identified MID areas outlined in section II.C. of this notice.

V.A.6. *Consolidated plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review

grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3-5 year) consolidated plan, or for 24 months after the applicability date of this notice, whichever is sooner. If the grantee has not already updated its Analysis of Impediments to Fair Housing Choice or accepted Assessment of Fair Housing (AFH) in coordination with its post-waiver consolidated plan update, HUD strongly encourages the grantee to do so to more accurately reflect housing conditions following the qualifying disaster(s) that served as the basis for the CDBG-MIT allocation.

V.A.7. *Requirement for consultation during plan preparation.* Currently, the HCDA and HUD regulations require a State grantee to consult with affected local governments in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and instituting the alternative requirement that States receiving a CDBG-MIT allocation consult with all disaster-affected local governments (including any CDBG Entitlement grantees), Indian tribes, and local public housing authorities in determining the use of funds. This ensures that State grantees sufficiently assess the impacts of all areas affected by the disaster. Additional guidance on consultation with local stakeholders can be found in the National Disaster Recovery Framework and its discussion of pre- and post-disaster planning at <https://www.fema.gov/national-disaster-recovery-framework>.

Grantees must consult with States, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency of the action plan with applicable regional redevelopment plans. As provided in sections V.A.1.b.(c) and V.A.2.a.(5), agencies that administer CDBG-MIT funds are required to consult with any separate agency of the jurisdiction that is responsible for development of the FEMA HMP for the grantee's jurisdiction, including coordinating with the State Hazard Mitigation Officer (SHMO).

Grantees are advised to maintain documentation of all consultations required by this paragraph to demonstrate compliance with this requirement.

V.A.8. *Grant administration responsibilities and general administration cap.*

V.A.8.a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all funds provided for CDBG-MIT funds.

V.A.8.b. *General administration cap.* For all CDBG-MIT grantees, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant and 5 percent of program income generated by the grant may be used for administrative costs by the grantee, units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any CDBG-MIT grantee must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only.* The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant amount plus 5 percent of program income generated by the grant. Under this alternative requirement, a State is limited to spending a maximum of 15 percent of its total grant amount or \$750 million, whichever is less, on planning costs. Planning costs subject to this cap are those defined in 42 U.S.C. 5305(a)(12).

V.A.9. *Operation and maintenance waiver for CDBG-MIT program income.* The provision of 24 CFR 570.207(b)(2) generally prohibits the use of CDBG funds for the repair, operation or maintenance of public facilities, improvements or services. With this first-time allocation of mitigation-only funds to CDBG-DR grantees, HUD seeks to help local government CDBG-MIT grantees to fulfill their commitment to fund the operation and maintenance of innovative projects financed with CDBG-MIT funds and to encourage new operating partnerships. HUD has determined that good cause exists for a waiver that will allow the limited use of CDBG-MIT program income to be used by CDBG-MIT grantees who are units of

local government, for the operation and maintenance of CDBG-MIT projects. Accordingly, HUD is waiving 24 CFR 570.207(b)(2) to the extent necessary to allow CDBG-MIT local government grantees to use program income generated by CDBG-MIT funds for the repair, operation, and maintenance of publicly owned projects financed with CDBG-MIT funds, as provided in section V.A.19.d. of this notice. This waiver shall apply only to program income generated by CDBG-MIT funds, and shall not apply to the initial disbursement of CDBG-MIT funds or to any CDBG-DR or CDBG funded activities or resulting CDBG-DR or CDBG program income.

V.A.10. *Planning-only activities-applicable to State grantees only.* The Department notes that effective mitigation relies on some form of area-wide or comprehensive planning activity independent of the ultimate source of implementation funds. To assist State grantees, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding mitigation, planning-only grants, or directly administering planning activities that guide mitigation in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205, which may include support for local and regional functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, resilience plans, development of building codes, zoning ordinances, and neighborhood plans. Such planning activities are strongly encouraged to be undertaken in partnership with local governments and regional planning entities, as these policies have critical impacts on long-term mitigation goals and objectives. Grantees are encouraged to fund planning activities that align and integrate with FEMA's pre-disaster mitigation grant program (PDM or BRIC) and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks. Grantees may use CDBG-MIT funds to enhance and update real property registration and land information systems at the state and local level. Grantees are expected to have land information systems which are sufficient to track requirements on

the use of CDBG-MIT funds that run with the land.

State grantees are also encouraged to use CDBG-MIT planning funds to establish programs and policies that would allow them to perform at an enhanced level as defined by FEMA requirements, as well as to meet the documentation requirements for a FEMA Enhanced Hazard Mitigation Plan. Grantees may also partner with agency staff responsible for community floodplain management activities to participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), which is a voluntary incentive program that recognizes floodplain management activities that exceed minimum NFIP requirements. Exceeding these requirements can result in discounted flood insurance premium rates which reflect a community's reduced flood risk. Plans shall include the required Mitigation Needs Assessment of disaster risks, including anticipated effects of future extreme weather events and other hazards, as described in section V.A.2.a.(1) of this notice. Additional resources to assist in this process are available on the HUD exchange website: <https://www.hudexchange.info/programs/CDBG-MIT/resources/#natural-hazard-risk-and-resilience-tools>.

V.A.11. *Overall benefit requirement.* The primary objective of the HCDA is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" (42 U.S.C. 5301(c)). This target is likely to be difficult to reach when grantees are pursuing community-wide or regional mitigation measures to protect entire regions or communities regardless of income. Therefore, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDBG-MIT funds must benefit low- and moderate-income persons. However, as provided in section V.A.2.a.(4), all grantees must prioritize the protection of LMI individuals, and describe in the action plan how their proposed programs and projects will reflect that priority.

V.A.12. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* Section 101(c) of the HCDA requires each funded activity to meet a national objective of the CDBG program,

including the national objective of benefiting low- and moderate-income persons. Grantees may meet this national objective on an area basis, through an activity which is available to benefit all the residents of an area where at least 51 percent of the residents are low- and moderate income. In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." A grantee qualifies for this exception when fewer than one quarter of the populated-block groups in its jurisdiction contain 51 percent or more low- and moderate-income persons. In such a community, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. CDBG-MIT grantees are required to use the most recent data available in implementing the exception criteria at <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees>. The "exception criteria" apply to mitigation activities funded pursuant to this notice in jurisdictions covered by such criteria, including jurisdictions that receive mitigation funds from a State. V.A.13. *National objective waivers and alternative requirements applicable to CDBG-MIT funds.* The following waivers and alternative requirements modify national objective criteria to ensure that the use of CDBG-MIT funds is consistent with mitigation purposes required by the Appropriations Act.

V.A.13.a. *Additional criteria applicable to all mitigation activities*

funded with CDBG-MIT funds. The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for all mitigation activities funded with CDBG-MIT funds. To meet a national objective, all CDBG-MIT activities must:

(i) Demonstrate the ability to operate for the useful life of the project. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority, or retargeting of existing financial resources.

(ii) Be consistent with other mitigation activities. The CDBG-MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the CDBG-MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

V.A.13.b. *Additional criteria applicable to Covered Projects funded with CDBG-MIT funds.* The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for Covered Projects funded with CDBG-MIT funds. To meet a national objective, all Covered Projects must:

(i) Demonstrate long-term efficacy and fiscal sustainability. The grantee must demonstrate the long-term efficacy and sustainability of the Covered Project by documenting measurable outcomes or reduction in risk as discussed in section V.A.2.i. of this notice, and documenting how the Covered Project will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and alter funding sources if necessary. The grantee also must establish a plan for the long-term operation and maintenance of the Covered Project and include a description of this plan in its action plan, as required by V.A.2.a.(10) and the additional criteria applicable to all CDBG-MIT activities.

(ii) Demonstrably benefit the MID area. The benefits of the Covered Project must outweigh the costs of the Covered Project. Benefits outweigh costs if the BCA results in a benefit-to-cost ratio greater than 1.0. Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate

risks or respond to and recover from disasters, benefits outweigh costs if the grantee supplements its BCA with a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities. BCAs must be completed consistent with the requirements of paragraph V.A.2.h.(2)(c)(ii).

V.A.13.c. *Additional urgent need national objective criteria for CDBG-MIT Activities.* In the context of disaster recovery and the allocation of CDBG-DR funds, the Department has historically provided waivers and established an alternative requirement to the urgent need national objective of the CDBG program as one means of helping communities to recover quickly. Specifically, the Department has waived the certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), recognizing that in the context of disaster recovery those requirements have proven burdensome and redundant.

The Appropriations Act directs the Department to allocate CDBG-MIT funds to grantees that received CDBG-DR funds to assist in recovery from major federally declared disasters occurring in 2015, 2016 and 2017. To reflect the direction of the Appropriations Act to allocate funds to grantees recovering from recent disasters and to address the demonstrable need for significant mitigation improvements by those grantees, the Department is waiving the criteria for the urgent national objective as provided at 24 CFR 570.208(c) and 24 CFR 570.483(d) and is establishing an alternative requirement to include new urgent need national objective criteria for CDBG-MIT activities.

To meet the alternative criteria for the urgent need mitigation (UNM) national objective, each grantee must document that the activity: (i) Addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas; and (ii) will result in a measurable and verifiable reduction in the risk of loss of life and property.

To meet the UNM national objective criteria, grantees must reference in their

action plan the risk identified in the Mitigation Needs Assessment that is addressed by the activity. Grantees must maintain documentation of the measurable and verifiable reduction in risk that will be achieved upon completion of the activity. Action plans must be amended, as necessary, to ensure that this information is included for each activity undertaken with CDBG-MIT funds.

V.A.13.d. *Additional LMI national objective criteria for CDBG-MIT activities.* In addition to other applicable criteria, CDBG-MIT activities can also meet an LMI national objective if they meet the criteria established in an alternative requirement in section V.B.5. of this notice applicable to buyout activities (LMB) and housing incentives (LMHI).

V.A.13.e. The UNM national objective and additional criteria for mitigation activities and Covered Projects shall be applicable only to funds allocated by this notice. Similarly, the alternative urgent need national objective criteria in the Prior Notices does not apply to CDBG-MIT funds.

V.A.13.f. Unless a grantee has received prior approval from HUD, CDBG-MIT activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of mitigation activities.

V.A.14. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* 42 U.S.C. 5302(a)(7) (definition of "nonentitlement area") and provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit a State to distribute CDBG-MIT funds to units of local government and Indian tribes.

V.A.15. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls "subrecipients." The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

V.A.16. *Recordkeeping.* When a State carries out activities directly, 24 CFR

570.490(b) is waived, and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG-MIT funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. All grantees must report FHEO data in the DRGR system at the activity level.

V.A.17. *Change of use of real property, applicable to State grantees only.* This alternative requirement conforms the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as "State, unit of general local government (UGLG) or State subrecipient."

V.A.18. *Responsibility for review and handling of noncompliance-applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct CDBG-MIT grant: The State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Each CDBG-MIT grantee shall attend and require subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management

of CDBG-MIT grant funds. Additional information about this training will be posted on the HUD website.

V.A.19. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to State and local government as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

V.A.19.a. *Definition of program income.*

(1) For purposes of this notice, "program income" is defined as gross income generated from the use of CDBG-MIT funds received by a State, local government, or a subrecipient of a State or local government, except as provided in subparagraph (d) of this paragraph. When income is generated by an activity that is only partially assisted with CDBG-MIT funds, the income shall be prorated to reflect the percentage of CDBG-MIT funds used (e.g., a single loan supported by CDBG-MIT funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-MIT funds.

(b) Proceeds from the disposition of equipment purchased with CDBG-MIT funds.

(c) Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG-MIT funds, less costs incidental to generation of the income (i.e., net income).

(d) Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG-MIT funds.

(e) Payments of principal and interest on loans made using CDBG-MIT funds.

(f) Proceeds from the sale of loans made with CDBG-MIT funds.

(g) Proceeds from the sale of obligations secured by loans made with CDBG-MIT funds.

(h) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the

special assessments are used to recover all or part of the CDBG-MIT portion of a public improvement.

(j) Gross income paid to a State, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-MIT assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds that is less than \$35,000 received in a single year and retained by a State, local government, or a subrecipient thereof.

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

V.A.19.b. *Retention of program income.* State grantees may permit a local government or Indian tribe that receives or will receive program income to retain the program income but are not required to do so.

V.A.19.c. *Program income—use, close out, and transfer.*

(1) Program income received (and retained, if applicable) before or after close out of the CDBG-MIT grant that generated the program income, and used to continue mitigation activities, is treated as additional CDBG-MIT funds subject to the requirements of this notice and must be used for mitigation activities in accordance with the grantee's action plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in sections V.A.19.d. and e.

(2) In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A State grantee may transfer program income to its annual CDBG program before close out of the grant that generated the program income. In addition, a State grantee may transfer program income before close out to any annual CDBG-funded activities carried out by a local government within the State. Program income received by a grantee after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the mitigation activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

V.A.19.d. *Repair, operation and maintenance of certain CDBG-MIT projects.*

Local government CDBG-MIT grantees may use program income to reimburse its agencies for the repair, operation and maintenance of publicly owned and operated projects funded with CDBG-MIT funds, provided that: (1) The agency that owns and operates the project has entered into a written agreement with the grantee that commits the agency to providing not less than fifty percent of funds necessary for the annual repair, operating and maintenance costs of the project; and (2) the grantee adopts policies and procedures to provide for the grantee's regular, on-site inspection of the project in order to ensure its proper repair, operation and maintenance. State grantees may request a waiver from the Department for the use of program income for this purpose.

V.A.19.e. Revolving loan funds. State grantees and local governments may establish revolving funds to carry out specific, identified mitigation activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific mitigation activities. These activities generate payments used to support other mitigation activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional CDBG-MIT grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to local governments to carry out specific, identified mitigation activities. The same requirements, outlined above, apply to this type of revolving loan fund.

A revolving fund established by a grantee or local government *shall not* be directly funded or capitalized with grant funds.

V.A.20. Limitation on reimbursement. The provisions of 24 CFR 570.489(b) are applied to permit a State grantee to charge to the grant eligible pre-award costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) that are associated with CDBG-MIT funds and comply with grant requirements. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for eligible pre-award costs that are associated with CDBG-MIT funds and comply with grant requirements. Section 24 CFR 570.200(h)(1)(i) will not apply to the

extent that it requires pre-award activities to be included in a consolidated plan. Each grantee must include all pre-award activities in its action plan.

Under the Prior Notices, grantees were permitted to charge to grants the pre-award and preapplication costs of homeowners, businesses, and other qualifying entities for certain eligible recovery costs they incurred within one year of a qualified disaster. Because the one-year period has passed for all grantees receiving an allocation pursuant to this notice and because CDBG-MIT funds are provided in order to reduce risks from future disasters, CDBG-MIT funds *shall not* be used to reimburse homeowners, businesses or entities (other than grantees, local governments, and subrecipients described above) for mitigation activities completed prior to the applicability date of this notice.

V.A.21. Prohibition on forced mortgage payoff. In some instances, mortgage agreement terms require homeowners to repay the balance of the mortgage loan with assistance received to rehabilitate, reconstruct or elevate the home in order to make the home more resilient. CDBG-MIT funds, however, may not be used to repay a mortgage loan in whole or in part under this type of "forced mortgage payoff" provision. The ineligibility of a forced mortgage payoff with CDBG-MIT funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits.

V.A.22. One-for-one replacement housing, relocation, and real property acquisition Requirements. Activities and projects undertaken with CDBG-MIT funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCDA (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-MIT funds:

V.A.22.a. Section 104(d) one-for-one replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCDA and 24 CFR 42.375 are waived in connection with CDBG-MIT funds for lower-

income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies and procedures governing these activities. A grantee with questions about one-for-one replacement requirements is encouraged to contact the HUD regional relocation specialist responsible for its jurisdiction.

HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic development. Grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

V.A.22.b. Relocation assistance. The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to mitigation. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive

a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance for CDBG-MIT funds.

V.A.22.c. Tenant-based rental assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede the grantee's actions whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

V.A.22.d. Arm's length voluntary purchase. The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who was allocated CDBG-MIT funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often-large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements to implement mitigation activities. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

V.A.22.e. Optional relocation policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out mitigation activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-MIT

funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide grantees with maximum flexibility in developing optional relocation policies with CDBG-MIT funds.

V.A.22.f. Waiver of Section 414 of the Stafford Act. Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]." Accordingly, homeowner occupants and tenants displaced from their homes because of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally-funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-MIT funded project commencing more than one year after the Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-MIT funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification, or (2) the date of completion of the site-specific review when a program utilizes Tiering, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that

the Secretary administers in connection with the obligation of funds made available by this notice, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA.

(1) The waiver will simplify the administration of mitigation programs and projects and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster.

(2) This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

V.A.23. Environmental requirements.

V.A.23.a. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a State distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

V.A.23.b. Adoption of another agency's environmental review. In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4) or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCDA. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The grant recipient must retain a copy of the review in the grantee's environmental records.

V.A.23.c. Unified federal review. Section 1106 of the Sandy Recovery

Improvement Act (Div. B of Pub. L. 113–2, enacted January 29, 2013) directed the establishment of an “expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.” The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects, including mitigation projects undertaken to avert the impact of future disasters. Grantees receiving an allocation of CDBG–MIT funds are encouraged to participate in this process as one means of expediting the implementation of mitigation projects that will assist in recovery from future disasters. Tools for the unified federal review process (UFR) process can be found here: <http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>.

V.A.23.d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–MIT funds if the recipient has adopted an environmental review, approval, or permit under section V.A.23.b. above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

V.A.23.e. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer/ Tribal Historic Preservation Officer to review CDBG–MIT projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

V.A.23.f. *Tiered environmental reviews.* HUD encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts (e.g. single-family housing programs). Tiering, as defined in 40 CFR 1508.28,

is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review” (40 CFR 1502.20). In addition, “tiering is appropriate when there is a requirement to evaluate a policy of proposal in the early stages of development a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date” (24 CFR 58.15). Tiering is appropriate when a Responsible Entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of 1 to 5 years) but where the specific sites and activities are not yet known.

A tiered review consists of two stages: A broad-level review and subsequent site-specific reviews. The broad-level review will identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. An 8-Step Decision Making Process for Floodplains and Wetlands, including early and final public notices can be completed on a county-wide basis for single-family housing programs funded with CDBG–MIT funds. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad-level, unless there are unanticipated impacts or impacts not adequately addressed in the prior review, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review have been completed for the site.

V.A.23.g. *Discipline and accountability in the environmental review and permitting of infrastructure projects.* Executive Order 13807, signed by the President on August 15, 2017, establishes a coordinated, predictable and transparent process for the review and permitting of infrastructure projects. E.O. 13807 requires Federal

agencies to process environmental reviews and authorization decisions for “major infrastructure projects” as One Federal Decision (OFD). As CDBG–MIT grantees assume authority to conduct environmental reviews, they should implement the following elements of the OFD policy set forth in E.O. 13807 for major infrastructure projects, and further clarified in M–19–20 Guidance on the Applicability of E.O. 13807 to Responsible Entities Assuming Department of Housing and Urban Development Environmental Review Responsibilities [<https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-20.pdf>]. CDBG–MIT grantees should: (1) Seek to complete environmental reviews and authorization decisions for major infrastructure projects in not more than an average of two years, measured from the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to the issuance of the Record of Decision (ROD); (2) Develop a Permitting Timetable that includes milestones for applicable environmental reviews and authorizations and is updated at least quarterly on the Permitting Dashboard (www.permits.performance.gov); (3) Coordinate with cooperating and participating Federal agencies, to develop a single EIS and coordinate a single ROD; (4) Seek to ensure that all necessary authorization decisions for the construction of the project are completed within 90 days of issuance of the ROD; and (5) Seek to ensure that there is an effective process in place to elevate instances in which a Permitting Timetable milestone is missed or extended, or is anticipated to be missed or extended, to higher officials (including senior responsible entity leadership) for timely resolution, and that it follow such process.

V.A.24. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met.

Accordingly, grantees must comply with the requirements of the 2019 DOB Notice. Requirements on CDBG–DR funds and CDBG–DR grants in the 2019

DOB Notice shall apply equally to CDBG-MIT funds and CDBG-MIT grants. As described in the 2019 DOB Notice, all CDBG-MIT grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: "Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b))."

The 2019 DOB Notice also implements requirements resulting from recent amendments to section 312 of the Stafford Act that only apply to CDBG-MIT grantees receiving an allocation as a result of disasters occurring in 2016 and 2017. FEMA, the agency that administers the Stafford Act, has advised that pursuant to recent amendments to Section 312 of the Stafford Act in the DRRRA, for disasters occurring between 2016 and 2021, a loan is not a duplication of other forms of financial assistance, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. The most common source of loans for physical and economic disaster recovery losses and related mitigation measures that have historically constituted a duplication of benefits are loans offered by the U.S. Small Business Administration (SBA). CDBG-MIT grantees receiving an allocation as a result of a 2015 disaster are not subject to the provisions of DRRRA.

V.A.25. Procurement. State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. State grantees shall establish requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services like legal services or case management). Additionally, if the State agency designated as the administering agency chooses to provide funding to another

State agency, the administering agency may specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other local governments and subrecipients are subject.

Local government grantees in direct receipt of CDBG-MIT funds must comply with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable).

HUD may request periodic updates from any grantee that uses contractors. A contractor is a third-party person or organization from which the grantee acquires goods or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD is establishing an additional alternative requirement for *all* contracts with contractors used to provide discrete services or deliverables only, as follows:

- The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;
- The grantee (or procuring entity) must incorporate performance requirements and liquidated damages or, for administrative and consultant contracts, penalties, into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and
- The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or a grantee.

V.A.26. Timely distribution of funds. The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has provided HUD with a waiver of this two-year expenditure requirement. HUD is also waiving the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds

and establishing an alternative requirement, providing that each grantee must expend fifty percent of its allocation of CDBG-MIT funds on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its allocation within twelve years of HUD's execution of the grant agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. A grantee request for a waiver of an expenditure deadline must document the grantee's progress in the implementation of the grant; outline the long-term nature and complexity of the mitigation programs and projects that have yet to be fully implemented; and propose an alternative deadline for the expenditure of the funds.

V.A.27. Review of continuing capacity to carry out CDBG-funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG-MIT activities and certifications in accordance with the requirements for CDBG-MIT funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in section V.A.28. below.

V.A.28. Corrective and remedial actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer CDBG-MIT grants in a manner that facilitates resilience, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction or limitation of payments to a grantee receiving CDBG-MIT funds.

V.A.29. *Noncompliance and grant conditions.* Failure to implement a CDBG-MIT grant in accordance with a grantee's approved financial certification, the capacity and implementation plan, the action plan, as well as grant conditions established by the Department or other applicable requirements, shall constitute a performance deficiency. To correct that deficiency, the Department may exercise any of the corrective and remedial actions authorized in subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised that such remedies may include suspension of administrative funds as well as a reduction of the grantee's CDBG-MIT grant, its CDBG-DR grants, or its annual CDBG grant.

The Department may also establish special grant conditions for individual CDBG-MIT grants to mitigate the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

V.A.30. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.*

Prior to a reduction, withdrawal, or adjustment of a CDBG-MIT grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described for CDBG-MIT funds, the Department may adjust, reduce, or withdraw the CDBG-MIT grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

V.A.31. *Federal accessibility requirements.* Grantees are reminded that the use of CDBG-MIT funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act. Grantees should review the Fair Housing Act Accessibility Guidelines at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag, the Uniform Federal Accessibility Standards (UFAS) at <https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/>, and the

2010 ADA Standards. The HUD notice on "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671 (May 23, 2014), explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

The following portion of the notice details the waivers and alternative requirements typically established in CDBG-DR Federal Register notices, modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department continues to authorize these modified waivers and alternative requirements as this notice cannot anticipate every type of mitigation project that will be proposed by grantees. These activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects. A program or project that meets these criteria is eligible for mitigation funding even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for its CDBG-MIT allocation.

V.B. Housing and Related Floodplain Issues

V.B.1. *Housing-related eligibility waivers.* The broadening of eligible activities under the HCDA is necessary in the context of mitigation activities, to address the current and future risks arising from the disaster that qualified grantees for CDBG-MIT funds. As described in section II of this notice, all housing activities implemented with CDBG-MIT funds must include mitigation measures that address the current and future disaster risks as identified in the grantee's Mitigation Needs Assessment.

Therefore, 42 U.S.C. 5305(a)(24)(A) and (D) is waived to the extent necessary to allow: (1) Homeownership assistance for households earning up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment. While homeownership assistance may be provided to households earning up to 120 percent of the area median income, only those funds used for households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) is waived and alternative requirements adopted to the extent necessary to permit new housing construction that addresses disaster risks identified in the grantee's

Mitigation Needs Assessment and to require the following construction standards on structures constructed, reconstructed, or rehabilitated with CDBG-MIT funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted.

V.B.1.a. *Green building standard for replacement and new construction of residential housing.* Grantees are encouraged to meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (*i.e.*, demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

V.B.1.b. *Implementation of green building standard.* For purposes of this notice, the Green Building Standard means that the grantee will consider meeting one of the following industry recognized standards for all construction covered by section V.B.1.a. above through implementation of one or more of the following programs: (i) ENERGY STAR (Certified Homes and Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite) or (vi) any other equivalent comprehensive green building program acceptable to HUD. Grantees should identify, in each project file, which Green Building Standard will be used, if any, on any building covered by section V.B.1.a. above.

V.B.1.c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation activities undertaken to address risks identified in the grantee's Mitigation Needs Assessment (other than that described in V.B.1.a. above) grantees are encouraged to consider guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>. Grantees are encouraged to incorporate these guidelines on the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or

obsolete products are replaced as part of the rehabilitation work, it is encouraged that rehabilitation use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, it is encouraged that the replacements be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) are recommended to be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

V.B.1.d. Elevation standards for new construction, repair of substantial damage, or substantial improvement. The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures to mitigate risks identified in a grantee's Mitigation Needs Assessment, when those structures are located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 100-year (or 1 percent annual chance) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the base flood elevation. Alternatively, grantees may choose to adopt the design flood elevation standards of ASCE-24 if it results in an elevation higher than two feet above base flood elevation. Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as

an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

For elevation activities, grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

V.B.1.e. Broadband infrastructure in housing. Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

V.B.2. Housing incentives in at-risk communities. Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Each grantee must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. Additionally, a grantee may require the housing incentive to be used for a particular purpose by the household receiving the assistance.

In undertaking a large-scale migration or relocation recovery effort that is intended to move households out of high-risk areas, the grantee must consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains.

When undertaking housing incentive activities, to demonstrate that an incentive meets the low- and moderate-income housing national objective and the LMI national objective, grantees must meet all requirements of the HCDA and the criteria for the Low/Mod Housing Incentive (LMHI) national objectives for the use of housing incentives as described in section V.B.5. of this notice.

V.B.3. Limitation on emergency grant payments—interim mortgage assistance. 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to the extent necessary to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or when the rehabilitation or reconstruction to enhance the resiliency of single-family housing extends beyond 3 months, during which mortgage payments may be due but the home is uninhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing mortgage assistance payments along with rehabilitation/reconstruction assistance to expedite mitigation assistance to homeowners but must establish performance milestones for the rehabilitation/reconstruction that are to be met by the homeowner to receive the interim mortgage assistance payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

V.B.4. Acquisition of real property; flood and other buyouts. CDBG-MIT grantees may carry out property acquisition for a variety of purposes. However, the term "buyouts" for CDBG-MIT funds refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk

Reduction Areas as designated by the grantee and defined below. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, a grantee should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program. Grantees are reminded that real property acquisition with CDBG-MIT funding, including buyout, is subject to the URA, including the real property acquisitions requirements at 49 CFR part 24, subpart B, as modified at section V.A.22.b. of this notice.

V.B.4.a. Clarification of "buyout" and "real property acquisition" activities.

Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-MIT funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-MIT assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides *post-disaster* FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by 42 U.S.C. 5305(a)(1)). However, only acquisitions that meet the definition of a "buyout" are subject to the post-acquisition land use restrictions imposed by this notice (section V.B.4.b. below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction Area. To conduct a buyout in a Disaster Risk Reduction

Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-MIT allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by best available data (e.g. FEMA Repetitive Loss Data) and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Real property acquisitions, including buyouts, undertaken with CDBG-DR and CDBG-MIT funds (even if funds are used only for acquisition costs other than the purchase price) are generally subject to the requirements in URA regulations at 49 CFR part 24, subpart B, unless they satisfy an exception at 49 CFR 24.101(b)(1)-(5). For acquiring entities with eminent domain authority, the most relevant exception is commonly 49 CFR 24.101(b)(1), which requires that the acquisition satisfy a four-part test. HUD is clarifying how the four-part test applies to buyouts conducted with CDBG-DR and CDBG-MIT funds. With respect to the buyout of properties, an "intended, planned, or designated project area," as referenced at 49 CFR 24.101(b)(1)(ii), shall be an area for which a clearly defined end use has been determined at the time that the property is acquired, in which all or substantially all of the properties within the area must be acquired within an established time period as determined by the grantee or acquiring entity for the project to move forward. Where moving forward with a project does not depend upon acquiring specific sites within established timeframes for a clearly defined end use, there is not an "intended, planned or designated project area." To illustrate this point, a grantee or acquiring entity's buyout would satisfy the criteria in 49 CFR 24.101(b)(1)(ii) with respect to the acquisition of property in the following examples: (1) A broad buyout eligibility area is identified by the need to reduce risk, but no specific property must be acquired or (2) a clearly defined end use (i.e., more specific than the categories of open space, recreational, or floodplain and wetlands management practices—see V.B.4.b., below) has not been determined at the time of acquisition.

Grantees are reminded that the distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an

acquired property if the property is *not* acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When properties are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

V.B.4.b. Buyout requirements:

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the owner of the buyout property (including subsequent owners) to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties, including nonprofit land conservation organizations, for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold.

In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-MIT funds for buyouts, the grantee must uniformly apply the valuation method it chooses.

(5) All buyout activities must be classified using the "buyout" activity type in the DRGR system.

(6) Any State grantee implementing a buyout program or activity must consult with affected local governments.

(7) When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the low- and moderate-income housing (LMH) national objective. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3), entitlement CDBG regulations at 24 CFR 570.208(a)(3), and Indian CDBG regulations at 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways:

(a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(b) The program meets the low- and moderate-income area (LMA) benefit criteria as defined for CDBG-MIT funds, to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, a grantee must define the service area based on the end use of the buyout properties; or

(c) The program meets the criteria for the low- and moderate-income limited clientele national objective (LMC) and does not provide benefits that are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate-income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

(d) The program meets the criteria for the Low/Mod Buyout (LMB) or Low/Mod Housing Incentive (LMHI) national objectives for buyouts and the use of housing incentives as authorized in the Department's August 7, 2017 **Federal Register** notice at 82 FR 36825 and described in section V.B.5. of this notice.

V.B.4.c. *Redevelopment of acquired properties.*

(1) A grantee may redevelop an acquired property as part of a mitigation activity if the property is not acquired through a buyout program and the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance or housing incentives to the owner of a property that will be redeveloped if the property is purchased by a grantee or subrecipient through voluntary acquisition, and the owner's need for additional assistance is documented.

(2) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans and hazard mitigation plans.

V.B.5. *Additional LMI national objective criteria for buyouts and housing incentives.* For CDBG-MIT funds, HUD is continuing its establishment of an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives for CDBG-MIT funds must follow guidelines outlined in section V.B.2. of this notice. The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet an LMI housing (LMH) national objective (80 FR

72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG-MIT grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG-MIT assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate-income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG-MIT grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs. This alternative requirement recognizes that the benefits received by those individuals that accept buyout and housing incentive awards allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)–(4) and 570.483(b)(1)–(4), HUD is establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-MIT funding provided pursuant to CDBG-MIT requirements.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG-MIT funds have been provided for an eligible activity that benefits LMI households supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-MIT funds:

(a) Low/Mod buyout (LMB). When CDBG-MIT funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.

(b) Low/Mod housing incentive (LMHI). When CDBG-MIT funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or

improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate-income persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-MIT grantee's overall LMI benefit.

V.B.6. Alternative requirement for housing rehabilitation—assistance for second homes. The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: Properties that serve as second homes are not eligible for rehabilitation assistance or housing incentives provided through a CDBG-MIT program. For CDBG-MIT funds, a second home is defined as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the storm or at the time of application for assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses and rental agreements.

V.B.7. Flood insurance. Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website.

V.B.7.a. Flood insurance purchase requirements. HUD does not prohibit the use of CDBG-MIT funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner of a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for HUD-assisted property within a Special Flood Hazard Area, when HUD assistance is used to finance acquisition or construction, including rehabilitation. HUD strongly

recommends the purchase of flood insurance *outside* of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

V.B.7.b. Federal assistance to owners remaining in a floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide CDBG-MIT assistance for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement and must implement a process to check and monitor for compliance.

(2) The Department is instituting an alternative requirement to 42 U.S.C. 5305(a)(4) as follows: Grantees receiving CDBG-MIT funds are prohibited from providing CDBG-MIT assistance for the rehabilitation/reconstruction of a house, if (a) the combined household income is greater than 120 percent AMI or the national median, (b) the property was located in a floodplain at the time of the disaster, and (c) the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance. When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. HUD is establishing this alternative requirement to ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance,

should not be assisted at the expense of those lower income households. Therefore, a grantee may only provide assistance for the rehabilitation or reconstruction of a house located in a floodplain if: (a) The homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs; or (b) the household earns less than the greater of 120 percent AMI or the national median and has unmet recovery needs.

(3) Section 582 also imposes a responsibility on a grantee that receives CDBG-MIT funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <http://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title42-section5154a&num=0&edition=prelim>.

V.C. Infrastructure and Other Nonresidential Structures

V.C.1. Elevation of nonresidential structures. Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain and may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to adapt to, withstand and rapidly recover flood a flood event. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions

include hospitals, nursing homes, police stations, fire stations and principal utility lines. Grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

V.C.2. Requirements for flood control structures. Grantees that use CDBG-MIT funds to assist flood control structures (*i.e.*, dams and levees) are prohibited from using CDBG-MIT funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG-MIT funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers Public Law 84-99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter into the DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures. CDBG-MIT funds may be used on the construction or demolition of a dam, levee or other flood control structure provided that construction or demolition shall be demonstrated to be an eligible mitigation activity pursuant to the requirements of this notice. Rehabilitation of dams, levees or flood control structures are also eligible, provided that the rehabilitation is demonstrated to be an eligible mitigation activity and for dams and

levees, that the rehabilitation may not exceed the original footprint of the structure as provided herein.

V.C.3. Waiver and alternative requirement to permit certain improvements on private lands. The Department recognizes that in order to achieve broad based and regional mitigation outcomes, it may be necessary to fund certain improvements on private lands that will yield public mitigation benefits. For instance, a grantee may seek to fund improvements and implement stormwater management practices on mostly privately-owned land to prevent or minimize the impact of downstream flooding. Under the Department's regulations and the HCDA, however, not all of these activities may be eligible under section 105(a)(2) of the HCDA, which permits the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. However, HUD recognizes that these improvements and management practices to be installed or applied on private lands can provide public benefits that are similar to the public benefits derived from public works, facilities, and other improvements generally eligible under section 105(a)(2). Accordingly, the Department is establishing a waiver and alternative requirement to expand section 105(a)(2) of the HCDA and to waive the provisions of 24 CFR 570.201(c) and 24 CFR 570.202(a)(1) to the extent necessary to permit CDBG-MIT grantees to carry out activities that provide for improvements on private lands that can be demonstrated to have a measurable public mitigation benefit. This eligible activity includes the expenditure of CDBG-MIT funds for actions necessary to obtain mandatory environmental permits (if approved by the permitting agency). CDBG-MIT grantees must demonstrate at a program level that such payments are necessary and reasonable and are required to secure the permits needed to implement its CDBG-MIT project.

V.C.4. Prohibiting assistance to private utilities. Funds made available under this notice may not be used to assist privately-owned utilities. A CDBG-MIT grantee that prioritizes a mitigation project where assistance to a privately-owned utility is necessary, may request a waiver of this prohibition.

V.C.5. Prohibition on emergency response services. CDBG-MIT funds shall not be used for programs and projects to provide emergency response services. Emergency response services shall mean those services that are carried out in the immediate response to a disaster or other emergency in order

to limit the loss of life and damage to assets by State and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities. However, CDBG-MIT funds may be used for mitigation activities to enhance the resilience of facilities used to provide emergency response services, provided that such assistance is not used for buildings for the general conduct of government as defined at 24 CFR 570.3.

V.D. Economic Development

V.D.1. National objective documentation for economic development activities. 24 CFR 570.483(b)(4)(i), 24 CFR 570.506(b)(5), and 24 CFR 1003.208(d) are waived to allow the grantees receiving CDBG-MIT funds to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.*, the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

V.D.2. Public benefit for certain economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f), 24 CFR 570.209(b) and (d), and 24 CFR 1003.302(c) for only those economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and

infrastructure projects). However, grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system. Paragraph (g) of 24 CFR 570.482 is also waived to the extent these provisions are related to public benefit.

V.D.3. Clarifying note on Section 3 resident eligibility and documentation requirements. The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. A section 3 resident means: (1) A public housing resident; or (2) an individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is: (i) A low-income person or (ii) a very-low-income person. Grantees should determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction—which is eighty percent of the median income for the area. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG-MIT funding must submit form HUD-60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's website: https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears.

V.D.4. Waiver and modification of the job relocation clause to permit assistance to help a business return. CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482, and 24 CFR 1003.209 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a

labor market area within the same State to continue business.

V.D.5. Prioritizing small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for businesses engaged in "farming operations" as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs. HUD advises grantees to pursue sources of assistance other than CDBG-MIT funds in order to address needs arising from crop loss or other agricultural losses attributable to the disaster.

V.D.6. Underwriting. Notwithstanding section 105(e)(1) of the HCDA, no CDBG-MIT funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) for evaluating and selecting economic development projects. States and their subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of Part 570. https://www.ecfr.gov/cgi-bin/text-idx?SID=88dced3d630ad9fd8ab91268dd829f1e&mc=true&node=ap24.3.570_1913.a&rgn=div9.

V.D.7. Limitation on use of funds for eminent domain. No CDBG-MIT funds may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the

general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118) shall be considered a public use for purposes of eminent domain.

VI. Certifications and Collection of Information

VI.1. Certifications waiver and alternative requirement. 24 CFR 91.225 and 91.325 are waived. Each grantee receiving a direct allocation of CDBG-MIT funds must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with CDBG-MIT funding.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with CDBG-MIT funds are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for CDBG-MIT funds.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to mitigation activities, as applicable, in the most impacted and distressed areas for which the President declared a major disaster in 2015, 2016, or 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG-MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-MIT funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the CDBG-MIT grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-MIT funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) CDBG-MIT funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments

that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out mitigation activities, as applicable, in a timely manner and that the grantee has reviewed the respective requirements of this notice. The grantee certifies to the accuracy of its Public Law 115–56 Financial Management and Grant Compliance certification checklist, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at section V.A.1.a of this notice and its implementation plan and capacity assessment and related submissions to HUD referenced at section V.A.1.b.

l. The grantee certifies that it considered the following resources in the preparation of its action plan, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf; DHS Office of Infrastructure Protection: <https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf>; National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf; the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: <https://www.nifc.gov/nicc/>; the U.S. Forest Service's resources around wildland fire (<https://www.fs.fed.us/managing-land/fire/>); and HUD's CPD Mapping tool: <https://egis.hud.gov/cpdmaps/>.

m. The grantee certifies that it will not use CDBG-MIT funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this

provision is the State, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

n. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

o. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

p. The grantee certifies that it will comply with applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

VII. Duration of Funding

This notice requires each grantee to expend fifty percent of its CDBG-MIT grant on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its grant within twelve years of HUD's execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the grants under this notice are as follows: 14.218 for Entitlement CDBG grantees and 14.228 for State CDBG grantees.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: August 23, 2019.

Benjamin Carson, Sr.,

Secretary.

[FR Doc. 2019-18607 Filed 8-29-19; 8:45 am]

BILLING CODE 4210-67-P

APPENDIX 10

RESERVED

APPENDIX 11

RESERVED

APPENDIX 12

RESERVED

APPENDIX 13

RESERVED

APPENDIX 14

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS

As a condition of receipt of federal financial assistance from the Department of the Treasury, the subrecipient named below (hereinafter referred to as the "Subrecipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP

persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

4. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1 – 4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42

U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

5. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

6. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

7. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or

proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

8. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

9. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that contractors also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Subrecipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Subrecipient is in compliance with the aforementioned nondiscrimination requirements.

By: _____

Date

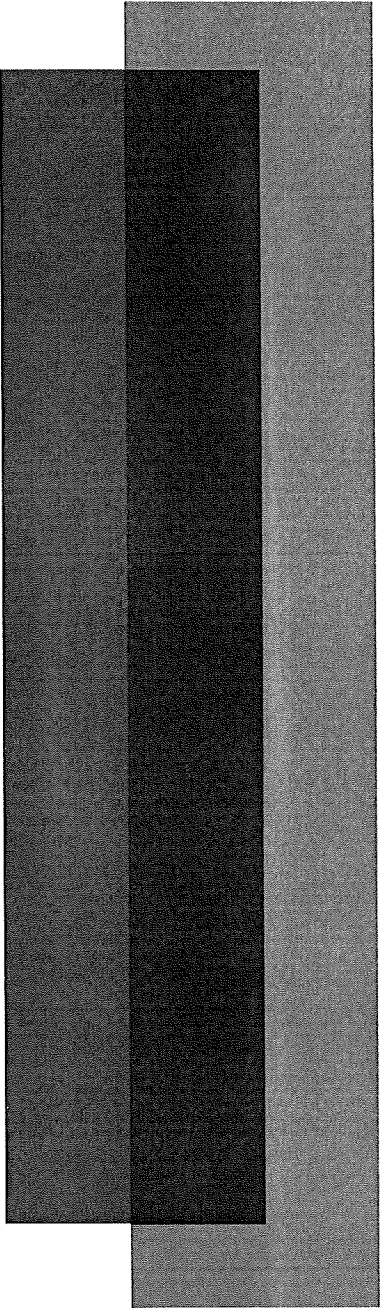
Signature of Authorized Official

Name: _____

Title: _____

APPENDIX 8

FEDERAL REGULATIONS COMPLIANCE PACKET

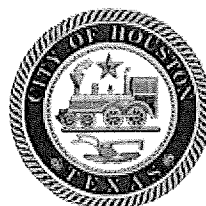


Federal Regulations Compliance Packet

CITY OF HOUSTON

HOUSING AND COMMUNITY
DEVELOPMENT DEPARTMENT

2100 TRAVIS STREET, 9TH FLOOR,
HOUSTON, TEXAS 77002
832.394.6200



| Table of contents

Federal labor standards provisions
(HUD-4010) 3

City of Houston's code of ordinance article
V. Minority, women, and small business
enterprises regulation 8

Section 3 regulation 18

Pay or play regulation 63



A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

(1) MINIMUM WAGES

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) Additional Classifications.

- (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

Previous editions are obsolete.

HUD-4010 (06/2022)
ref. Handbook 1344.1



- (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)
- (2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.
- (3) **Payrolls and basic records.**

- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

- (ii) **Certified Payroll Reports.**

- (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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ref. Handbook 1344.1

Previous editions are obsolete.



Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (a)(3)(ii)(b).
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

HUD-4010 (06/2022)
ref. Handbook 1344.1

Previous editions are obsolete.



If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of Eligibility.**
- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

Previous editions are obsolete.

HUD-4010 (06/2022)
ref. Handbook 1344.1



(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).

(11) Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

C. HEALTH AND SAFETY

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Previous editions are obsolete.

HUD-4010 (06/2022)
ref. Handbook 1344.1



City Of Houston's Code of Ordinance Article V. Minority, Women, and Small Business Enterprises

Sec. 15-81. - Declaration of policy.

- a. It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, as set forth in this article. The purposes and objectives of this article are:
1. To promote equal opportunity for participation amongst local minority, women and small business enterprises in all phases of city contracting;
 2. To increase the utilization of such local firms in providing certain goods and services;
 3. To provide opportunities to broaden and enhance local firms' ranges of capacities; and
 4. To increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, where applicable, in an effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.
- b. This article is intended to be remedial in nature and to continue only until its purposes and objectives are achieved. At least every five years the city shall make its best efforts to initiate a review of its minority and women business enterprise program, the results of which shall be provided to city council, who shall determine, upon its receipt of recommendations and the consideration of other relevant information from the OBO director, whether there is strong statistical and anecdotal evidence of discrimination against minority and women business enterprises in city contracting warranting the continuation of a race and gender conscious minority and women business enterprise program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-82. - Definitions.

The following words and phrases, when used in this article and in article VI of this chapter, shall have the meanings provided in this section, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

Bidder means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the city by contract for profit.

Commercially useful function means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE is responsible. In determining whether a MWSBE is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether it has the skill and expertise to perform the work for which it is being utilized and possesses all the necessary licenses; (2) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. MWSBEs shall be responsible for performing more than fifty percent of the task or group of tasks being counted toward the applicable participation goal unless subcontracting such task or group of tasks in excess of fifty percent has been expressly authorized via a waiver by the OBO director.

Contractor means any person or legal entity providing goods, labor, or services to the city by contract for profit.

Established business enterprise means a MWSBE or any business applying for certification as a MWSBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business Administration for that category of business, as determined by the procedures described in section 15-87(a) of this Code.



Goal-oriented contract means any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or non personal or nonprofessional services in excess of \$100,000.00:

- a. For which competitive bids are required by law;
- b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the initiating city department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the subcontract service(s).

Good faith efforts shall refer to steps taken to achieve a MWSBE goal or other requirements which, by their scope, intensity and usefulness demonstrate a bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract and a contractor's responsibility to put forth measures to meet or exceed a MWSBE goal throughout the duration of the contract.

Joint venture means an association of a MWSBE and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Local firm, local MWSBE, or locally based when describing a firm or entity seeking certification means a sole proprietorship, partnership, corporation or any other business entity with a significant business presence in the Houston-Sugar Land-Baytown metropolitan statistical area, as defined by the Office of Management and Budget within the Executive Office of the President of the United States. A significant business presence includes the requirement that a MWSBE have an established place of business in the Houston-Sugar Land-Baytown metropolitan statistical area at which one or more of its employees is regularly based and that such place of business has a substantial role in the MWSBE's performance of a commercially useful function.

MWSBE means, collectively, MBEs, WBEs, and SBEs.

Minority business enterprise or MBE means a business which is:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
- f. A business which has been certified as an MBE by the office of business opportunity under any other recognized MBE program.

Minority person means a citizen or legal resident alien of the United States who is:

- a. Black American, which includes persons having origins in any of the black racial groups of Africa;
- b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;
- d. Native American, which includes persons having origins in any of the original peoples of North America,



- American Indian, Eskimo, Aleut, Native Hawaiian; or
- e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

Owned, controlled and managed means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise certification possesses equivalent incidents of such ownership, including an equivalent interest in profit and loss, and has contributed an equivalent percentage of capital and equipment to the business. Contributions of capital and equipment must be real and substantial. In instances where expertise is relied upon to demonstrate ownership, control, and management, it must be shown that the expertise is: (1) in a specialized field; (2) in an area critical to the firm's operation and performance of a commercially useful function; (3) critical to the firm's continued success; and (4) documented in the records of the firm, including but not limited to documentation showing the particular expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse). The one or more minority person or woman owners shall have recognized, ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

Regulated contract means any contract, agreement or other undertaking:

- a. For which competitive bids are not required by law;
- b. That is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the recommending city department has determined, in consultation with the director of the office of business opportunity either:
 1. Has significant subcontracting potential in fields in which there are sufficient known MWSBEs to perform the particular subcontract service(s); or
 2. Is of a type for which there are sufficient known MWSBEs which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

Small business enterprise or SBE means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women business enterprise defined in this Code.

Subcontractor means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.

Woman means a person who is a citizen or legal resident alien of the United States and who is of the female gender.

Women business enterprise or WBE means a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or



- professional entity is owned, controlled and managed by one or more women; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- f. A business which has been certified as a WBE by the office of business opportunity under any other recognized WBE program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-83. - Program elements.

- a. Based upon a review of annual awards and purchases by affected city departments, the office of business opportunity shall each year submit a progress report to the city council. The report shall include two percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in:
 - 1. The supply of goods and nonpersonal or nonprofessional services; and
 - 2. The performance of personal or professional services;
 to the prior year's total local business community utilization and availability to do business in each of the two named fields of city contracting.

In addition, the report shall include percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in construction to the prior year's total local business community utilization and availability to do business in city construction contracting.

The report may also include figures and other evidence of factors prescribed in Part 26, Title 49 of the Code of Federal Regulations in the year the report is made that may affect the aforementioned ratio of utilization and availability.

- b. Based upon the measured utilization and availability and any other relevant factors prescribed in Part 26, Title 49 of the Code of Federal Regulations and identified in the report submitted pursuant to subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MWSBEs in each of the two named categories described in subsection (a)(1) and (2) above and for contracting with MWSBEs in the construction category. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.
- c. It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MWSBE register, the number of certified MWSBEs in each of the two named categories described in subsection (a)(1) and (2), above, and for construction, the number of certified MWSBEs in the construction category. The initiating department director or his or her designee shall determine whether the contract is one to which MWSBE provisions should be applied.
 - 1. These provisions are not required to be applied in the following circumstances:
 - a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;
 - b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MWSBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants);
 - c. If application of MWSBE provisions would impose an unwarranted economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or
 - d. If the possible MWSBE participation level based on MWSBE availability would produce negligible MWSBE participation.

If one of the above-listed conditions is determined to exist, the department director shall certify that determination in writing prior to the award of the contract, specifying the conditions which lead to the determination, and submit the determination to the OBO director for review and approval.



2. If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating department shall assign an appropriate MWSBE participation level, if any, for the contract (whether goal-oriented or regulated) considering the local availability of certified MWSBEs in the contract field.

The intention of this article is to provide administrative flexibility in the application of MWSBE provisions of this Code and in the percentage participation level on a contract-by-contract basis so as not to limit access to city contracting by non minority-owned, non women-owned or established business enterprises to a greater degree than necessary to meet the city-wide annual goal and the policies and objectives of this article.

- d. The bidding documents and the contract documents for goal-oriented contracts for which a MWSBE participation level has been established shall contain a provision detailing the purposes and objectives of the city's MWSBE ordinance and shall incorporate by reference this article and the then-current motion or ordinance establishing MWSBE annual goals. Regulated contracts which are determined to have significant subcontracting potential for which a MWSBE participation level has been established shall contain contractual provisions (and proposal provisions if submitted for proposals or for bids) requiring the contractor to meet or exceed the determined MWSBE participation level for that contract, or to establish that it has made good-faith efforts to do so, and that notwithstanding such efforts, was unable to meet or exceed the determined participation levels. The OBO director shall establish procedures defining good-faith efforts. These procedures will be reviewed and approved by the mayor and the city attorney.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84. - Office of business opportunity.

- a. Applications for certification as a MWSBE and any addenda thereto shall be made on a form promulgated by the OBO director, and the requirements for certification shall be consistent with the applicable requirements set forth in subsection (b) below.
- b. The office of business opportunity has responsibility for:
 1. Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting non minority-owned or non woman-owned or established business enterprises. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;
 2. Certifying businesses as minority, small or women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MWSBEs;
 3. Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive bidding system) MWSBEs to compete effectively for city contracts;
 4. Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article, including but not limited to assisting city departments in setting contract-specific MWSBE goals;
 5. Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the office of business opportunity may take exception;
 6. Compiling a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MWSBE contractor and subcontractor information, to be specified by the office of business opportunity. Upon completion, the report is to be submitted quarterly to city council members, the mayor and all affected city department directors for their information;
 7. Receiving and reviewing complaints and suggestions concerning the MWSBE program from contractors, MWSBEs and city departments; and
 8. Without limiting the authority of the office of business opportunity to establish procedures that are



consistent with the terms of this article, the office of business opportunity is specifically directed to promulgate and implement procedures as follows:

- a. Grievance procedures for any person aggrieved by any decision of the office of business opportunity under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;
 - b. Mediation procedures for the resolution of disputes between contractors or bidders and MWSBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MWSBE has failed to make good faith efforts to comply with this article;
 - c. Procedures to implement and enforce any sanctions provided under this article;
 - d. Procedures to ensure performance of work by MWSBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the office of business opportunity for cause; (ii) a requirement that the minority person, small business or woman owner of a MWSBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MWSBE goals; and (iv) a requirement that MWSBEs accurately represent all material information required for certification and truly perform a commercially useful function;
 - e. Procedures for counting participation by MWSBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MWSBEs is included in the computation of the progress made toward meeting the annual city-wide goals;
 - f. Procedures to ensure that this article is limited in its application to the certification of locally based MWSBEs;
 - g. Procedures to coordinate the operation of this article with other local MWSBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article;
 - h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts; and
 - i. Procedures for handling theft of services (wage theft) complaints of employees of city contractors and subcontractors.
- c. MWSBE certification shall be valid for a period of three years from the date of certification; provided, however, all applicants certified as MWSBEs shall be subject to review on an annual basis pursuant to procedures established by the OBO director to ensure compliance with all applicable provisions of this article.
 - d. Applications for renewal of MWSBE certification shall be evaluated under the same criteria and subject to the same manner of review as original applications.
 - e. All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the office of business opportunity for inspection, and copies may be purchased at the fees prescribed by law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84.1. - Responsibilities of city departments; department utilization plan.

- a. Each department director shall be accountable for the oversight and implementation of the following activities:
 1. Informing MWSBE organizations or associations of the department's procurement procedures and future procurement opportunities;
 2. Ensuring that department bid solicitations and requests for proposals are sent to MWSBEs in a timely manner;
 3. Referring MWSBEs to technical assistance services available from the office of business opportunity and other organizations that provide such services;
 4. Reviewing each request for waiver or modification of participation goals prior to its submission to the office of business opportunity for approval;
 5. Monitoring the department's procurement activities to ensure compliance with and progress towards the city-wide participation goals; and



6. Providing the OBO director with the departmental utilization plan prescribed in subsection (b) of this section and any other documentation requested by the office of business opportunity necessary in evaluating a department's progress in achieving city-wide participation goals.
- b. Each department that has procured goods and services in excess of three million dollars during the fiscal year ending on June 30 th of the preceding calendar year shall be required to submit a departmental utilization plan for the following fiscal year commencing on July 1 st . Departmental utilizations plans shall be submitted on or before June 15, 2014, and not later than June 15 th of each calendar year thereafter.
 - c. Each department director shall be responsible for creating, submitting, and implementing an annual departmental utilization plan that shall include, at a minimum, the following:
 1. The department's forecast of anticipated projects and contract specific goals for the upcoming fiscal year;
 2. A detailed, written explanation for any departmental goal that is not consistent with the overall city-wide goals for MWSBE participation;
 3. A list of the names and titles of department personnel responsible for the implementation of the departmental utilization plan;
 4. The methods and relevant activities proposed for achieving the department's participation goals; and
 5. Any other information the department director deems relevant or necessary.
 - d. Upon review by the OBO director, all departmental utilization plans shall be submitted to the mayor and city council for final approval.
 - e. A departmental utilization plan may be amended to reflect changes in the department's projected procurements, expenditures, or other relevant circumstances and resulting changes in the department's participation goals.

Such amendments shall be submitted to the OBO director for review and shall be submitted to city council for final approval not less than 30 days prior to the proposed date of implementation.

(f) Each department director shall be accountable for setting and making reasonable efforts to meet the participation goals stated its departmental utilization plan. Departments shall, at minimum, engage in outreach activities that encourage eligible businesses to apply for certification as MWSBEs and encourage MWSBEs to participate in all facets of the procurement process and compete for city contracts, including contracts awarded by negotiated acquisition and emergency and sole source contracts.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-85. - Filing of plan.

Before execution of any contract or issuance of any purchase order for which a MWSBE goal has been established, a bidder or potential contractor shall submit a plan setting forth how it intends to meet the contract MWSBE goal or documentation demonstrating its proof of good faith efforts to meet the contract MWSBE goal. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted plan, unless it has received approval from the OBO director for a deviation therefrom. Approval shall not be unreasonably withheld. While it is not a requirement that a contractor meet its goal, it is required that the contractor objectively demonstrate to the office of business opportunity that it has made good faith efforts to meet the goal. To this end, the contractor shall maintain records as prescribed by the office of business opportunity demonstrating its efforts at compliance. The contractor shall be required to submit to the office of business opportunity reports of its efforts under this article in such form or manner as shall be prescribed by the OBO director.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-86. - Sanctions.

- a. The OBO director is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal established under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The OBO director is also authorized to suspend any MWSBE who has failed to make good faith efforts to meet all requirements necessary for participation as a MWSBE from engaging in any



contract affected by this article for a period up to, but not to exceed, five years.

- b. In accordance with section 15-84 of this Code, the office of business opportunity shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given and an opportunity for a hearing consistent with the procedures set forth in sections 15-22, 15-23, and 15-24 of this Code. Any procedure established shall be consistent with state law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-87. - Determination of established business enterprise status.

- a. Based upon a review of data submitted by MWSBEs or MWSBE applicants and any other information available from its files or the files of any other governmental entity, the office of business opportunity shall determine the size of each MWSBE or MWSBE applicant by determining the average of the gross receipts for the prior three years and the average number of employees for the 12 calendar months immediately preceding the review, as applicable. The calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA) including, without limitation those set forth in 13 C.F.R. part 121, subpart A, secs. 121.101 through 121.107, and sec. 121.201, any amendment or successor thereto, or any other document defining such size standards or the calculation thereof that has been fully and finally adopted by the SBA. The review shall be applicable to business entities applying for initial certification as a MWSBE or to certified MWSBEs, provided that such review may not be initiated until the applicant or certified MWSBE has established a business history of sufficient length to allow calculation of size based on the three year financial or 12 month employee data, as applicable.
- b. Following the review described in this section, each certified MWSBE or MWSBE applicant shall be reevaluated under this section on an annual basis based upon the size standards and methods of calculation identified by the SBA and procedures established by the OBO director to ensure compliance with all applicable provisions of this article.
- c. All MWSBEs and MWSBE applicants shall, upon written request of the OBO director, provide to the office of business opportunity copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of a MWSBE applicant.
- d. Following the review authorized by subsection (a) of this section, the office of business opportunity shall classify each MWSBE or MWSBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing of the notice provided in section 15-88 of this Code.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-88. - Notice, appeal and waiver.

- a. Immediately upon classification of a certified MWSBE or MWSBE applicant as an established business enterprise pursuant to section 15-87 of this Code, the office of business opportunity shall notify the business so classified of the action by United States certified mail, return receipt requested, addressed to the last known address of the business and deemed given when placed in a United States mail depository.
- b. Each notice shall inform the affected MWSBE or MWSBE applicant of the following matters:
 - 1. That the MWSBE or MWSBE applicant has been classified as an established business enterprise;
 - 2. That the classification is effective as of the date of mailing of the notice;
 - 3. That the MWSBE or MWSBE applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;
 - 4. That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MWSBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn prior to the expiration of the one-year period; and
 - 5. That any MWSBE applicant deemed ineligible for certification based upon its classification as an established business enterprise shall remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise is granted pursuant to an appeal or a request for waiver conducted under this section.



- c. In order to appeal a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the office of business opportunity has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the OBO director finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the OBO director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within ten days of the date of mailing of the notice submit to the OBO director a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.
- d. In order to seek a waiver of a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:
 1. Profitability of the enterprise;
 2. Sales of the enterprise, including a demonstration that 55 percent or more of the enterprise's sales, within the period utilized by the office of business opportunity in its classification determination, are not related to city contracts;
 3. Ability of the MWSBE or MWSBE applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and
 4. Positive comparison of the enterprise's business and financial profile with those of non-MWSBE firms in the same business category based on an objective industry standard.
- e. The OBO director shall notify the affected MWSBE or MWSBE applicant of the place and time of a hearing before the OBO director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the OBO director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the OBO director or his designee.
- f. The OBO director shall promulgate written procedures for the conduct of hearings. The OBO director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business enterprise. The OBO director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.
- g. Notwithstanding any provision of this Code or of the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, the decision of the OBO director or his designee regarding appeal or waiver shall be final.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-89. - Effect of classification; re-application.

- a. Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the OBO director, each certified MWSBE so classified shall be ineligible for future participation in any city contract as a MWSBE and its certification shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the OBO director that the applicant does not meet or exceed



the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.

- b. Notwithstanding any provision of this Code or the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, any initial applicant for MWSBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.
- c. The office of business opportunity may continue to assist established business enterprises following ineligibility as follows:
 1. Such businesses, if formerly certified by the city, may continue to be listed in any listing of MWSBE firms in a separate category of established MWSBE firms for the information of other private or public entities; and
 2. Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the office of business opportunity after their classification as established business enterprises.
- d. No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification provided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MWSBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:
 1. That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for reinstatement would place the business below the SBA size standards for that category of business;
 2. That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR §121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;
 3. That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or
 4. That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.
- e. Applications for reinstatement shall be on a form prescribed by the OBO director and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the OBO director.
- f. Within 30 days following receipt of a completed application for reinstatement, the OBO director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.
- g. The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the OBO director or his designee shall disregard evidence that is repetitious or cumulative of the prior hearing on the matter.
- h. The decision of the OBO director or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

(Ord. No. 2013-428, § 10 (Exh. A), 5-8-2013, eff. 7-1-2013)



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 574, 576, 578, 905, 964, 983, and 1000

[Docket No. FR-6085-F-03]

RIN 2501-AD87

Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Secretary, HUD.
ACTION: Final rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. This final rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3. These changes will increase Section 3's impact for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden.

DATES: *Effective Date:* November 30, 2020.

Compliance Dates: Public housing financial assistance recipients must implement their Section 3 activities pursuant to these regulations and comply with the reporting requirements starting with the recipient's first full fiscal year after July 1, 2021. These regulations are applicable to Section 3 projects for which assistance or funds are committed on or after July 1, 2021.

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (the phone numbers are not toll-free):

For Public Housing Financial Assistance: Merrie Nichols-Dixon, Director, Office of Policy Program and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202-402-4673 (not a toll-free number).

For Community Development Block Grant (CDBG)/CDBG Disaster Recovery/Section 108 Loan Guarantee Program: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone 202-708-3587 (voice/TDD) (not a toll-free number).

For HOME or Housing Trust Fund Section 3 projects: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 10168, Washington, DC 20410; telephone 202-402-4606 (not a toll-free number).

For Office of Housing programs: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6230, Washington, DC 20410; telephone 202-402-7549 (voice/TDD) (these are not toll-free numbers).

Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800-877-8339. General email inquiries regarding Section 3 may be sent to: section3@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, approved August 1, 1968) (Section 3) was enacted to bring economic opportunities generated by certain HUD financial assistance expenditures, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results

in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the dual benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities.

The Section 3 statute establishes priorities for employment and contracting for public housing programs and for other programs that provide housing and community development assistance. For example, the prioritization as it relates to public housing assistance places an emphasis on public housing residents, in contrast to the prioritization as it relates to housing and community development assistance, which places more emphasis on residents of the neighborhood or service area in which the investment is being made.

In the 25 years since HUD promulgated the current Section 3 regulations, significant legislation has been enacted that affects Section 3.¹ In addition, HUD has also heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD's experience in administering Section 3 over time has also provided insight as to how HUD could improve its Section 3 regulations. HUD, thus, concluded that regulatory changes were necessary to streamline Section 3 and more effectively benefit low- and very low-income persons through HUD financial assistance to achieve the Section 3 statute's purposes.

II. The Proposed Rule

HUD issued a proposed rule on April 4, 2019 (84 FR 13177) to update the existing regulations and streamline the Section 3 program.

Promote Sustained Employment and Career Development

The proposed rule included multiple elements designed to increase Section 3's impact in directing employment opportunities and sustaining employment for the people served by

¹ This legislation includes, but is not limited to, the following: Reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104-330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105-276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111-372, approved January 4, 2011); and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111-347, approved January 4, 2011).



HUD financial assistance programs. The rule proposed tracking and reporting labor hours instead of new hires. While the previous new hire framework was valuable for measuring entry into employment, the new hire framework did not capture the extent to which new hiring opportunities are created relative to the total work performed, nor whether those opportunities are sustained over time. The proposed rule's focus on labor hours sought to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to labor hours emphasized continued employment. For example, the prior exclusive focus on counting new hires regarded five new hires for one-month opportunities as a more valued outcome than one 12-month opportunity, and it did not distinguish between full- and part-time employment. A full-time job sustained over a long period allows a low- or very low-income worker to gain skills and is a strong indicator of progress towards self-sufficiency. The new focus on labor hours would ensure that longer-term, full-time opportunities are appropriately recognized.

HUD's proposed rule also sought comment on maintaining the new hire framework for only Public Housing Agencies (PHAs). HUD held a number of listening sessions and heard from some PHAs that they would prefer to keep reporting new hires rather than switch to reporting labor hours. Therefore, while HUD believes tracking labor hours is the best option and would simplify reporting, HUD did seek comment on the alternative option of maintaining the new hires framework for PHAs.

Align Section 3 Reporting With Standard Business Practices

HUD also proposed tracking labor hours rather than new hires because it would be more consistent with business practices. Most construction contractors working on HUD assisted projects already track labor hours in their payroll systems because they pay their employees based on an hourly wage. In some cases, they are also subject to prevailing wage requirements.² HUD believes a consistent labor-hour tracking mechanism makes compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. The proposed rule provided that for employers who do not track labor hours in detail through a time-and-attendance

system, such employers could provide a good faith assessment of the labor hours for a full- or part-time employee. However, if a time-and-attendance system is later implemented, the accurate labor hour accounting would be required.

Applicability and Thresholds

The Section 3 statute applies to both: (1) HUD's Public Housing Program, and (2) Other HUD programs that provide housing and community development assistance. For ease in administration for recipients using one or both of these HUD funding streams, the proposed rule provided definitions for these types of funding and specified Section 3 requirements for each type. The proposed rule included the following definitions for the scope of such financial assistance:

(1) Public housing financial assistance covers:

(a) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act),

(b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and

(c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and

(2) Section 3 projects cover HUD program assistance used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs.

The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond the compliance requirements of HUD's prior regulations. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. The proposed rule also clarified that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under Section 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business

opportunities to Indians and Indian organizations.

Reporting and Targeted Section 3 Workers

The proposed rule aimed to align Section 3 reporting requirements more closely to the statutory priorities; HUD's previous regulation tracked only public housing residents or low- or very low-income persons who lived in the metropolitan area or nonmetropolitan county of the project, rather than whether the statutory priorities were met. The rule proposed a new definition of "Section 3 worker" as any worker or who meets at least one of the following criteria: Low- or very low-income, as established by HUD's income limits; living in a Qualified Census Tract (QCT); or employed by a Section 3 business concern.³

The proposed rule also included a new "Targeted Section 3 worker" definition so that HUD could track, and recipients could target, the hiring of Section 3 workers in selected categories. The Section 3 statute requires certain financial assistance recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The "Targeted Section 3 worker" reflects both statutory and policy priorities that HUD wishes to specifically track. For public housing financial assistance, the proposed definition of a Targeted Section 3 worker was a Section 3 worker who is also:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who is currently or who was when hired by the worker's current employer, a resident in a public housing project or Section 8-assisted housing; or

(3) A resident of other projects managed by the PHA that is expending assistance; or

(4) A current YouthBuild participant.

For other HUD assistance programs, the proposed priorities were:

(1) Residents within the service area or the neighborhood of the project, and

(2) YouthBuild participants.

³ Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low- or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

² See 42 U.S.C. 1437j(a), 24 CFR 905.308(b)(3)(ii), 24 CFR 965.101, 25 U.S.C. 4225(b)(1)(A), and 24 CFR 1006.345(b).



There is also a statutory contracting priority for businesses that provide economic opportunities for low- and very low-income workers. Therefore, HUD proposed including labor hours worked by the Section 3 business concern employees for both Section 3

workers and Targeted Section 3 workers. HUD also proposed a new Section 3 business concern definition that reflected the change to labor hours and increased the threshold of work performed by a business by low- and very low-income workers given the

proposed rule's inclusion of all Section 3 business concerns' labor hours in the definition of both Section 3 workers and Targeted Section 3 workers.

The proposed rule created the following construct for measuring workers:



Benchmarks

The proposed rule provided that a new Section 3 benchmark measurement would serve as a safe harbor for those recipients that meet the new benchmark. The primary objective of the proposed rule was to reflect and monitor grantees' abilities to direct job opportunities that are generated by HUD financial assistance to Section 3 workers and Targeted Section 3 workers. The proposal included using benchmarks based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. HUD proposed that the benchmarks would be set by Federal Register Notice and amended periodically to provide for updating of the benchmarks to align with the reporting data HUD received. As HUD gathers more data under the new rule, HUD could increase or decrease benchmark figures over time, or tailor different benchmarks for different geographies and different funding types. If a recipient certifies compliance with the statutory priorities and meets the outcome benchmarks, HUD will presume the recipient is complying with Section 3 requirements, absent evidence to the contrary. Recipients are still required to report their outcomes, and HUD will monitor them accordingly through the data reporting methods used to oversee all other program requirements in each applicable program area. Otherwise, recipients would be required to submit

qualitative reports on their efforts, as they are required to do under HUD's previous rule when they do not meet the safe harbor, and HUD may conduct monitoring to review the recipient's compliance, again consistent with practices used to monitor program participants' compliance with other program requirements.

The proposed rule also provided a burden relieving measure for PHAs with fewer than 250 units. For these PHAs, they would only be required to report on Section 3 qualitative efforts and would not need to track labor hours for Section 3 workers and Targeted Section 3 workers.

Multiple Funding Sources

The proposed rule created a new section for housing rehabilitation, housing construction, or other public construction projects assisted with funds from more than one HUD program. Specifically, the proposed rule provided that when a Section 3 project is funded by public housing financial assistance, the public housing financial assistance must be tracked and reported consistent with the public housing financial assistance requirements in subpart B, while the community development financial assistance may follow the requirements in subpart B or subpart C. The proposed rule directed that when a Section 3 project receives housing and community development assistance from two different HUD programs, HUD would designate

guidance through a single reporting office.

Integrate Section 3 Into Program Enforcement

Since HUD program office staff are regularly in touch with HUD's funding recipients on other compliance requirements, HUD proposed that program offices incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 an integral part of the program's oversight work. The proposed rule also streamlined the complaint and compliance process to make Section 3 compliance consistent with existing practices for other requirements. The proposed rule shifted the delegation of authority for Section 3 enforcement and compliance responsibilities from the Assistant Secretary for Fair Housing and Equal Opportunity to reside with each of the applicable HUD program offices.

III. Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of Section 3 and the issues raised in the proposed rule, HUD has adopted the proposed rule as final with a few changes in this final rule. HUD also made minor edits to clarify the rule's language. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

Removing Alternative 2 for New Hires



After considering the data, Section 3's statutory goals, and the public comments, HUD is not retaining the tracking of new hires for PHAs, but instead requiring tracking of labor hours for all Section 3 outcomes. HUD agrees with commenters that it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. Using different metrics for different programs would unnecessarily further complicate Section 3 reporting. Tracking labor hours is meant to ensure that Section 3 workers have sustained employment and career opportunities. HUD believes that the use of new hires provides an incomplete measure of the employment and local contracting opportunities available to low- and very low-income persons envisioned by the Section 3 statute. HUD expects the labor hour data to present a more accurate assessment of Section 3's impact. The focus on labor hours will measure total actual employment and the proportion of the total employment performed by low- and very low-income workers, which will mitigate contractors' ability to manipulate their Section 3 outcomes.

Section 3 Project Threshold

HUD received many public comments on proposed changes to the Section 3 Project threshold. HUD still considers the \$200,000 threshold for Section 3 projects appropriate given the percentage of projects that will continue to be covered and are likely to result in opportunities for employment of low- and very low-income workers when expended on construction-related activities. However, in response to public comments, HUD is providing that in this final rule, the Secretary may adjust the threshold, through a **Federal Register** Notice subject to public comment, in order to ensure Section 3 compliance. HUD's proposed rule already provided for the Secretary to update the threshold not less than once every five years based on a national construction cost inflation factor; the final rule now provides that the Secretary updates the benchmarks not less frequently than once every three years. HUD believes adding this flexibility is responsive to the comments received by the public. HUD will continue to work with program participants to adjust the thresholds accordingly, if necessary, based on the updated data provided under this final rule.

Setting a Project Threshold for Lead Hazard Control Grants

HUD also received comments regarding the exclusion of projects under HUD's Lead Hazard Control and Healthy Homes program from the \$200,000 project threshold. Lead hazard control projects are generally smaller, so many commenters suggested a lower threshold for such projects. On the other hand, other commenters noted that not including a threshold for lead hazard control grants altogether may incidentally include small grants that should not be subject to Section 3. For example, some Lead and Healthy Homes Technical Studies grants study the health effects of installed housing components in projects typically smaller than \$100,000. As expected, they did not result in opportunities for employment of Section 3 workers under the previous regulations. At the final rule stage, HUD is therefore adopting a \$100,000 project threshold for all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs. HUD adopted this number to match the contract threshold in the previous regulations (see previous 24 CFR 135.3(a)(3)).

Removing the Qualified Census Tract Definition

After considering Section 3's statutory goals and the public comments, HUD is removing the QCT definition from this final rule. The addition of this criteria was to encourage hiring in the QCT and to make targeted hiring easier, but HUD recognizes that the inclusion of workers in these areas could inadvertently include individuals who are not low- or very low-income. Rather than the broad QCT definition, HUD is limiting the Section 3 worker definition to be more consistent with the statute, which requires prioritization of low- and very low-income workers and YouthBuild participants. This should also alleviate any potential burden on participants associated with the QCT designation.

Changing the Section 3 Business Concern Definition

In adopting the proposed definition of Section 3 business concern in this final rule, HUD is maintaining the over 75 percent of the labor hours performed for the business on construction are performed by low- or very low-income persons standard, but adding in that such performance must be over the last three-month period to help businesses determine whether or not they meet the criteria. HUD is also maintaining a separate criterion for businesses owned and controlled by current public

housing residents or residents who currently live in Section 8-assisted housing, but increasing the required percentage of owned and controlled to 51%. This change is in response to public comments and to maintain consistency with HUD's public housing regulations on contracting with resident-owned businesses at 24 CFR part 963. HUD also added a change to the documentation timing in paragraph (1) of the Section 3 business concern definition to allow a six-month grace period. HUD understands that businesses need time when bidding on contracts and prior to the contract's execution to assemble materials and to assess labor hours. This change is responsive to commenters who expressed concerns about Section 3 status retention, since labor hours can be dependent on the number of contracts on which a business bids and receives.

Changing the Professional Services Definition

In this final rule, HUD is amending the professional services definition to clarify that only non-construction services that require an advanced degree or professional licensing, rather than all non-construction services, are excluded from Section 3. HUD wants to ensure this final rule's emphasis encapsulates the statutory requirement to prioritize low- and very low-income workers, and provides this category of exempted workers from reporting given the challenge to hire low- and very low-income workers in jobs that require such degrees and licensing.

Counting Labor Hours for 5 Years

HUD's proposed rule provided that labor hours for Section 3 workers and Targeted Section 3 workers could be counted as long as the worker met the definition of a Section 3 worker or Targeted Section 3 worker at the time of hire. Based on public comments and further consideration, HUD agrees that a worker whose income has risen should only be counted for Section 3 purposes for a limited time period. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. Therefore, HUD provides that for purposes of reporting the labor hours for Section 3 workers and Targeted Section 3 workers, an employer may choose whether the workers are defined as Section 3 workers for a five-year period at the time of the workers' hire, or when the



workers are first certified as meeting the Section 3 worker definition.

Delayed Effective Date

The rule provides for a delayed transition to labor hours and the associated recordkeeping requirements. HUD recognizes that employers and grantees will need time to transition their systems and reporting practices as a result of this final rule. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period through at least July 1, 2021. During this transition period, HUD expects that employers and grantees will begin following this final rule's requirements for new grants, commitments, and contracts. The exact date on which any particular recipient of HUD funding will be able to implement the conversion to the new requirements will vary during this transition period, but the transition must be complete by July 1, 2021. The reporting requirements and labor hours tracking will not begin until the dates for each entity specified in the "Compliance Date" section above.

IV. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on June 3, 2019, and HUD received 163 public comments. The comments came from state and city government agencies and housing administrations, housing authorities, non-profits, independent consultants, private citizens, housing authority directors, small businesses, the construction industry, and housing authority associations. The following presents the significant issues and questions related to the proposed rule raised by the commenters, and HUD's responses to these issues and questions. HUD would like to thank all the commenters for their thoughtful responses.

"Best Efforts" and "Greatest Extent Feasible"

In the proposed rule, HUD included a specific question for public comment regarding these statutory terms. Some commenters suggested the terms are interchangeable. One commenter suggested that HUD use the term "reasonable best efforts" for CDBG and HOME recipients and remove the term "greatest extent feasible" from the Section 3 regulations or use only "best efforts." Other commenters argued that these words are key to the intent of the statute, which is to provide recipients

leeway when constraints outside their control impede implementation, and recommended that HUD provide guidance materials on how to show best efforts when organizations do not meet their Section 3 goals, such as data collection forms which would indicate best efforts or non-exclusive lists of examples of "best efforts" and "greatest extent feasible."

In contrast, some commenters suggested that these terms are not interchangeable. One commenter said that "best efforts" should be measured by tracking outreach and outcomes of outreach and "greatest extent feasible" is the result of "best efforts." Another commenter argued that "best efforts" can be more clearly defined than "greatest extent feasible," as specific actions can demonstrate efforts, while feasibility is a more passive analysis of what is possible. One commenter argued that the "greatest extent feasible" is a much more rigid and prescriptive standard than the "best efforts" standard and noted that courts have found that the "best efforts" requirement "specifically avoids creating a mandatory obligation on the part of the agencies the statute affects." This "best efforts" standard likewise "does not call for perfect compliance." This commenter encouraged HUD to allow PHAs to retain greater discretion over the development of their own Section 3 programs.

A commenter suggested that Subpart B participants should continue to use "best efforts" while Subpart C participants should use "greatest extent feasible," and agencies receiving funding that triggers compliance under Subparts B and C should use the "best efforts" standard. One commenter suggested using the term "best efforts" to comply with employment, contracting and training opportunities.

Commenters also urged HUD to enforce the terms "best efforts" and "greatest extent possible," suggesting that whatever the standard, if an activity by a recipient, contractor or subcontractor does not adequately serve to hire, train, and retain a Section 3 worker, then it should not meet the standard. These commenters provided an example of a PHA's best effort. Commenters noted that while the recipient or contractor appears to meet the Section 3 goal, or at least made "best efforts" to reach the goal, in practicality such effort is not workable.

One commenter wrote that the terms without any definition are too broad and should be defined to assist in compliance with Section 3. Another commenter proposed that HUD should define the terms by how they will be

measured; for instance, that "best efforts" could be determined by a specific set of metrics around recruitment efforts and the percentage of Section 3 workers in the area. One commenter suggested a way to draft the rule using dollars spent to track compliance such that these terms would not be necessary.

Other commenters requested that HUD not define these terms or should not restrictively define these terms because HUD should trust the judgment and common sense of its professional field staff to determine compliance, because documenting compliance according to specific definitions could create additional administrative burden, because there are constraints outside the grantee's control, and because guidelines may stifle innovation.

HUD Response: HUD appreciates commenters' responses to the specific question regarding "best efforts" and "greatest extent feasible" in the proposed rule. "Best efforts" and "greatest extent feasible" are statutory terms, used in the statute in different contexts. As such, HUD will continue to use both terms to track compliance. HUD agrees with commenters that there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. See 12 U.S.C. 1701u(b)-(d). HUD also agrees with commenters who noted these terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients.

HUD notes that some perceive "best efforts" to be the more rigorous standard, while others perceive "greatest extent feasible" to be the more rigorous standard. HUD has determined not to define the difference between these two terms, but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).



Move to Labor Hours*Support for Using "Labor Hours"*

Many commenters supported the shift to labor hours and, notwithstanding the alternatives presented in the proposed rule for PHAs, encouraged HUD to do the same for public housing construction, modernization, and similar work. These commenters stated that the "new hire" loophole should be eliminated for both housing and community development and public housing projects. Commenters stated that, in practice, contractors have only brought on new hires for short periods of time; the shift to labor hours will promote longer term employment. Commenters also stated that the shift to labor hours would solve the problem of contractors using dishonest practices to meet benchmarks, such as hiring Section 3 residents to fill the 30% benchmark only to lay them off shortly thereafter, or employing Section 3 hires for less than 20 hours a week. Commenters stated that allowing PHAs and their contractors to use "new hires" could provide a loophole to PHAs, allowing them to hire Section 3 workers for a limited or short time frame in order to comply with the regulation. Short-term employment does not allow residents to obtain technical skills, knowledge, or adequate savings. PHAs should be required to use labor hours worked because they can evade Section 3 compliance through manipulative hiring practices.

Commenters stated that the "labor hours" standard is far more effective, less susceptible to manipulation and administratively easier to verify. Commenters stated that the new hire standard is vulnerable to manipulation, because any contractor or subcontractor that performs work on more than one project at a time can easily avoid Section 3 hiring responsibilities by placing their new hires on non-Section 3 covered projects. Commenters asserted the new hire standard may be the single greatest barrier to achieving the employment potential of Section 3.

HUD Response: HUD agrees that counting new hires can be problematic and that collecting labor hours can be a more effective measure. As stated in the proposed rule, HUD believes that counting labor hours is consistent with the statute and mitigates contractors' ability to manipulate their Section 3 outcomes. HUD has adopted the suggestion by the commenters and in the final rule applies the labor hour requirements to both housing and community development and public housing projects.

Support for Using New Hires

Many commenters supported retaining the new hires metrics. Commenters stated that tracking by labor hours is burdensome, will increase administrative costs, and will not streamline the Section 3 reporting requirements. One commenter refuted HUD's hypothesis articulated in the proposed rule and stated that a labor hours metric is unlikely to capture the data on sustained employment opportunities that HUD is seeking. Another commenter stated that the proposed labor hours metric would decrease the number of firms willing to bid on contracts, increase the cost of public contracting for both the PHA and contractors, and provide no appreciable increase in Section 3 workers. Commenters stated that HUD should continue to track compliance by new hires for both Subparts B and C.

One commenter stated that labor hours should only apply to projects that already require the collection of certified payrolls as part of Davis Bacon compliance. Another commenter recommended HUD look to existing programs such as the Department of Transportation's Disadvantaged Business Enterprises for guidance to make substantive changes to Section 3.

Commenters stated that the changes will generate additional administrative burdens. Commenters especially emphasized the potential impact on the Housing Trust Fund (HTF) program and state CDBG and HOME program implementation because states, particularly small and rural community sub-grantees, have limited capacity. Commenters recommended HUD give State CDBG programs a similar alternative to the one offered to PHAs in § 75.15(d). Another commenter proposed HUD allow State CDBG programs to use a good faith assessment of hours, stating that § 75.25(a)(4) will help but will not eliminate the difficulty for State CDBG programs. Another commenter specifically referenced HOME funding and the HTF regulations, noting that stated HTF regulations do not trigger Davis-Bacon and it is rare for a HOME-funded project to trigger Davis-Bacon and prevailing wage requirements.

Commenters stated that HUD's assumption that labor hours are already tracked by most contractors and subcontractors to comply with the prevailing wage requirement is false. Commenters specifically noted that not all CDBG programs are subject to such requirements. One commenter wrote that even a small maintenance contract could result in 6 extra work hours for

staff charged with ensuring correct payroll entries and compliance, stating that a current contract that does not track labor hours would have an increase of approximately \$606,000 of federal funding required to administer the contracts, an additional 5% of costs. Another commenter stated that the proposed shift to labor hours will create an estimated 110 hours of additional administrative effort for the commenter per construction project, and will not impact the duration of Section 3 worker employment or allow HUD to better determine if long-term employment opportunities are generated. One commenter stated that tracking labor hours would require city contractors and subcontractors to track project labor hours using LCPTracker as the city does, necessitating increased administrative staff and resulting in higher contract amounts. One commenter stated that payrolls required for Davis-Bacon compliance are often submitted in hard copy, so compliance with the shift to labor hours would require manual data entry, a significant added labor-intensive task. Commenters also stated that many contractors are small business owners who do not have payroll software and many housing authorities do not have sufficient staff to track hours worked on all projects. Commenters also noted that many medium and smaller sized PHAs do not use LCPTracker and instead rely on contractor payrolls to monitor Davis-Bacon and Section 3. Other commenters stated that tracking hours could be more burdensome than tracking new hires, because new hires are only reported once. Tracking the workers' hours necessitates verifying each Section 3 employee each week for the duration of their employment.

HUD Response: HUD carefully considered the diverse public comments on the use of labor hours versus retaining new hires as the measurement for assessing compliance with Section 3 requirements. HUD believes that the use of new hires provides an incomplete measure of the economic opportunities available to low and very low-income persons envisioned by the Section 3 statute. HUD believes that moving to the labor hours metric provides a more robust measure of how Section 3 is intended to work and mitigates contractors' ability to manipulate Section 3 outcomes. HUD concluded the benefits of the labor hours approach outweighs the marginal cost that would result from this shift. HUD has determined that, while public commenters have concerns about possible burdens that result from the



proposed transition to recording labor hours instead of new hires, it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. The use of labor hours is intended to ensure that recipients of these program funds are fully in compliance with the intent of Section 3—maximizing the economic opportunities arising from Federally funded activities that are available to low- and very low-income persons, including those who reside in public housing.

HUD also notes that the comments revealed a diversity of understanding with respect to HUD's record-keeping expectations in measuring the labor hours metric. HUD does not anticipate the level of detail in record-keeping that is required under the Davis-Bacon prevailing wage framework for purposes of Section 3. The proposed rule does not require prevailing-wage-style payroll reports. HUD does anticipate that either employers have some form of time and attendance system, particularly where employment uses an hourly wage structure, or that employers have salaried staff. The final rule does not require any change in these systems, nor necessitate any software approach to tracking payroll. Those employers that use a time and attendance system to track hourly wages may rely on that data, while the final rule provides a good faith reporting exception which applies to all entities that do not have an existing time and attendance system. The final rule has been modified in an effort to clarify that the good faith exemption applies to all Section 3 reporting entities (not only contractors and subcontractors) and that data from any existing salary-based or time-and-attendance-based payroll records can be used in good faith reporting under Section 3. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period and a bifurcated compliance date. Public housing financial assistance recipients must comply with the reporting requirements starting with the recipient's first full fiscal year after this final rule's effective date. Section 3 project recipients must comply with the reporting requirements starting with the recipient's first full program year for projects committed or awarded after this final rule's effective date.

Many Section 3 Positions Are Short-Term in Nature

One commenter stated that many of the jobs made available under Section 3 requirements are short term positions specific to the needs of the individual project and/or worksite. These positions provide opportunities for the target population of low-skilled workers to build work experience (leading to possible economic advancement) while helping ensure project costs remain reasonable. Another commenter stated that the Section 3 goal leading to long-term employment and career advancement is unrealistic, as most opportunities generated by Section 3 projects are construction-related and therefore seasonal or project-based; it would be burdensome and complicated to track via labor hours long-term employment that results from a Section 3 worker being hired on a subsequent Section 3 project by a different contractor. Contractors do not keep pools of long-term general laborers on hand for consecutive projects as a means of employing Section 3 workers. Other commenters stated that nothing in the statute states that long-term employment through public housing or other housing and community development funding is the goal of Section 3; the statutory intent is to provide employment and training opportunities to residents of low-income communities where Federal housing and community development dollars are being spent, and tracking new hires better meets this intent.

Similarly, commenters stated Section 3 workers are more likely to assist in temporary work for PHAs. Using new hires better fits with this economic reality. One commenter stated that contractors do not reduce the number of part-time employees so they can provide full-time, long-term employment to fewer Section 3 workers. Other commenters stated that the nature of the construction industry is episodic; workers are not employed by one company for long periods of time, but from project to project, and workers often move from one company to another. The number of hours that a specific person works is generally based on what is required for the project and the type of work they are doing. Commenters asserted it is unreasonable to think that hours for lower-skilled employees will dramatically be increased for a specific construction project by moving to a "labor hours" standard.

Commenters also stated that the move to labor hours will confuse contractors and create more complexity. Another

commenter anticipated pushback from contractors declining to bid, which can lead to an increase in the cost of developing affordable housing. Commenters stated that tracking labor hours could provide contractors with an incentive to hire fewer low-income residents by employing those hired for a greater number of hours. This would have a negative effect on the number of low-income residents hired overall.

HUD Response: HUD recognizes that many Section 3 opportunities are short-term employment opportunities. The shift from measuring new hires to measuring labor hours continues to value these short-term opportunities as creating significant economic opportunities for low- and very-low-income workers, and these short-term opportunities will likely remain a primary source of Section 3 opportunities. At the same time, the shift in metrics more accurately reflects the nature and extent of these employment opportunities and places greater relative weight on those opportunities which do provide long-term career ladders and sustained employment opportunities.

There is no obligation on a reporting employer to track an employee's work beyond the immediate short-term seasonal or project-based employment. The opportunity to track an employee over time is solely an opportunity which can be seized by those reporting employers who have invested the extra time and effort to nurture an employee over time. That extra effort to develop a career track is not recognized by the previous new hire metrics but is recognized in the labor hour metrics. It should be noted, however, that the use of the labor hour metric to reward retention applies only to the relationship with the current employer. (See § 75.11(a)(2) "A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years . . .") This provides an option for employers to look back to the worker's status at the time of original employment but does not require that an employer do so if the employer only wants to reference the employee's current status. Contrary to the concept referenced in the comments, there is no ability to claim long-term employment when hired on a subsequent Section 3 project by a different contractor.

This rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in low- and very low-income workers. It is HUD's opinion that the change from new hires to labor hours, in combination with the opportunity to



provide good faith assessments, is consistent with businesses' existing payroll systems. Finally, HUD is of the opinion that this change will better advance the goal of sustained employment and career opportunities for low- and very low-income workers.

Alternatives

Several commenters suggested alternative frameworks for measuring Section 3 results, in some cases using the labor hours metric and/or the new hire metric already articulated in the current and proposed rules and in some cases proposing new alternative metrics entirely.

Some commenters recommended including definitions for both Alternative 1 and Alternative 2 so that agencies may exercise whichever option best suits their local circumstances. One commenter recommended using the \$200,000 project threshold or \$400,000 recipient threshold to determine whether labor hours or new hires should be the appropriate reporting metric, as larger projects have greater potential to create long term employment opportunities. One commenter focused on the safe harbor benchmark, stating PHAs should have the choice of labor hours at 10% or new hires at 30%. A commenter stated that if labor hours is adopted, all recipients and subrecipients should have the same flexibility allowed to PHAs.

Another commenter stated that "labor hours worked" should be used in conjunction with "30% new hires." The commenter wrote that many PHAs do not track the generated new hires metric making the current 30% of new hires mandate irrelevant—some PHAs allow contractors and subcontractors to select how many hires they will take onto a project despite it coming short of the 30% benchmark. The commenter wrote that tracking both "labor hours worked" along with the "30% new hires" provides further assurance that a recipient's contractors and subcontractors do not avoid their responsibilities to pay the prevailing wage in accordance with the Davis Bacon Act.

Other commenters argued neither labor hours worked, nor number of new hires are accurate metrics for Section 3 compliance and impact, where the goal of Section 3 is sustained economic independence and economic enhancement for Section 3 workers in and around HUD's investment areas. Commenters suggested compliance should instead be measured by: (1) Payroll dollars paid to Section 3 employees; (2) training dollars spent training Section 3 workers; and (3)

contract dollars paid to Section 3 contractors. Commenters further asserted tracking employment status would be unnecessary if all Section 3 employment payroll dollars were captured as a percentage of gross payroll dollars instead. Another commenter stated that an alternate suggestion would be to delineate Section 3 workers as full-time or part-time, and that tracking hours by using these two categories would be effective while still giving HUD information about the hours being completed by each worker. One commenter recommended Alternative 2, which continues to track new hires with the addition of Targeted Section 3 workers.

One commenter stated that transparency is needed, and the new revisions of Section 3 should include that contractors and subcontractors must make public the total amount of workers expected to complete a construction project.

Commenters proposed a third alternative to the two proposed, which is to stay with the current existing Section 3 goals, for both new hires (30% of new hires) and for contracting with Section 3 business concerns (10% of construction dollars and 3% of other dollars). Changes to what is already understood by contractors will be administratively burdensome and will require additional education and training for contractors and subcontractors.

HUD Response: HUD appreciates the alternatives suggested and has considered the various comments regarding the alternatives presented in the proposed rule and the modifications to those alternatives presented in the comments. HUD has concluded that both the use of Alternative 2 (New Hires) and the use of a hybrid drawing from both Alternative 1 and Alternative 2 provide an incomplete measure of employment opportunities generated through Section 3. Therefore, HUD decided not to retain the new hire standard. Rather than apply new hires recordkeeping to some programs and labor hours to others, HUD believes it is more efficient and effective for purposes of HUD's objectives with respect to Section 3 to apply the same standard across the board. HUD has determined to align Section 3 reporting requirements with typical payroll business practices by tracking labor hours (whether based on prevailing wage data, non-prevailing wage time-and-attendance system data, good faith assessments of hourly workers not tracked through a data system, or good faith assessments of salaried employees). While commenters varied

on whether tracking Section 3 outcomes through labor hours will be easier for recipients of HUD funding, HUD has concluded that the consistent labor hours metric more accurately reflects the impact of Section 3 and the economic development opportunities created. With respect to the alternatives regarding aggregate payroll tracking or tracking full-time and part-time positions, HUD believes that tracking of labor hours will adequately show hours worked. HUD has determined that tracking of training will be done qualitatively when appropriate.

Process for Tracking Labor Hours

Commenters stated that while they appreciated the idea of streamlining the metric, tracking new hires vs. hours may be a disincentive to developers if the tracking is more onerous or complicated than the current method. If tracking labor hours is a goal similar to Davis Bacon, then the process should be fully integrated with the Davis Bacon procedure including the duration of tracking (only until project completion), reporting requirements, and procedures. Commenters stated that ascertaining whether an employer has any new hires is not a simple task; it involves (1) reviewing pre-award payroll records to determine who was on the employee's payroll at the time of contract award and (2) reviewing ongoing payroll records for the duration of the contract to determine whether any new employees have been hired. Commenters also stated that it makes no sense to apply the "labor hours" standard to only one type of construction and rehabilitation project but not to another, based solely on the type of HUD funds involved. If a contractor employs no Section 3 workers, there should be no requirement to provide the data.

Commenters stated inexpensive software is available that enables contractors to submit electronic payroll reports and allows PHAs and other Section 3 funding recipients to easily determine the hours worked on the project, in each trade, by all workers and by Section 3 residents. Commenters noted such software is available to recipients of housing and community development assistance and also to PHAs and other public housing financial assistance recipients. Commenters stated that commonly used Contract Management and Payroll systems such as LCPTracker and B2GNow have features that align with compliance practices and make monitoring more effective. One commenter stated that HUD could provide appropriate software to all



agencies to assist them in tracking and reporting labor hours. A commenter noted that its city has a Federal labor standard software tracker which only 21% of contracts use, and this rule would require 100% of contractors to use the software, resulting in increased administrative work, contract costs, and system management.

One commenter noted that it would be easier to track labor hours with LCPTracker software if the reporting were more aligned with Davis-Bacon reporting. Commenters also saw potential in the hourly tracking if there were a way to eliminate double paperwork by adding Section 3 reporting to the existing Davis-Bacon worksheets. On the other hand, when Davis-Bacon does not apply to a Section 3 project, some commenters felt the administrative burden of tracking hours could be higher. More information would be needed about how the reporting requirements would be implemented before it could be definitively agreed that tracking hours is less burdensome than tracking new hires.

HUD Response: HUD recognizes the diversity of views on whether tracking labor hours would be less burdensome for organizations obligated to report Section 3 results. Based on the comments, HUD has concluded that it is likely to be less burdensome to track labor hours in many circumstances, and HUD has clarified the applicability of the good faith exemption to mitigate any potential burden for those who do not have payroll systems which would align to a labor-hours reporting metric. For those efforts subject to Davis Bacon requirements, which includes many HUD-funded construction endeavors, tracking labor hours consistent with existing tracking for prevailing wage requirements would almost certainly reduce burden on recipients. HUD is aware that there are existing software options that have the potential for capturing total labor hours and labor hours contributed by Section 3 workers. HUD also is exploring whether and how to operationalize and integrate HUD's Section 3 Performance Evaluation and Registry System (SPEARS) with outside software vendors. The SPEARS system already has optional data fields to capture the Aggregate Number of Staff Hours Worked and Total Staff Hours Worked by Section 3 Employees, and the system will be modified to align with the final rule. Underlying these considerations, however, is HUD's belief, as described above, that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated, and

that the metric should be consistent without regard to the identity of the recipient of HUD funds. Unlike a labor hours measure, the new hire measure does not consider the share of actual work done by low- and very low-income workers, and new Section 3 hires may not be given the opportunity to work a substantial number of hours.

Labor Hours Based on Good Faith Assessment

One commenter stated that the proposed new rule allows for recipients to rely on a contractor's "good faith assessment" of labor hours (rather than payroll reports) if the contractor is not subject to other requirements specifying time and attendance reporting. Since a large proportion of housing rehabilitation and construction projects do not meet the unit thresholds that trigger Federal labor standards (*i.e.* eight units for CDBG, 12 units for HOME), grant administrators will regularly have to report labor hours based on a contractor's "good faith assessment." Use of this approach will introduce an unknown error margin into the calculation of labor hour benchmarks. This lack of data integrity calls into question the meaning of the proposed benchmarks and the soundness of using "labor hours" as a unit of measurement. Commenters stated that Section 3 businesses who report labor hours in "good faith" need to have specific recording requirements (*i.e.*, software) to avoid manipulation; it is more efficient to rely on tracking systems instead of contractors' good faith submissions. Commenters stated that not all HUD construction projects are subject to Davis-Bacon compliance and even a good faith assessment of labor hours will require significant PHA resources to monitor, review, and compile. One commenter stated that while the proposed rule states that HUD will permit "a good faith assessment of the labor hours" for certain employers, recipients could still be required to establish new compliance procedures, including determining how to protect the privacy of Section 3 workers and businesses when supplied with labor hours supporting documentation.

HUD Response: The final rule is explicit that employers are not required to acquire a time-and-attendance system in order to comply with the Section 3 rule. The "good faith assessment" is a limited exception to be used by employers who do not have systems in place to track labor hours. This rule was put in place to avoid increased administrative burdens. HUD is aware of the margin of error represented in the good faith assessments, but has

concluded that even with this margin of error, the labor hours metric provides a more accurate reflection of the economic opportunities created in connection with HUD-funded activities than the new hires metric. The exception does not apply if the employer is subject to other time-specific requirements.

Section 3 Applicability Threshold, HUD's Lead Hazard Control and Healthy Homes Programs and All Section 8 Programs

Total Funds Threshold or per Project Threshold Versus an Increased Threshold

The proposed rule set the Section 3 applicability threshold for Section 3 projects to projects where the amount of assistance exceeds \$200,000. HUD received comments both in favor of maintaining the current \$200,000 threshold and in favor of the new proposed threshold. Commenters also addressed the use of a project versus a total funding threshold. In addition, other commenters provided a range of alternative frameworks for setting the threshold amount—different numbers and the inclusion or exclusion of different kinds of funding in the threshold calculations.

Some commenters recommended that the \$200,000 threshold be based on the total amount of funding received within the fiscal year because it is a more simplified and streamlined process. Commenters stated the change to a per project threshold would result in many housing production projects that are mainly small and resource constrained having to comply with Section 3 requirements for the first time, noting that a per project threshold can become complicated and burdensome when a recipient handles a large volume of contracts that are funded by multiple sources. Commenters went on to state that a per project threshold would reduce the number of economic opportunities directed to low-income persons and recommended continuing to subject Project Based Voucher programs to Section 3 requirements to ensure those opportunities are directed toward low-income persons and businesses that employ them. Commenters in this line of thought noted that the \$200,000 per project threshold would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total project funding is much higher. Commenters stated this could lead to a decrease in the number of projects subject to Section 3 and an



overall reduction in Section 3 program impact.

Other commenters supported the per project threshold generally without commenting on the amount or supported the \$200,000 per project threshold and saw it as an improvement. Some of these commenters noted that while \$200,000 is an improvement over the current threshold, it does not relieve underlying concerns that contractors may break up activities into small contracts of less than \$200,000 each to avoid accountability. Several commenters agreed that a \$200,000 per project threshold would still allow contractors awarded significant funding to avoid Section 3 requirements by carrying out small discreet activities even though they cumulatively spend more than the threshold amount. A commenter suggested that the final rule include a prohibition on such activity, so that HUD has authority to pursue enforcement measures if HUD determines a recipient is "gaming the system" to avoid Section 3 obligations.

Other commenters provided alternative threshold amounts at a range of figures up to \$1 million. Some commenters stated the \$200,000 per project threshold will not necessarily result in employment opportunities for low-income people, arguing a higher project amount does not inevitably translate to the need for new employees or a benefit to Section 3 business concerns. Commenters suggested an alternative \$250,000 threshold which would coincide with the Office of Management and Budget simplified acquisition threshold and could automatically change when that amount is updated. Other commenters supported using the \$250,000 threshold for all projects to include PHAs. Some large PHAs with Section 3 experience recommended raising the threshold to \$350,000 on a per project basis and making this threshold consistent across all programs and funding sources. Commenters in agreement with this notion also noted that HUD has determined that employment opportunities in CDBG funded projects under \$350,000 are very minimal, and these commenters argued that the same is also true of public housing projects. Commenters also recommended \$400,000 or higher to increase the number of program recipients exempted from Section 3 requirements from less than 4 percent to 20 percent, greatly reducing the compliance burden for smaller grantees. Still other commenters recommended a higher threshold of \$750,000, tied to the single audit threshold, noting that smaller grants

generally will not involve sufficient hiring opportunities to warrant the increased administrative burden. Other commenters recommended that a \$1 million threshold would be a better measure of a project of a scale that would have the potential to drive the hiring of Section 3 workers and justify the additional administrative burden on recipients, subrecipients, and contractors to implement the program, particularly state CDBG programs that primarily fund public infrastructure. Another commenter recommended exempting grantees that receive \$1 million or less annually in CDBG or HOME funds because such grantees focus on a finite set of activities that involve small projects.

Commenters stated that a low threshold will create an undue compliance burden for small projects. Commenters suggested that adopting a higher per project threshold would still ensure the majority of CPD grants are covered but would likely offer significant regulatory relief for smaller grantees, builders, developers, contractors, and subcontractors who are disproportionately burdened by regulatory obligations. Some commenters who advocated for a higher threshold linked their reasoning to the effect of the threshold amount on contractors and subcontractors, noting that Section 3 obligations apply to recipients, their sub-recipients and so on. Commenters described cases in which builders forgo using covered funds to avoid the liability and compliance burdens of Section 3, and situations where developers experience costly delays on projects while searching for qualified subcontractors who are not deterred by the Section 3 paperwork and certifications.

Commenters also suggested that both a recipient threshold at \$400,000 and a project threshold of \$200,000, applicable across all programs, would be most appropriate to reduce reporting burdens with a limited impact on the dollar amounts of funding covered. Another recommendation was to apply Section 3 obligations to any entity that receives at least \$200,000 during a program year for a specific program activity. Other commenters suggested either the threshold for contracts should remain \$100,000 in HUD assistance; or a "total contract value" threshold should be defined that will trigger Section 3 on HUD-funded contracts, regardless of the dollar amount of the HUD funding. Other commenters offered an alternative threshold of 10 percent of construction costs per project. Commenters also reiterated that some CDBG grant awards are very small,

ranging from \$50,000 to \$200,000, so units of general local government have difficulty finding contractors to bid on the projects, let alone finding a contractor that is a Section 3 business concern and is willing to work on a small project. Finally, commenters suggested limiting activities that trigger the threshold to only construction and rehabilitation, as defined within the Section 3 statute for CDBG, HOME and other CPD programs.

HUD Response: HUD acknowledges the considerations raised by all the commenters in their responses. HUD found that the portion of Section 3 expenditures excluded by the \$200,000 per project threshold generate relatively few Section 3 jobs. After weighing the various considerations, this final rule maintains the \$200,000 per project threshold in general but makes changes to the Lead Hazard Control & Healthy Homes Programs threshold. HUD believes that project funding levels help accurately define thresholds because the amount of funding spent on a project is directly related to the economic opportunities generated by the project. HUD acknowledges the potential disadvantages mentioned by commenters to using a per project threshold but reiterates the per project threshold will help provide opportunities for those who are recipients of Federal financial assistance for housing or residents of the community in which the Federal financial assistance is spent. In addition, HUD remains open to adjusting thresholds in the future based on updated data analysis. The final rule clarifies that HUD may change the thresholds and benchmarks at a later date via **Federal Register** notice, subject to public comment, based on updated data input and accounting for inflation. HUD also notes that not every contractor, subcontractor or sub-recipient must use Section 3 workers. A funds recipient could meet its Section 3 benchmarks with one contract to a Section 3 business concern where the number of labor hours worked is 25% or more of all the labor hours worked by all workers on a Section 3 project while not using Section 3 workers for other work. The recipient has flexibility in determining how to meet its benchmarks.

Lead Hazard Control & Healthy Homes Programs Inclusion

Commenters who advocated for a single consistent per project threshold across all programs stated that the Lead Hazard Control and Healthy Homes programs should also be subject to the same threshold. Other commenters



agreed that Lead Hazard Control and Healthy Homes projects should be exempted from administrative and compliance burdens based on a threshold of \$200,000 or greater, stating these projects are unlikely to generate many employment opportunities because they are small and Lead Hazard Control abatement and interim controls is to be done by trained and certified workers.

Some commenters agreed that including Lead Hazard Control projects with no threshold would increase the administrative burden without a benefit, and while the exclusion is understandable, HUD should pursue a standardized threshold to avoid complicating Section 3 by creating a different scope for Lead Hazard Control and Healthy Homes programs. Commenters generally supported higher thresholds for Lead Hazard Control and Healthy Homes programs. A commenter suggested it may be appropriate to use the community development assistance threshold for simplicity. Alternatively, commenters suggested a more modest reporting threshold of not less than \$50,000 for Lead Hazard Control and Healthy Homes projects, stating that for grantees working on multifamily projects in high cost cities, projects where the contract is less than \$50,000 tend to be awarded to smaller contractors. A \$50,000 threshold would meet HUD's admirable intention of ensuring greater Section 3 participation from Lead Hazard Control and Healthy Homes grantees without imposing hardship on such small contractors.

HUD Response: HUD agrees that the \$200,000 threshold should not apply to Lead Hazard Control and Healthy Homes programs since those projects are generally smaller dollar amounts. However, in keeping with Section 3's statutory priorities and applicability, HUD is choosing to adopt a \$100,000 project threshold regarding application of Section 3 to Lead Hazard Control and Healthy Homes programs.

Section 8 Programs Exclusion

Many commenters supported the exclusion of Section 8 programs in the proposed rule, as Section 8 programs are not included in the statute. Commenters went on to note that because Section 3 programs are development subsidy sources and Section 8 programs provide operating subsidies, Section 8 assistance recipients should not be subject to Section 3 regulatory responsibilities. Commenters noted that the primary purpose of Section 8 programs is to provide a rental subsidy that covers the difference between the contract rent and 30 percent of the tenant's income,

stating these programs are "affordability tools, not construction tools," and agreed HUD should not increase regulatory burdens on housing providers by expanding the scope of Section 3 to programs not covered in the statute.

Some commenters urged that for Subpart B, HUD should retain an option for PHAs to report on Section 3 requirements for Section 8 funded programs, noting that these programs generate significant employment and training opportunities for Section 3 workers. Commenters suggested HUD format Section 3 reporting so that Section 8 funded placements can be captured as part of a PHA's overall efforts. Commenters also suggested the current reporting system be updated to allow for the reporting of other placements that might be excluded with the new proposed rule, such as placements under professional service contracts.

HUD Response: Section 8 programs are not covered under the Section 3 statute. Therefore, HUD in this final rule maintains the clarification in the proposed rule that Section 8 programs are excluded from Section 3 requirements.

Section 3 Project Definition

Commenters recommended that HUD more clearly define "project" for the purpose of Section 3, and asked how HUD would view a job order contract of more than \$200,000 that may work on various locality-owned sites (e.g., all of a locality's schools or homeless shelters). These commenters also asked, if several unrelated HUD-funded activities are taking place at the same location and have a combined value of more than \$200,000 constitutes a project. Lastly, the commenters asked whether the per-project threshold is based solely on construction-related activities, and whether the level of Federal assistance to a project must exceed the \$200,000 threshold to trigger Section 3.

Another commenter recommended that HUD define "project" as follows: Project means a site or sites together with any building or multiple buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with Section 3 covered funds as a single undertaking. A program that funds multiple buildings under separate ownership, management and financing is not a project.

HUD Response: HUD supports the Section 3 Project definition within the proposed rule and believes it is consistent with the statutory

requirements of HUD programs. HUD also intends to provide sub-regulatory guidance and technical assistance on a program-by-program basis to assist recipients with Section 3 implementation.

Section 3 Worker

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

Commenters stated that the rule, particularly the definitions of Section 3 worker, rewards creating opportunities for persons who are not low-income, which would be counterproductive to the intent of the Section 3 program. A commenter stated that the proposed definition could inadvertently include individuals who are not low-income because categories (ii) and (iii) are not income-based.

Specifically, some commenters objected to category (ii) which allowed workers who live in a Qualified Census Tract (QCT) to be included in the definition of "Section 3 worker" because these individuals will not necessarily be low-income. One commenter noted this is especially true in large metropolitan cities with mixed income communities and gentrifying areas. Another commenter stated that researching employee residence as of the date of hire to determine census tract qualification will be difficult or impossible for long-term employees who may have moved multiple times. Commenters warned that the QCT designation would create a risk of potential abuse by recipients. Some commenters suggested removing the QCT criteria altogether since the definition already includes a low- or very low-income person.

Other commenters objected to category (iii) which included all Section 3 business concern employees as Section 3 workers. These commenters stated that someone working at a Section 3 business concern is not necessarily a resident of HUD-assisted housing, nor is it likely that a business owned by 51% low-income people would hire only public housing or HUD-assisted residents. For this reason, commenters recommended that HUD should exclude "a worker employed by a Section 3 business" from its definition and benchmarks and the definition of Section 3 worker and Targeted Section 3 worker. One commenter noted the phrase "worker is employed by a Section 3 business" is included in both the Section 3 worker and Targeted Section 3 worker definitions and recommended including this term in the Targeted Section 3 worker definition



only and not the Section 3 worker definition.

HUD Response: HUD agrees that paragraph (1)(ii) could inadvertently include individuals who are not low-income. This final rule removes paragraph (1)(ii) regarding the QCT from the definition of "Section 3 worker" from this final rule. However, HUD disagrees that the category of Section 3 business concerns should be removed from the Section 3 worker and Targeted Section 3 worker definitions. The Section 3 statute states that HUD must prioritize Section 3 business concerns. If HUD did not include Section 3 business concerns in the definitions that are used for the benchmarks, PHAs and other HUD funded entities would have no incentive to hire Section 3 businesses. Including all Section 3 business concern employees in the definition of Section 3 worker and Targeted Section 3 worker creates an incentive to contract with a Section 3 business while maintaining a single reporting metric. The final rule maintains that all hours worked on the project by the Section 3 business counts towards the benchmarks. HUD believes these changes are consistent with the statute.

Prior Conviction

One commenter wrote that convictions for certain categories of crimes may have a direct bearing on the worker's suitability for particular jobs. Previous theft convictions, for example, may be relevant for a worker who will be involved in procurement and distribution of materials. Other commenters supported this language, stating that "there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success." The commenters also noted that the language is consistent with other HUD guidance on the use of background reports in housing decisions. However, one commenter suggested a minor revision to clarify the regulation: "A recipient, contractor, or subcontractor shall not refuse to hire a Section 3 worker on the basis of a prior arrest or conviction, unless otherwise required by Federal, state, or local law."

HUD Response: HUD agrees with the commenters that convictions for certain crimes, such as fraud or theft, might affect a worker's qualifications for a particular position, and that "there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success." HUD notes that the Section 3 worker definition provides that an individual's prior arrest or conviction shall not negatively impact their Section 3 worker

status, but the definition maintains the requirement that the individual is qualified for the job. Job qualifications may include the worker's arrest or conviction history. The rule does not require a Section 3 worker with a criminal history to be hired. HUD has considered the suggestions and has chosen to keep the regulatory language in § 75.5. *See Section 3 business concern*, § 75.5 ("The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees."); *Section 3 worker*, § 75.5 ("The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction."); *Targeted Section 3 worker*, § 75.5 ("does not exclude an individual that has a prior arrest or conviction.")

Additional Categories

One commenter stated that the proposed rule no longer explicitly lists a public housing resident as a "Section 3 resident" and does not provide for the employer to continue counting that worker in the future. Another commenter suggested that staff hired by a PHA should be counted toward Section 3 requirements. Commenters suggested additional categories and expansion of existing categories, and requested HUD explicitly list the following: people immediately prior to hiring are public housing, Section 8, Section 811, Section 202 residents or other low-income people, and women. Commenters recommended that a "Section 3 worker" should be a worker whose income is below the limit set by HUD, or a resident of public or HUD-assisted housing.

One commenter supported the change to using an individual's status as low-income versus household income, which will increase the pool of persons that can be counted as a Section 3 worker and make meeting the benchmarks more attainable. Commenters requested clarification on whether the HUD-defined low-income level will be based on individual or family income and one commenter recommended the use of only an individual's income.

HUD Response: HUD wants to clarify that, while the definition of Section 3 worker does not include public housing residents, it does include all workers whose income is below the income limit established by HUD, which is the same limit that would qualify someone for public housing. Therefore, public housing residents would be considered Section 3 workers. HUD does not believe that all staff hired by a PHA should be counted as Section 3 workers.

Those staff that meet the qualification of a low or very low-income person, as defined by HUD's income limit, would already qualify, and HUD does not think it is appropriate to include all PHA staff. As for expanding the categories further, the Section 3 statute is specific as to the priorities that HUD should be providing with employment and other economic opportunities generated by Federal financial assistance. Therefore, HUD is not expanding the scope of Section 3 workers beyond those listed in the statute. HUD changed the Section 3 worker definition to include a worker whose income is below the income limit established by HUD in place of the family income and appreciates the comments in support of the change.

Setting Time Limits

Commenters recommended that HUD should keep the existing standard of a three-year period for counting workers in order to account for staff turnover and to generate more accurate metrics. Other commenters recommended HUD limit someone counting as a Section 3 person to 5 years. Another commenter stated that because many contractors and subcontractors report no new hires for specific projects, a Section 3 worker should be defined as one who "at the time of hire" was low- or very low-income. One commenter asked HUD to be more specific in defining a Section 3 worker rather than stating low-income is a "limit established by HUD."

HUD Response: HUD agrees with the commenters that a worker whose income has risen should only be counted for Section 3 purposes for five years. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. An employer may choose whether the workers are defined as Section 3 workers for that five-year period at the time of the workers' hire, or the date from which the workers are certified as meeting the Section 3 worker definition.

Guidance

Commenters requested that HUD provide more specific guidance regarding how to calculate labor hours for the purpose of determining Section 3 status. For example, is there a set timeline for consideration, such as during the past year or several years? Or is it based on the business' last 1–2 payrolls to capture the most recent picture of employment? Commenters stated that it is unclear over what time period labor hours are to be measured.



One commenter stated that it is unclear whether the "labor hours" standard relies on the labor hours on the Section 3 project, or in general.

HUD Response: HUD will provide additional guidance to assist PHAs and grantees in how to calculate labor hours. Generally, labor hours will be calculated based on the labor performed on a Section 3 project for housing and community development financial assistance or on all labor hours performed within the fiscal year for public housing assistance.

Subrecipient

One commenter stated that using the applicable definition of subrecipient in the HOME program would mean that multifamily owners contracting directly with the State may not have to comply with Section 3 requirements because they are not included in that definition for the HOME program in 24 CFR 92.2. This commenter also noted that multifamily owners are also not often contractors (under the proposed definition), because they do not enter into a contract with a recipient to perform the work. This commenter suggested inclusion of owners in the HOME program and changing the definition of subrecipient to say "has the meaning provided in the applicable program regulations, and in 2 CFR 200.93" or suggested HUD amend the definition of contractor to further define the phrase by adding "work in conjunction with a Section 3 project," to more clearly identify that it includes an owner in the HOME program that contracts with general contractors.

HUD Response: HUD appreciates the comment. However, subrecipient has different meanings in different programs, which is why HUD defined it as either the meaning as is applied in the specific program or 2 CFR 200.93.

Targeted Section 3 Worker Definition

Some commenters supported the new "Targeted Section 3 worker" definition and eliminating tracking Section 3 business concern types separately. Some commenters stated that the Targeted Section 3 worker concept is consistent with the goal of expanding employment opportunities for individuals that receive Federal assistance for housing. Another commenter agreed with HUD's efforts to track and target certain high priority Section 3 workers separately and efforts to fold Section 3 business concern engagement into other benchmarks.

Other commenters opposed the "Targeted Section 3 worker" definition, stating that it is duplicative with worker categories already given preference

under § 75.9. Commenters stated a separate reporting category for "Targeted Section 3 worker" merely complicates reporting requirements for recipients, contractors, and subcontractors, and recommended HUD keep the existing definition and the existing priority preference order. Other commenters noted that tracking additional information to determine Section 3 compliance would be burdensome.

A commenter recommended that hours worked by Section 3 business employees be categorized as regular Section 3 worker hours and Targeted Section 3 worker hours depending on the employee's status to avoid inflated reporting of hours worked by targeted Section 3 workers. Other commenters suggested that a worker employed by a Section 3 business only be included in the "Targeted Section 3 worker" definition because it was created to better align the regulation with the law.

Commenters stated that counting all Section 3 business concern employees as Targeted Section 3 workers is problematic and risks questionable data. HUD should exclude "a worker employed by a Section 3 business" from the definition of Targeted Section 3 worker and Section 3 worker. Including "a worker employed by a Section 3 business" in the definition of "Targeted Section 3 worker" dilutes the purpose of creating a Targeted worker designation. It also frustrates the purpose of the statute, which is to give priority to public housing and other HUD-assisted residents in employment and training opportunities, along with low-income families near the Section 3 project location.

Commenters also suggested that HUD include public and HUD-assisted housing residents in the Targeted Section 3 worker definition for Section 3 projects, not just PHA projects. The proposed definition of Targeted Section 3 worker for PHA projects more accurately interprets the statutory priority of Section 3 to employ public housing and other Federally assisted residents than the definition for CPD recipients. One commenter recommended that HUD include the word priority in the definition of "Targeted Section 3 worker" to clarify the requirements and add objective criteria or guidance by which to monitor or measure success or satisfactory performance.

HUD Response: HUD appreciates the commenters' recommendation to target public and HUD-assisted housing residents in both funding types. However, the statute specifies priority categories differently for recipients of

public housing financial assistance and housing and community development financial assistance. The Targeted Section 3 worker is a concept designed to serve as a proxy for the highest priority categories, allowing HUD to collect data through standardized reporting regarding the funding recipients' efforts with respect to the priority categories. HUD believes that the definitions of Targeted Section 3 worker for both public housing financial assistance and other housing and community development financial assistance funds provide good reporting proxies for the statutory priorities and should remain as proposed. As Targeted Section 3 workers are a proxy for the priority categories solely for reporting purposes, and do not replace the prioritization that funding recipients must apply in their efforts under Section 3, the use of the word "priority" in the definition would be inappropriate.

§ 75.11 Targeted Section 3 Worker for Public Housing Financial Assistance

Commenters stated that HUD should combine 75.11(a)(2)(i) and (ii) into a single category, "residents of public and HUD-assisted housing" to more clearly include residents of all HUD-assisted housing programs and conversion projects. Commenters supported the addition of Section 8 assisted households. This change mirrors the Section 3 statute, which broadly emphasizes employment and training opportunities for "recipients of government assistance for housing." Some commenters recommended deleting paragraph § 75.11(a)(1), because it is redundant with § 75.5. Commenters also asked HUD to clarify what "residents of other projects managed by the PHA" covers. One commenter suggested HUD add "administered by the PHA" when describing Section 8 assisted housing.

HUD Response: HUD appreciates the support for the categories in § 75.11 and recommendations to make changes to include additional HUD programs. HUD believes that consistent with the statute, the Targeted Section 3 worker definition for public housing financial assistance should focus on the categories as listed. To be inclusive of residents in other housing assisted by the PHA and residents of housing in the property management portfolio of the PHA, both categories have been included in the regulation in place of the vaguer term "managed by the PHA." Those residents would also count as Section 3 workers for purposes of Targeted Section 3 workers for public housing financial assistance. The rule's current "resident



of other projects managed by the PHA" has been replaced, which should address the commenter's concerns.

§ 75.21 Targeted Section 3 Worker for Housing and Community Development Financial Assistance

One commenter wrote that limiting the definition to a geographic area eliminates large sectors of nearby Section 3 workers and business. Another commenter noted some State CDBG programs do not operate in areas where public housing residents or YouthBuild participants typically live. Commenters also stated that the proposed definition gives broader opportunity to identify low-income construction employees for Section 3 projects but requires wage calculations and census tract verification from contractors already burdened by paperwork and will remove the focus from employing eligible persons living within a neighborhood.

HUD Response: HUD retained the proposed Targeted Section 3 worker definition in the final rule. The rule creates the "Targeted Section 3 worker" concept so that HUD can track, and recipients can target, the hiring of Section 3 workers in selected categories based on the statute's hiring priorities. The Targeted Section 3 worker category also incorporates the statutory requirements of contracting with business concerns employing low- and very low-income persons. For other HUD housing and community development financial assistance programs, such as the State CDBG program or HOME Investment Partnerships programs, Targeted Section 3 workers would be low- or very low-income workers residing within a one-mile radius of the Section 3 project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached.

The requirement that contractors verify whether workers are low or very low-income for tracking purposes is not new. Contractors were already required to verify new hires as qualifying for Section 3 status, and the statute requires that employment and other economic opportunities generated by work in connection with housing rehabilitation, housing construction or other public construction projects receiving housing and community development assistance be directed to low- and very low-income persons in the local community. HUD's proposal to use Targeted Section 3 workers for housing and community development programs that fall within a defined service area should reduce burden because HUD's mapping tool

will identify the jurisdiction the contractor should target.

§ 75.5: Section 3 Business Concern Definition

Previous Rule's "Dollar Value" Method

Commenters stated that the previous "dollar value" method of reporting contracts awarded to Section 3 business concerns should be kept, as it gives recipients and general contractors a clear benchmark to achieve when selecting subcontractors and aligns with methods many are already using to report on minority-, women-, and veteran-owned businesses. Commenters noted Section 3 is designed to promote wealth-building in addition to employment opportunities and the "dollar value" method is a better measure of economic opportunities provided to low-income owners of Section 3 business concerns than the labor hours worked by their employees. Without having a metric tied to the number of contracts awarded to Section 3 business concerns, commenters anticipated a reduction in the number of contract awards, and a reduction in employment opportunities. One commenter stated that both definitions will likely continue to be a challenging means of qualifying for eligibility and may prove difficult to document.

HUD Response: HUD found the Section 3 business concern definition to be consistent with both the previous regulation and with the statute, although HUD notes that the final rule's definition does impose more rigorous criteria for qualifying as a Section 3 business concern with respect to the percentage of workers who must be Section 3 workers. This additional rigor in the criteria ensures that, if qualifying on the basis that the firm employs Section 3 workers, a high percentage of workers are in fact Section 3 workers, and ensures that, if qualifying on the basis that the owner is a low-income individual, the owner is in operational control and will benefit from the wealth creation opportunities. The changes to the Section 3 business concern definition do not depend on the change in reporting to a labor hours metric.

HUD recognizes that some in the industry have found the "dollar value" method to be workable, and that the dollar value metric does provide a measure of the extent of contracting to Section 3 business concerns. However, HUD believes there is value in having a unitary reporting metric—labor hours—and has designed the metric to measure both direct employment and to reflect prioritization of contracting with Section 3 business concerns. HUD

believes that this new method will be effective, will encourage wealth creation opportunities for the owners of Section 3 business concerns, and will provide the opportunity for recipients of HUD financial assistance to determine which projects use Section 3 businesses in a way that is not administratively burdensome.

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

One commenter stated that the focus on hours worked is appropriate in light of the statute's focus on providing economic opportunities to low-income residents, but aggregating hours poses a risk that non-low-income people at Section 3 business concerns may report hours, though this risk is mitigated by the Section 3 business concern definition. Another commenter stated that the 51% owned and 75% labor hours requirements allow Section 3 business concerns to employ persons who are not low-income or very low-income.

Another commenter supported replacing the aggregate dollars spent metric, but stated that including all Section 3 business concerns' employee hours will lead to the misleading inclusion of non-low-income worker hours in the data; only the hours worked by the low- and very low-income employees of a Section 3 business concern should be reported as Section 3 hours worked.

HUD Response: According to the Section 3 statute, HUD must prioritize businesses that provide economic opportunities for low- and very-low-income persons. The statute does not require that HUD prioritize business that only provide economic opportunities for such persons. If HUD were to include only the Section 3 workers in the reporting metrics, the regulation would not effectuate the statutory requirement to also place an emphasis on Section 3 business concerns. The Section 3 statute states that HUD must prioritize Section 3 business concerns in the awarding of contracts. By collecting labor hour data on all employees of Section 3 business concerns, HUD is creating an incentive to contract with a Section 3 business concern while maintaining a unitary reporting metric for Section 3 performance. The final rule maintains the provision of the proposed rule that all hours worked on the project by the Section 3 business concern counts towards the benchmarks, with the awareness that this reporting framework will collect labor hour data for workers who are not low-income. This serves as the incentive to contract with Section 3



business concerns. HUD believes these changes are consistent with the statute.

Verification

A commenter stated that nothing addresses processes for verification of Section 3 business concern eligibility, and that HUD should enhance the Section 3 business concern registry to include confirmation of eligibility or work with Equal Employment Opportunity Commission to assist jurisdictions with certification programs. One commenter noted that using the Section 3 business concern registry to project availability of Section 3 workers is unreliable because the registry is a self-reporting structure with no mechanism to verify the business on the list, it assumes such businesses are able to work in any geographic area, and many PHAs in rural and suburban areas have reported that there are no Section 3 business concerns in their areas.

Another commenter raised the issue that verifying Census tract designations would create an additional burden, especially Census tract data that changes over time, which will result in fewer contractors participating in Section 3 projects.

One commenter stated apprehension about this part of the definition because accurately tracking and reporting labor hours will be much more challenging than tracking and reporting full-time employees. The proposed definition also makes it difficult for Section 3 business concerns and the entities that contract with them to predict with confidence that they will retain their Section 3 status, as labor hours can be dependent on the number of contracts a business bids for and receives.

Another commenter requested clarification regarding how long a business retains the Section 3 business concern status once it is certified as a Section 3 business concern. Commenters suggested HUD or the local government should bear the responsibility for verifying the eligibility of a Section 3 business concern, rather than shunting that responsibility to the builder, general contractor, or subcontractors. HUD's online Section 3 Business Registry⁴ was a positive first step, but HUD does not verify the self-certifications submitted by the business concerns, and it cautions database users to perform due diligence before awarding contracts.

HUD Response: HUD plans to continue the use of the Section 3 Business Registry as an available public

tool. While HUD appreciates the suggestion that HUD or the local government make determinations of eligibility for Section 3 business concerns, HUD believes that, consistent with other paperwork requirements, it is appropriate that the entity receiving HUD financial assistance ensure compliance with Section 3 requirements, which includes confirming that both Section 3 workers and Section 3 Business concerns qualify as such under this regulation. HUD addressed commenters' concerns about Census tract designations by removing that language from the rule, and concerns about labor hours are addressed in previous comment responses. Once a business is certified as a Section 3 business concern, it will retain that status as long as it continues to meet the definition. Status is determined at the time of hiring for each contract and is no different from any other definition. Currently, business concerns self-certify, and verification is done by HUD. The timing is on a project by project basis.

(1)(i) "At least 51 percent owned by low- or very low-income persons"

One commenter stated that this part of the definition follows the statute's intent. Another commenter stated that 51 percent ownership by low- or very low-income persons is unrealistic without training programs on business management.

HUD Response: HUD appreciates the feedback from commenters and is keeping this part of the Section 3 business concern definition as it is. HUD has found this definition to be consistent with both the previous regulation and with the statute. HUD notes that the definition also includes other methods by which a business concern may be defined as a Section 3 business concern. See 24 CFR 135.5; 12 U.S.C. 1701u (e)(2).

(1)(ii) "Over 75 percent of the labor hours . . . performed by low- or very low-income persons"

Commenters supported changes to definitions of Section 3 business concerns, Section 3 workers, and Targeted Section 3 workers under the new hire approach. One commenter stated that the decision to focus on percentage of hours worked by Section 3 individuals will result in a decrease of self-identified Section 3 business concerns. The commenter asserted that although it is a better metric for proving actual commitment to long-term employment of Section 3 individuals, gathering the data will be overly burdensome. One commenter stated that this option will present undue hardship

to small businesses and should be omitted. Another commenter stated that this requirement will negatively affect HOME and CDBG funded projects.

Some commenters supported tracking Section 3 hiring separately from Section 3 business concern tracking. Section 3 business concerns are already encouraged to retain existing employees to meet the previous Section 3 business concern definition. Counting existing employees to meet both the contract and hiring goals may result in decreased new hiring in connection with Section 3 covered assistance. Commenters recommended only tracking new Section 3 hires employed by Section 3 business concerns relative to a contractor's hiring goals.

One commenter also stated that even though the proposed rule provides a mechanism for PHAs to continue documenting compliance through a "new hire" metric, this proposed definition would still require PHAs to analyze a business's labor hours in order to determine whether a business could qualify as a Section 3 business concern.

One commenter noted the new burden would affect businesses who may not meet the new markers and might reevaluate the benefits of working with PHAs given the increased work to track labor hours. The commenter noted in an environment where getting bids is already difficult this would further dissuade them from doing business with PHAs. Other commenters suggested focusing on long-term employment goals for employees, developing benchmarks for growth of Section 3 business concerns, providing micro-business support, and targeting capital construction projects for mentorship and sub-contracting with Section 3 business concerns.

Some commenters stated that the definition of a Section 3 business concern should remain defined in part as a business where at least 30% of the permanent, full-time workforce are currently Section 3 residents, or were Section 3 residents within three years of the date of first employment at the business concern.

Commenters stated that this proposed amendment would render most Section 3 business concern owners in the commenter's city ineligible, as over 50% qualified by meeting the existing standard for the makeup of their workforce (30% full time permanent employees who are Section 3 residents). The result will be fewer Section 3 business concerns maintaining and/or seeking certification and will further compound the challenges of helping low-income workers access jobs. Most Section 3 business concerns do not

⁴ HUD, *What is the Section 3 Business Registry?*, Hud.gov, <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.



possess the infrastructure to support tracking this information. A commenter stated that 75 percent of labor hours is too high as a standard for determining Section 3 business concern eligibility. A smaller percentage would be more appropriate, or perhaps HUD could allow businesses to qualify either by labor hours or percentage of staff. Commenters stated that the 75 percent criterion would defeat important purposes of the Section 3 program which include encouraging business creation and increasing contract opportunities for businesses that employ a substantial number of low-income residents.

One commenter stated that it would significantly increase compliance costs, and that HUD appears to assume that every project will be tracking employee hours worked due to the applicability of federal prevailing wage requirements, but this is not the case. This commenter's program includes projects that are not subject to prevailing wage requirements, but that are subject to Section 3. Another commenter stated that the new definitions could pose significant challenges to businesses as they will have to first determine which employees are considered low- and very low-income persons, and then have to calculate if their labor hours are over 75 percent.

One commenter agreed that reporting on business concerns should not be an aggregate of dollars spent. The commenter recommended that HUD keep the self-certification tool and website resource and incentivize Section 3 contractors to register to make this resource as useful as possible. The commenter observed a review of the website shows that some states do not have any Section 3 contractors listed.

Commenters stated that the change from 30 percent of full-time employees to 75 percent of labor hours performed will limit Section 3 business concerns only to those lower-skilled businesses (cleaning companies, moving companies, perhaps landscaping or painting companies) that hire an overwhelming majority of their workers as low-income.

One commenter stated that the proposal will not have the intended impact of increasing access to opportunity. This change would look backwards rather than measuring opportunities provided as a direct result of the contract award. In practice, this change would significantly impact administrative efforts, would adversely affect other qualified Section 3 business concerns, and potentially limit employment opportunities available to the targeted population.

One commenter stated that the rule should keep the threshold at 30% but change it to hours worked rather than new hires and retain other elements of the current definition. The commenter recommended that HUD only count the hours worked by Section 3 residents toward the percentage goals of hours worked by Section 3 residents (not all employees of the Section 3 business concern). The commenter believes the 30% benchmark creates an incentive for established businesses to create a professional development component to their project approach, while 75% is much too high for most businesses to pursue.

One commenter recommended the definition be modified to include more than 75 percent of the labor hours worked at the business are performed by public housing, Section 8, Section 811, or Section 202 residents or persons who, immediately prior to the date of hire, were low- or very low-income, particularly women. Commenters suggested removing the 75 percent labor hour portion all together. If HUD proceeds with this definition, it should consider a transition period so existing Section 3 business concerns can adjust to the new definition.

HUD Response: HUD believes that the refined definition continues to reflect the language and intent of the Section 3 statute, defining Section 3 business concerns in a way that furthers economic opportunities for low- and very low-income persons. HUD recognizes that 75% is a higher number than the prior new hire standard but believes that Section 3 business concerns should be either majority owned by low or very low-income persons or should primarily employ such individuals. HUD believes that the prior 30% standard does not ensure that a sufficiently substantial number of low- or very-low-income persons benefit from the priority contracting status that the Section 3 statute and regulation provide. Section 3 business concern employees are counted as Targeted Section 3 workers, giving HUD funding recipients and Section 3 projects an incentive to hire them to meet their Targeted Section 3 Benchmark numbers. HUD acknowledges that the revised definition of Section 3 business concerns may result in a decrease in firms qualifying for the designation, but the benefits of qualification will be more directly targeted to low- and very-low-income persons. HUD notes that the safe harbor benchmarks can be adjusted by notice periodically, which is intended to allow HUD to modify the benchmarks to accommodate geographies where the initially proposed benchmarks cannot

be met due to the unavailability of Section 3 workers and Section 3 business concerns. HUD amended this provision to clarify that the 75% of labor hours should be determined based on looking back over the last 3 months of work performed for the business. The determination as a Section 3 business concern is made at the time the contract or subcontract is executed, so that the program participants have certainty in their Section 3 strategies. However, the final rule also provides flexibility to establish Section 3 business concern status during the Section 3 covered activity, to provide further incentive to employ Section 3 workers. If the business performed multiple projects, all of the hours on the projects over the prior three-month period should be considered for making the determination.

HUD notes the comment that observed a Section 3 business concern might need to track labor hours to be qualified, even if the federal funding recipient is reporting new hires. By eliminating the new hire alternative reporting metric, HUD anticipates that this dimension of documenting qualification as a Section 3 business concern will be mitigated. HUD further notes that businesses do not need to track labor hours precisely. HUD is not presuming the applicability of prevailing wage requirements, but rather is presuming that all employers paying an hourly wage will have some method to tabulate the number of hours worked, and for those that do not have a tracking mechanism in place, the final rule permits them to rely on a good faith assessment. An objective of Section 3 is to provide employment opportunities for public housing and low-income residents, which can lead to a focus on long-term employment goals. Other activities identified by the commenters are better suited for business development and therefore are outside the scope of this rule.

As for the concern that the definition will limit wage growth or promotion or result in Section 3 business concerns where all employees have low-income wages, HUD provides that the qualification of a Section 3 worker takes place at either the date of the Section 3 covered activity or the date of initial hire by the employer, not more than five years previously. Labor hours of an employee who is low- or very low-income at hire will continue to count for 5 years even if that person grows into a new, more advanced position. HUD anticipates that the employee with 5 years of experience with that same employer would be moving up in the business and would eventually need to



be replaced by a new, presumably low- or very-low-income entry-level employee. The definition has been modified to clarify this framework and to reduce the potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern. HUD also acknowledges that many entry-level opportunities for low-wage workers are in businesses and industries with a high percentage of low-wage employment possibilities. HUD determined not to implement a transition period, although contracts with Section 3 business concerns entered into under the regulations in place prior to the final rule's compliance date will continue to be considered Section 3 business concerns.

(1)(iii) at least 25 percent owned by current public housing residents or Section 8 residents

One commenter stated that the revised definition of at least 25 percent owned by current public housing residents, or residents who currently live in Section 8 assisted housing, will be easier to justify than evidence of a commitment to subcontract 25 percent or more of the dollar amount to all subcontracts. Other commenters stated that the third option for defining "Section 3 business concern" should be modified to require that the business have 51% ownership by public housing or Section 8 residents. These commenters warned that unless residents have majority control there is a danger of the business being a front for owners who might not represent residents' interests.

Further, the statute defines a Section 3 business concern as one with Section 3 residents having a controlling interest, or the business employs a substantial number of Section 3 residents. The commenter does not believe that this new proposed criterion is appropriate. Commenters also thought it would be inconsistent with the Congressional statutory intent that economic opportunities be provided to business concerns that are *majority owned and controlled* by low- and very low-income people and/or residents of government assisted housing. (12 U.S.C. 1701u(b)). Commenters further argued reducing the required ownership percentage would also be inconsistent with HUD's public housing regulations at 24 CFR part 963, which defines resident-owned business as one "(1) which is at least 51% owned by one or more public housing residents and, (2) whose management and daily business operations are controlled by one or more such individuals." Commenters felt reducing the required ownership percentage would invite

manipulation and abuse, the prevention of which would require a significant administrative burden. Commenters recommended the Section 3 regulations should be designed to encourage entrepreneurial development, not a passive ownership interest.

HUD Response: HUD agrees with commenters that the 25% ownership language may create the risk of unscrupulous business practices. Therefore, HUD revised the final rule to require a Section 3 business concern seeking to meet this third test be 51% owned and controlled by PHA residents and Section 8 residents, in place of the 25% test contained in the proposed rule. This number is also more consistent with HUD's current contracting provision for PHA resident owned businesses in 24 CFR part 963.

Wages

Commenters stated that businesses should not be rewarded for paying low wages; businesses should not receive a contracting preference by virtue of the fact that they pay their employees low wages. The commenters asserted Section 3 regulations should be designed to reward businesses that provide economic opportunities to low-income persons so that they have a chance to work their way out of poverty, and the income determination must be made immediately prior to the date of hire. According to the commenters, HUD's regulations should also reward employers who provide decent-paying jobs so that their employees no longer need to depend on HUD assistance to make ends meet. Commenters observed that by determining the low-income status of employees at the time of contract award (the labor hours "are performed by low- or very low-income persons") the definition inadvertently restricts eligibility to businesses whose employees are currently low-income. For these reasons, the commenters proposed that the definition of "Section 3 business concern" be changed to "Over 75 percent of the labor hours performed for the business are performed by persons who were low- or very low-income immediately prior to the date of hire and whose current wage is equal to or greater than 80 percent of the area median income."

HUD Response: The Section 3 regulations are designed to provide jobs for low-income persons. As these individuals gain experience, HUD anticipates wages will increase, and the individuals should be able to work their way out of poverty. The definition has been modified to clarify this framework by including a three-month documentation period and to reduce the

potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern.

Contract Requirement

One commenter expressed concern over the elimination of Section 3 business concern contracting requirements because the commenter's agency spends a lot of resources on outreach, but recognized many housing authorities lack the resources or diverse vendor marketplaces to do the same.

HUD Response: HUD recognizes that not all PHAs will have the same resources to outreach to Section 3 business concerns. HUD believes, however, that counting the Section 3 business concern employees as Targeted Section 3 workers will incentivize PHAs to target Section 3 business concerns to help meet their Targeted Section 3 worker benchmark. HUD will continue to have a Section 3 business concern directory as well to make it easy for PHAs and other entities to identify Section 3 business concerns in their jurisdiction. HUD also believes that making the definition consistent with the PHA resident-owned businesses definition in 24 CFR part 963 will also provide another avenue for finding Section 3 business concerns.

Alternative Suggestions for the Definition of Section 3 Business Concern

One commenter recommended that HUD extend Section 3 business concern status to businesses funded through the Opportunity Zone program.⁵ Commenters suggested defining a Section 3 business concern as meeting one of the following categories, in the following priority order: (1) Businesses owned 100% by Section 3 persons; (2) businesses owned and operated at a minimum 51% by Section 3 Persons; (3) Businesses whose total employees consist of a minimum of 75% Section 3 persons who reside within the project area; (4) Businesses whose total contract specific staffing (not back office administration unless the opportunity created is a back office position) has more than 50% Section 3 persons residing in the project area; (5) businesses owned by persons providing a negotiated employment level greater than 30% of total project staffing to Section 3 persons; (6) businesses who commit to directly conduct or to subcontract professional employment readiness and employment trade skills training related to the project work or other in-demand employment

⁵ See HUD, *Opportunity Now*, Hud.gov, <https://opportunityzones.hud.gov/>.



disciplines, at a minimum of 10% of their total contract award, plus or minus change orders, to Section 3 persons. Under (1), (2), (5), and (6), there is a priority order for the Section 3 persons as well: (A) Public housing assisted persons at the property where the work is being executed. When a contract is issued for service work covering multiple properties of the PHA, any public housing person from that PHA's portfolio shall compete equally for any opportunities created as a direct result of the expenditure. (B) When the service contract only covers one public housing property, the persons from that property will receive first priority for opportunities and then persons from other properties of the PHA's public housing portfolio will be secondly considered. (C) Housing Choice Voucher holders of that specific housing authority that administers that voucher will be third priority. (D) Persons residing in any project-based Section 8 property owned in whole or in part by that PHA. (E) Current YouthBuild participants. (F) All other low- and very low-income persons within the legal boundaries of the service area of the project.

HUD Response: HUD appreciates all the different options provided by commenters. However, HUD believes the final Section 3 business concern definition provided in this final rule provides a balance that is consistent with the statute and ensures that most Section 3 business concerns are in fact aimed at employing low- and very low-income persons. See responses above for additional discussion of the Section 3 business concern definition.

Small PHA Reporting

Support

Some commenters supported reporting flexibility for small PHAs, and especially the removal of the non-construction contract goal of 3 percent of all covered contracts to Section 3 business concerns, which they said is challenging to meet due to the amount of professional service contracts. One commenter suggested that for consistency and clarity, the final rule should exclude all PHAs with 250 or fewer units from reporting on benchmarks, regardless of procurement cost. The commenter also suggested that since the proposed rule exempts Section 8 funding from having to meet Section 3 requirements, the final rule should clarify the definition of a small agency for the purposes of Section 3 reporting to mean an agency with 250 or fewer public housing units. Another commenter recommended defining

"small PHA" in a way that alleviates regulatory burdens for as many agencies as possible and suggested defining small PHA as those having 550 or fewer combined public housing and Section 8 units; or, as Section 8 funding is not covered by Section 3, utilize a 250 unit threshold.

Another commenter supported the small PHA reporting exemption suggesting that HUD should define a small PHA in a way that would maximize the number of agencies exempted from detailed reporting, recommending 550 combined units (consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 and the Housing and Economic Recovery Act of 2008) or 250 public housing units (as Section 8 assistance is not covered by Section 3).

HUD Response: HUD continues to support the Small PHA reporting provision in the proposed rule. Small PHAs with less than 250 public housing units will not be required to report the number of labor hours and instead will be required to report their qualitative efforts. The final rule does not require a commitment to award at least 3 percent of the total dollar amount of all other Section 3 covered contracts to Section 3 business concerns. HUD currently is also not changing the number of public housing units for determining the Small PHA exception.

All PHAs Should Report for Data Collection and Compliance

Some commenters recommended that all PHAs, regardless of size, should be required to report for data collection and compliance. Other commenters specifically objected to the labor hours reporting exemption for PHAs with fewer than 250 housing units, because inexpensive software is available for PHAs to track and report labor hours. Other commenters suggested removing all exceptions for PHAs. Additional commenters elaborated that reporting requirements should be the same for all entities with no exceptions, noting that every recipient and every dollar should be included in order to guarantee that opportunities reach the poorest and smallest communities.

Commenters noted that small PHAs should not be exempt because they could have significant contractor and subcontractor activity in any given year. Specifically, one commenter noted that the \$200,000 threshold should apply to small PHAs because they have the same opportunity to create jobs as other entities. Another commenter noted that not requiring small PHAs to report creates a loophole that hinders opportunity.

HUD Response: HUD has heard from small PHAs that they do not receive enough funding or have sufficient pools of Section 3 workers to support annual new hire or labor hour reporting. Close to one-half of small PHAs with less than 250 public housing units receive less than the \$200,000 project threshold applicable to Section 3 projects that receive other HUD assistance such as CDBG and HOME funding. Due to Operating Fund shortfalls, small PHAs can take advantage of the authority under section 9(g)(2) of the United States Housing Act of 1937 to use its Operating and Capital Funds flexibly to fund any eligible activities under either funding stream. Some small PHAs compensate by promoting economic opportunities through referrals of residents to employers and job fairs, providing training facilities and offerings, and other local efforts. To recognize these other activities and the generally low amount of funds available or used for capital projects, small PHAs will report qualitatively on their efforts.

No Good Faith Assessment for Small PHAs

Some commenters objected to allowing small PHAs to supply a "good faith" assessment of hours worked because doing so would invite those entities to bypass important tracking requirements, suggesting that HUD should require quarterly, instead of annual reporting.

HUD Response: The small carve out for good faith assessment is not limited to small PHAs. As stated in the proposed rule, it is a limited exception where PHAs and other recipients of public housing financial assistance could use the reporting of a good faith assessment of the labor hours of a full-time or part-time employee from contractors and subcontractors that have not been subject to requirements specifying time and attendance reporting, and do not have systems already in place to track labor hours. This is to address employers that do not already track labor hours without making changes in time and attendance or payroll. It is not a permanent exception and if in the future the contractor or subcontractor is required to track labor hours under some other authority, or begins to voluntarily track labor hours, the exception would no longer apply.

Qualitative Reporting

Another commenter noted that the rule lacks information on what qualitative reporting will be required of small PHAs to substantiate the claim that such reporting will be less



burdensome and recommended that small PHAs have the option to track labor hours or do qualitative reporting.

HUD Response: The rule seeks not to be too prescriptive on qualitative reporting to provide small PHAs with the flexibility to report on a range of activities. HUD is considering some of the following to signify qualitative efforts: Outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to create a form for tracking and reporting qualitative efforts, to ease burden on recipients. HUD agrees that small PHAs should have the option of conforming to the more quantitative reporting standards and has modified the text to permit such option.

Dollar Threshold for Small PHAs

A few commenters also recommended use of a dollar threshold for public housing assistance similar to that used for other HUD assistance as a means to reduce reporting burdens on small agencies. One commenter suggested that using a dollar threshold, rather than a threshold based on number of public housing units, is a more practical and effective means of identifying those smaller projects that are less likely to generate significant Section 3 employment opportunities. Another commenter further suggested that thresholds established in the proposed rule for Community Planning and Development (CPD) should be applied across the board to all programs and noted that using a per-project or per-recipient threshold would more accurately exclude or include small PHAs based on funding. This commenter also suggested establishing a threshold for workable non-working residents below which small PHAs would not have to report.

HUD Response: HUD continues to maintain that a dollar threshold for public housing financial assistance is not consistent with the statute. Section 3 applies to public housing operating, development, modernization, and management assistance, which covers virtually all housing authority projects and activities. HUD believes that the statute's expansive coverage of public housing projects and activities indicates that any attempt to diminish the coverage would be inconsistent with the statute.

Subcontractors

Several commenters noted that Section 3 requirements should not apply to subcontractors. Commenters stated that extending reporting requirements to subcontractors would discourage participation in PHA contracting opportunities, adversely impacting competition in the market, driving up construction costs and limiting economic opportunities. Other commenters added that HUD should consider ways to reduce administrative requirements on subcontractors wherever possible, echoing concerns that regulatory burdens which do not acknowledge subcontractor's practical limitations will discourage private sector partners from working with PHAs.

The commenters also suggested that regulatory relief for subcontractors could be achieved in a number of different ways, which range from exempting small subcontractors, excluding subcontractors from Section 3 obligations if their contracts are below a certain dollar threshold or below a percentage of the total covered funding on the Section 3 project. Commenters also suggested HUD consider limiting Section 3 obligations to the recipient, general contractor and immediate subcontractor(s), noting that relieving some or all Section 3 obligations on subcontractors may attract more high-quality tradespeople to affordable housing construction projects and possibly also lower the construction costs on Low Income Housing Tax Credit (LIHTC) and other affordable housing projects with covered HOME or CDBG funds.

Other commenters who expressed concerns about the reporting requirements for grantees and subcontractors also suggested thresholds for subcontractor reporting. Some commenters suggested retaining the existing \$100,000 threshold, though one commenter recommended a reduced compliance level, allowing subcontractors to track Section 3 employees instead of labor hours, to reduce the administrative burden on small entities who lack the capacity to track hours. Some commenters suggested a reporting requirement threshold of \$250,000 to align with the OMB procurement threshold, one of whom recommended this threshold also apply to contractors and offered the \$10,000 micro purchase threshold as an alternative. Other commenters suggested a compliance threshold of \$200,000.

A number of commenters supported reporting requirements for both contractors and subcontractors. One

commenter recommended excluding second tier and below subcontractors from requirements, noting that large PHAs are more likely to award or fund multimillion-dollar projects that have more than 25 first-tier subcontractors. Two commenters mentioned the role of contractors simplifying the reporting mechanism for subcontractors and encouraging subcontractors to comply with requirements. One commenter also suggested that the funding recipient should be allowed to decide the extent of the Section 3 reporting requirements for subcontractors.

One commenter requested clarification as to how Section 3 requirements "flow down" to contractors and subcontractors for housing and community development financial assistance, noting the current regulation includes references to recipients as well as contractors' and subcontractors when describing numerical goals and hiring/contracting preferences. The commenter went on to state that Subpart C of the Proposed Rule references only the recipient when describing the employment, training and contracting requirements and safe harbors, and removes the \$100,000 contractor and subcontractor threshold in the current regulation for triggering Section 3 requirements. The commenter noted that while the Proposed Rule does mandate that each recipient "require subrecipients, contractors, and subcontractors" to meet the hiring/contracting requirements, they would propose a clarification on the extent to which contractors, subcontractors and subrecipients on Section 3 projects are bound by the requirements.

HUD Response: HUD is sensitive to the potential burden that Section 3 compliance may impose and has focused on outcomes, allowing the recipient to direct where the recipient's efforts, and its contractors' and subcontractors' efforts, will have maximum effect.

In the statute, the sections addressing public housing programs specifically include "contractors and subcontractors" in Section 3 requirements. In contrast, the statute does not reference "subcontractors" in the sections addressing other covered housing and community development assistance. Section 3's applicability to subcontractors as set forth in this final rule closely tracks the statute's requirements. The reporting requirements, however, focus on outcomes, deferring to the recipient to focus their efforts for maximum impact with respect to Section 3, and aligning the contractual obligations the recipient imposes on contractors and



subcontractors accordingly. Unlike the current rule, which applies Section 3 compliance to all subcontractors in excess of a \$100,000 contract threshold, the final rule does not apply specific Section 3 reporting obligations to any subcontractor and instead such requirements would stem from the recipient. See § 135.3(a)(3)(ii)(B). The proposal to reinstate the \$100,000 contract size threshold or any alternative threshold would limit the recipient's flexibility to determine how to achieve the "greatest extent feasible" standard most effectively. Similarly, subcontractors are excluded from the contract language provisions in Section 75.27(a), but subcontractors are still required to meet Section 3 requirements in Section 75.19, which provides the recipient flexibility to achieve the goal. The rule implements the suggestion provided in the comments that the recipient be allowed to decide on the extent of the Section 3 reporting requirements for subcontractors where the statute does not constrain HUD from providing this flexibility.

Definition for "neighborhood" or "service area"

Some commenters supported the proposed definition, stating that the definitions are reasonable and will simplify compliance. Other commenters accepted only the one-mile radius definition of "service area" or "neighborhood," but suggested that HUD eliminate the population requirement given the impact on rural areas.

Some commenters disagreed with the proposed definition, stating that metrics will be skewed based on close proximity to more affluent areas. Another commenter thought the definition is inconsistent with the statutory intent to encourage employment opportunities among low- and very low-income persons, noting a single definition cannot capture the expansive geographic areas. Another commenter noted the definition will actually limit mobility and the long-term success of resident programs because contracts will not provide opportunities to residents in successive projects in different neighborhoods. Some commenters wrote that the definition limits businesses in diverse economies and in high-cost cities that need more flexibility to recruit. One commenter wrote that this new definition would significantly reduce the labor pool of eligible Section 3 new hires, making it difficult to achieve benchmarks. Other commenters wrote that it may exclude local public housing or Section 8 residents. Another commenter thought

that it would add challenges for contractors in identifying and prioritizing eligible workers.

Other commenters noted that the restriction does not account for Section 3 covered projects in areas that are not low-income, such as some CDBG expenditures. In addition, commenters noted that such a limitation could have the unintended consequence of excluding large groups of people from the pool of potential employees, especially in cities that are combatting racial segregation. Another commenter stated that the requirements are too geographically limited as to whom and where recipients/contractors must provide opportunities. Additionally, it does not account for opportunities that are accessible beyond the prescribed radii by using mass transit and other commuting opportunities.

Some commenters noted that a new definition would add unnecessary administrative burdens which increases the cost of program management and compliance. One commenter wrote that determining how to meet a 5,000-person radius would be burdensome. Other commenters wrote that completing data analysis of employee home locations and certification would be administratively burdensome and could be covered under state and local data privacy laws. In addition, a commenter stated that the definition may limit PHAs' abilities to hire individuals in their communities who would otherwise qualify as a Section 3 worker and stated that entities receiving community development funds are better at determining which individuals would benefit most from Section 3 employment.

Several commenters suggested that HUD retain the definition of "service area" as it exists in the current rule at 24 CFR 135.5. Another commenter supported Section 3 and encouraged the retention of flexible approaches to compliance, such as those outlined in 24 CFR 135.30. Any proposed rule changes should consider geographical and service population differences. The commenter supported maintaining the rule as is, noting it provides flexibility for compliance through training, hiring, or contracting. Similarly, another commenter noted that there should be flexibility and factors other than hours worked and earned to provide Section 3 credit.

HUD Response: HUD notes that the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds. The hiring prioritization is different for

this category of funding, and pursuant to the statute is focused on residents of the geographic area in which the work is being done, not on the rent-assisted status of the workers. Consequently, in this context, HUD is not adjusting the regulatory text to acknowledge the availability of transit or to prioritize employment of low- and very-low-income people from a broader geography.

The rule seeks not to limit the labor pool available within specific geographic areas, but to allow flexibility for smaller and more rural areas through the definition. HUD believes counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the project neighborhood. Where the one-mile radius circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. This expansion would address many of the commenters' concerns regarding smaller communities or rural areas. For the benefit of densely settled urban areas, HUD recognizes there may be more than 5,000 people, but will hold at the one-mile geographic diameter.

HUD believes this final rule does take into consideration geographical and service population differences and retains flexibility for compliance through training, hiring, or contracting. Additionally, the rule is meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. Compliance can be evaluated qualitatively if the labor hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. In addition, HUD intends to create a web-based tool to support recipients, subrecipients, contractors, and subcontractors in determining the geographic area encompassing Targeted Section 3 workers.

Allow Grantees To Define "Neighborhood" or "Service Area"

Commenters recommended that grantees be given the ability to define "service area" for themselves. Another commenter urged HUD to adopt something other than a "one-size-fits-all" approach so that small rural counties would not have difficulty utilizing federal funding. One commenter noted for example that in New Orleans, there are clearly defined



neighborhoods that most residents and officials understand and recognize, some having a larger area than a one-mile radius. The commenter stated that allowing for a more localized definition of 'project area,' rather than using HUD's definition of a one-mile radius or 5,000 person population guideline, increases local participation in projects that impact those individuals and their immediate surroundings and makes the most sense for their community. This commenter stated that recipients should be able to define their geographic size for purposes of how they focus their priorities regarding low-income persons residing within the service area or neighborhood in which the project is located, and communicate their determination to sub-recipients, contractors and subcontractors. Another suggestion was to have localities work with their local HUD office to define service area based on the locality's characteristics.

Commenters suggested that HUD allow residents and businesses from anywhere in the state to receive priority consideration or to give state recipients deference in establishing areas for purposes of meeting Section 3 requirements. Additionally, one commenter stated that service area may change based on project type, some serving entire communities while others serve smaller sections of a community, rendering the one-mile radius inapplicable depending on the project's scope of impact.

The commenters noted that limiting preference to a certain "service area" may have the unintended consequence of excluding large groups of people from the pool of potential employees. The commenters proposed allowing localities to either target job opportunities to low-income hires from anywhere within the locality, or work with their local HUD offices to define appropriate service areas based on the characteristics of the locality. One commenter wrote that the one-mile radius is too limiting and that residents within the community should be considered.

Some commenters suggested that HUD define service area to be "the area within or contiguous to a PHA's jurisdictional boundaries." Other commenters suggested that HUD define "service area" or "neighborhood" in the following tiered manner: (1) PHA residents in project area; (2) Section 3 residents in project area; (3) extremely low-income or homeless individuals in project area; (4) YouthBuild in project area; and (5) next closest PHA in project area.

One commenter suggested that HUD should give preference to eligible residents of the neighborhood surrounding the PHA before other residents of the metropolitan area and should utilize the language in Subpart C § 75.19 reading "Section 3 workers residing within the service area or the neighborhood of the project." One commenter stated that Section 3 Employment Priorities, as written, is very clear as to the order of Section 3 applicant priorities, starting with residents in closest proximity to the construction project, but disagreed that the one mile and 5,000 population radius is an appropriate geographic, using two PHA examples of Cayce Place and Edgehill to show that these metrics would be skewed based upon the close proximity to those earning twice the AMI and with property values in the hundreds of thousands of dollars.

HUD Response: As noted above, the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds, and the focus in this context is on residents of the geographic area in which the work is being done. HUD believes that its proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. Where the radius or circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. All Targeted Section 3 workers identified by the geographic radius must also qualify as Section 3 workers, so this would not include higher-income workers within the neighborhood or service area.

Rural Areas and Contractors

Several commenters noted concerns about the effect of the proposed "service area" definition on Section 3 implementation in rural areas. One commenter stated it would be unrealistic and burdensome for employers in rural areas to administer and monitor the one-mile radius, and

that it does not reflect the realities of construction employment in small rural states where the service area is the entire state. One commenter also stated that in areas of low population density, there often will not be sufficient residents or businesses that are capable of performing the work required for housing and community development projects. Other commenters wrote that, given chronic and widespread labor shortages, it is inadvisable to have such a small geographic restriction on the labor pool of Section 3 workers.

Other commenters accepted the one-mile radius definition of "service area" or "neighborhood," but stated the 5,000-person population radius is too large for rural areas. Another commenter noted that the population threshold could increase the service area size exponentially in cities and counties where the population is less than 5,000.

One commenter in Utah opposed the proposed definition, arguing that changing the definition of "neighborhood" to 5,000 people would not work because of the state's very large rural geographic area. The commenter stated HUD's determination that most (77%) current CPD projects had a population of 5,000 people within one mile of the project site is not applicable in Utah, which has only 29 counties. The commenter detailed that 70% of Utah's population resides in its 4 urban counties, and Utah's CDBG projects are part of the 23% that do not have 5,000 people within a one-mile radius of a project site.

One commenter mentioned the impact of the proposed definition on small contractors or those outside the immediate service area, noting that CDBG and HOME funds are often financing projects completed by small contractors who need to travel outside of a service area to complete work on a project. Another commenter rejected the proposed definition, suggesting that for small town jurisdictions, the "service area" or "neighborhood" should apply within the recipient's jurisdiction, which may be an entire county. One commenter mentioned that finding Section 3 contractors or businesses is already challenging and should not be limited by a "service area" or "neighborhood" definition.

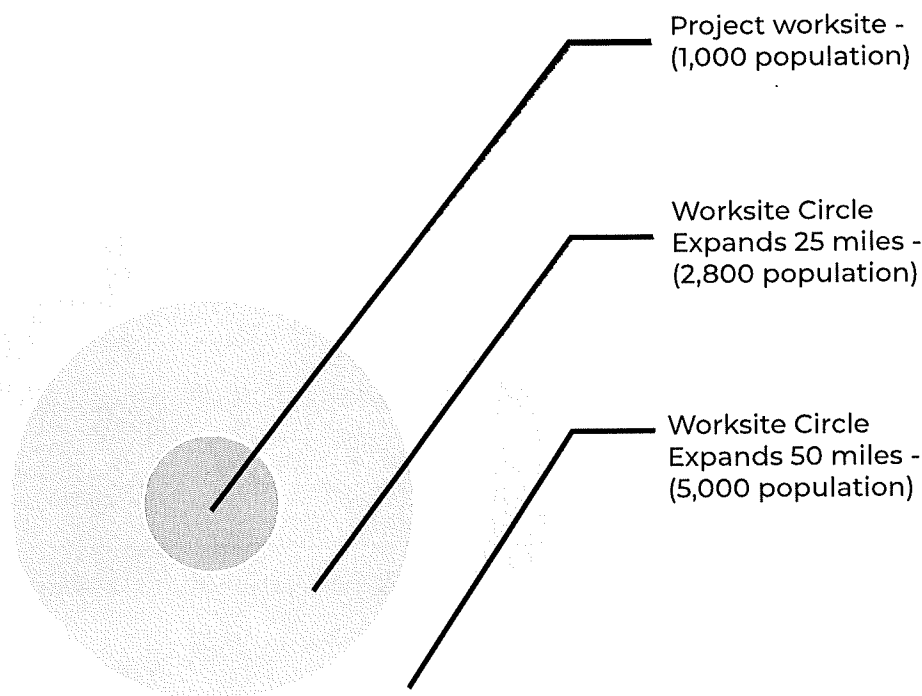
HUD Response: HUD acknowledges and has carefully considered the concerns of commenters representing small and rural areas regarding the proposed definition of neighborhood/service area. As previously stated, HUD supports the proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the



worksite that encompasses 5,000 people. This concept was designed specifically to address the unique needs and challenges facing rural and small

communities. The graphic provides an example on how a circle centered around a worksite with fewer than 5,000 people may be expanded until the

desired population goal of 5,000 people is met or eligible Targeted Section 3 workers are counted.



Above: Graphic depiction showing how the one-mile radius can be expanded where there are fewer than 5,000 people until the 5,000-person population is found.

The text as written will provide a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. HUD also notes that over time, as outcome results are reported to HUD, the benchmarks may be tailored to certain types of projects and geographies by notice, with the explicit intention that it may be appropriate to set different benchmarks for rural areas given the

availability of labor and the patterns of contracting work in rural areas.

Web Tool

Some commenters noted that HUD's proposal to provide a web tool to aid in the process of determining a geographic service area would be helpful. One commenter urged HUD to provide the proposed web tool that will help determine the geographic area that encompasses Targeted Section 3 workers before it proceeds with the current definition and finalizes the rule. Commenters requested that HUD provide it to state and local recipients, sub-recipients, contractors, and subcontractors for testing before implementation. Though encouraged by the prospect of a web tool to help determine the geographic area that

encompasses Targeted Section 3 workers, some commenters still argued for a broader definition and geographic areas that define Targeted Section 3 workers. Some commenters thought the web tool would not alleviate burden from the contractor that would still need to determine if a worker meets the requirements to be in the geographically defined area.

HUD Response: HUD agrees with the suggestion to provide a web tool to aid in the process of determining a geographic neighborhood/service area. As stated in the proposed rule, HUD will create and provide this tool at the issuance of the final rule to aid recipients, subrecipients, contractors, and subcontractors to determine the geographic area that encompasses Targeted Section 3 workers under this



definition. HUD will also explore the option of creating a mobile tool to help recipients with monitoring and compliance determinations.

Exceptions

Commenters suggested the proposed definition should not apply to Puerto Rico considering its geographic composition.

HUD Response: HUD has decided to retain the proposed definition for all recipients, including Puerto Rico. HUD believes the proposed regulation takes the varied geographical areas into account and provides a streamlined framework that will enable eligible workers to benefit from employment and training opportunities available within the area surrounding a Section 3 project.

YouthBuild Participants

Some commenters were in favor of or not opposed to expanding the definition to include previous YouthBuild workers that are under 24 years of age and those who are still eligible to participate in YouthBuild but may have graduated out of the program. One commenter was opposed to expanding the definition on the grounds that it would require onerous and complex background checks and research to determine whether a participant meets the alternate definition. One commenter recommended that the definition be changed to include previous YouthBuild workers who successfully graduated from the program and are either under age 24 or are otherwise still eligible for YouthBuild programs. Other commenters proposed that the definition of YouthBuild participant should be as broad as possible, regardless of age, while other commenters proposed the definition to include other programs which teach relevant skills, such as Service and Conservation Corps participants and graduates, participants/graduates of "pre-apprenticeship" training programs, participants/graduates of "youth corps," VFW Local Program participants, and AmeriCorps participants.

HUD Response: HUD appreciates the commenters' support of the YouthBuild program, and after careful deliberation, has decided to keep the definition consistent with the current regulations and current YouthBuild participants. See 29 U.S.C. 3226; 24 CFR 135.5. HUD determined that given the work required to certify current YouthBuild workers, that adding a longer-term duration would create an additional paperwork requirement on both the person claiming the status and the entity reporting the status. It may also cause

confusion using a certain period of time. Additionally, a YouthBuild worker can still qualify for 5 years if they are employed at the end of their YouthBuild experience.

Applicability and Scope

One commenter supported the rule's change to applicability. Another commenter supported Section 3 as an important mechanism to strengthen communities, reduce poverty, and increase residents' economic self-sufficiency. One commenter proposed that these rules should apply to all developers, contractors, and sub-contractors; all professional, skilled, unskilled, technical, and consulting service contracts compensated partially or fully by HUD funds—no exceptions. Another commenter suggested these rules shall be applicable to all professional, skilled, unskilled, technical, and consulting service contracts line items.

Other commenters suggested that HUD should clarify that owners and managers of HOPE VI, Choice Neighborhoods and Mixed-Financed Developments are subject to Section 3 Hiring and Contracting requirements in their own operations and should extend this requirement to Rental Assistance Demonstration (RAD) converted projects. One commenter supported HUD's separation of PHA requirements from non-PHA requirements because it did not make sense for non-PHAs to follow regulations intended for PHAs.

A commenter supported HUD's clarification regarding Section 3 applicability to projects receiving HUD assistance of \$200,000 or greater. Another commenter warned that this rule states that Section 3 will apply when the amount of HUD assistance is greater than \$200,000 on a per-project basis, which would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total funding is much higher, leading to a decrease in number of projects subject to Section 3.

One commenter suggested that PBV and PBRA contracts should be exempt from Section 3 compliance. Another commenter suggested that, rather than a per-project basis, it would be simpler to apply Section 3 to individual contracts for housing and public construction funded with HUD assistance.

HUD Response: HUD shares the view that Section 3 is an important mechanism to strengthen communities, reduce poverty, and increase economic self-sufficiency. HUD seeks to focus Section 3's applicability where it can have a real impact, and to exempt from Section 3 those cases where

applicability imposes burdens not commensurate with outcomes. HUD has concluded that in certain circumstances, particularly professional services, there are very few opportunities for Section 3 outcomes. The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond what HUD's existing regulations already required for compliance. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. HUD disagrees that Section 3 should be applied to all types of work, without exception, and reaffirms in the final rule the exception for professional services. The proposed rule does, however, give credit in the reporting for opportunities that are created in the professional services context by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The final rule applies Section 3 in a manner consistent with the statute. HUD has determined that monthly rental assistance payments, such as those provided under Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute. Properties converted to Section 8 rental assistance through the RAD are covered by the rules applicable to Section 8. However, the RAD governing notice does apply Section 3 requirements to those activities occurring after the date of the RAD conversion which are contractually obligated as part of the RAD conversion.

Employment Priorities § 75.9 / § 75.19

Some commenters supported separating the agencies which fund Section 3 projects from PHAs and mirroring the statute. Other commenters felt that the priorities should be the same for both Section 3 projects and PHA financial assistance. Other commenters suggested that HUD give preferences to certain groups, while other commenters thought HUD should consider adding geographic considerations into the definition. One commenter suggested that the last priority level should be expanded to any person if the PHA can reasonably demonstrate there are not sufficient Section 3 residents with the requisite job skills within a project's geographic area. Commenters also asked HUD to clarify that otherwise eligible workers of PHAs, even if under private



management, are included in this category, as well as recipients of Section 8 assistance or voucher assistance residing in properties managed by other entities. One commenter suggested HUD change the regulatory language to insert the word "priority" in § 75.19 to clarify the requirement and make the sections consistent with § 75.9.

HUD Response: HUD appreciates the comments that supported the employment prioritizations. These prioritizations follow the statutory prioritizations, and HUD is including that language for clarity for recipients implementing the regulations. HUD has rephrased § 75.19 to include the word "priority," consistent with the language of the statute. While HUD appreciates the alternative suggestions, these regulations are meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. HUD believes that the existing regulatory text does that and is making no changes to this section. HUD, however, encourages the HUD financial assistance recipients to consider all the diverse suggestions provided when working on outreach to persons who are low- and very low-income persons to meet the Section 3 benchmarks including residents of PHAs under private management such as those residing in a mixed-finance development project.

Reporting § 75.15 / § 75.25

Consolidated Plan Regulations

A commenter recommended that the Consolidated Plan regulations at 24 CFR 91.520(a) be amended to specifically include Section 3 reporting; PIH will need to develop a Section 3 reporting format.

HUD Response: HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. As a result, HUD will issue sub-regulatory guidance on reporting per program area and provide technical assistance to recipients for Section 3 compliance.

Systems

A commenter warned that HUD will need to modify IDIS to allow CDBG and HOME recipients to report on their Section 3 actions annually because CDBG and HOME recipients will report on their Section 3 actions in IDIS using a similar form as HUD Form 60002 that has been modified to capture labor hours worked. This commenter stated that this move will eliminate

redundancy and ease the administrative burden for grantees.

HUD Response: HUD agrees that the Integrated Disbursement and Information System (IDIS) and DRGR should be modified to ensure accurate Section 3 compliance reporting for CDBG and HOME recipients. HUD will also adjust our data collection systems as necessary to ease administrative burden for grantees and to eliminate redundancy.

Report Through Action Plan and/or CAPER and Effective Date

A commenter supported HUD's effort and recommended reporting through the Action Plan and/or the Consolidated Annual Performance Evaluation Report (CAPER), only on completed projects. One commenter recommended that the final rule be effective for funds granted in the next Federal fiscal year after publication of the final rule so there is time for contracts/written agreements with sub-awardees to be amended, and in order to avoid having CAPER reporting requirements from annual federal years with two separate program requirements.

HUD Response: HUD supports efficient and effective Section 3 compliance reporting through current mechanisms, such as the Annual Action Plan and/or CAPER, for applicable HUD programs. As stated in the proposed rule, HUD believes that requiring reporting annually, but consistent with timeframes that PHAs and other recipients of other housing financial assistance are already using to submit documents to HUD, will relieve existing burden. HUD may also look into reporting into other existing systems rather than requiring PHAs and other recipients to log into and report under a separate system, such as the existing SPEARS.

Double Counting

A commenter stated that reporting responsibilities when multiple government agencies provide HUD CPD funds are unclear and requested HUD determine whether agencies will be responsible for reporting outcomes for each federal investment or whether HUD will prevent double counting by limiting reporting to one funding agency per Section 3 project.

HUD Response: Section 75.29(b) specifies that when there is funding from multiple programs that exceed the threshold in § 75.3(a)(2), the recipient will report to the applicable HUD program office. Some HUD systems allow for indicating when there are multiple HUD funds so that reporting can be limited to one system. However,

not all HUD systems provide for that type of designation. HUD will provide additional guidance to recipients that have multiple funding sources on the proper process for reporting Section 3 project completion.

Separate Reporting by Funding Source

One commenter requested HUD clarify whether PHAs will still be required to report separately by funding source (e.g., Operating Funds and Capital Funds) or whether the hires report will be aggregated to report only on PHA total funds. This decision will impact how PHAs currently collect and track Section 3 hires. A commenter supported elimination of separate reporting on contracting with Section 3 business concerns. Other commenters stated that the reporting and monitoring required to remove professional services labor hours from overall labor hours would add additional administrative burden to PHAs and could prove challenging in the overall reporting process.

HUD Response: Under the final rule, for non-MTW agencies, reporting initially will remain at the grant or individual program level, but HUD may explore agency-level reporting where possible to streamline and simplify. PHAs will still be required to report by separate funding source or in the aggregate for MTW agencies. For ease in administration, the rule will provide separate definitions for these types of funding and separate subparts relating to: (1) Public housing financial assistance, which covers (a) development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act), (b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and (c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and (2) Section 3 projects, which means housing rehabilitation, housing construction and other public construction projects assisted with HUD housing and community development assistance when the amount of the assistance to the project exceeds \$200,000, or \$100,000 where the assistance is from HUD's Lead Hazard Control and Healthy Homes programs. There are no current plans to aggregate the information or eliminate reporting on contracting with Section 3 business concerns. Small PHAs with less than 250 public housing units will be permitted to report qualitatively. HUD is exploring how best to implement qualitative reporting for small PHAs, and as indicated above



may study whether other reporting methods should be contemplated in the future. As stated in the final rule, HUD believes that tracking labor hours consistent with existing tracking for prevailing wage requirements would reduce burden on recipients. HUD also believes that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated.

Exempt Commodity Purchases, Non-Construction, and Professional Services

Commenters strongly agreed with the change to exempt both commodities purchases (material supply contracts) as well as professional services (contracts for legal, accounting, financial consulting, environmental assessment, A&E services and other professional services) from the calculation of contract dollars and new hires for reporting. One commenter supported exclusion of Section 3 requirements on non-construction professional services (e.g., legal, accounting, and engineering) but has concerns that not all Section 3 workers want careers in the construction field and some employment is generated in non-construction contracts.

HUD Response: The final rule maintains the exemption of material supply contracts and maintains the structure presented in the proposed rule which does not require separate reporting of contracting with Section 3 business concerns. HUD is providing clarification on the exemption for professional services in the definition of "professional services" in this final rule, by defining professional as services that require an advanced degree or professional licensing.

HUD acknowledges that many low-income workers seek employment in jobs other than construction. However, data indicate that there are relatively few opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific federally funded project or activity. The reporting structure in the rule allows a recipient to count as Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able

to report Section 3 hires in the professional services context.

Frequency of Reporting

Commenters stated that annual reporting does not facilitate capture and correcting of non-compliance. Some commenters recommended all PHAs should provide Section 3 reports quarterly instead of at the end of the fiscal year. Another commenter recommended that reporting should be done on a monthly basis.

One commenter strongly supported a return to annual reporting and integration of reporting with other funding program reporting requirements. Another commenter supported annual reporting for reducing administrative burden of more frequent reporting. Another commenter supported the proposed change to annual reporting on projects completed within the reporting year.

HUD Response: The reporting requirements represents a balance between frequent reporting, effective reporting, and administrative burden. Frequent reporting allows HUD to keep a closer eye on compliance, and early oversight can result in identification of non-compliant actors when there is still opportunity to influence change. Frequent reporting also risks identifying as non-compliant those endeavors where the Section 3 opportunities are sequenced later in the effort's timeline, resulting in ineffective reporting. This is often the case in construction efforts that begin with heavy machinery work and end with trades where Section 3 opportunities are more commonly created. Additionally, there is an administrative burden for the reporting entity, and an oversight responsibility for HUD, each time Section 3 reports must be submitted. HUD notes the variety of opinion represented in the comments, with suggestions of monthly, quarterly, and annual reporting, as well as the project-based reporting permitted in the proposed rule. HUD has determined not to revise the rule. As a result, reporting is on an annual basis for ongoing endeavors such as PHA operations or multi-year infrastructure or disaster recovery efforts. For discrete projects such as development of a singular multifamily apartment building, the reporting is on a project basis, and reported to HUD in the recipient's annual report corresponding to the year of the project's completion. Acknowledging the value of early intervention, the final rule also shifts oversight of Section 3 from a centralized HUD office, which typically does not have visibility into whether the funding recipient is embracing and effectively

implementing its Section 3 obligations, to the program office which is in regular communication with the funding recipient. Part of HUD's intention with respect to this shift in oversight is to integrate discussions of Section 3 compliance into regular oversight discussions so that there are opportunities to influence improvement in Section 3 performance on an ongoing basis.

Submission Timing

Commenters recommended that HUD should provide further guidance on how and when annual reports will be submitted and stated that meeting the current January 10th deadline is a challenge for PHAs because end-of-year hires may be undercounted because paperwork may still be in process in January. Commenters stated that if the new regulations require reporting consistent with the timeframes that PHAs are already using, it will assist PHAs in providing the most accurate and up-to-date information. The commenters recommended that HUD refine the proposed reporting frequency regulations to read: "recipients must report annually after the end of their reporting year to HUD . . ." and HUD should provide PHAs 90 days from the end of their reporting year to have sufficient time to collect and aggregate data.

Another commenter noted that MTW PHAs provide annual reports based on the past fiscal year and updating the system to include such Section 3 reporting would be easier to use. This commenter also noted that it needs to be clarified how the reporting would deal with differing timelines for annual reporting versus the duration of projects with funds triggering Section 3 reporting.

HUD Response: As noted above, HUD will issue sub-regulatory guidance on reporting by program area. HUD anticipates that it may be able to integrate Section 3 reporting into the funding recipients' other, programmatic, reporting structures, which already have existing time frames for submission of reports. The rule does specify that reporting is based on the recipient's fiscal year, which language has not been changed. Section 3 requirements may not be waived by MTW agencies. MTW only provides flexibility for requirements promulgated under the 1937 Act, while Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968. Since HUD has a specific online system to collect Section 3 data—SPEARS—all PHAs, including MTW agencies, should report into that system. HUD will consider providing



training specific to MTW agencies, in addition to training for a more general audience, on how to use the SPEARS system.

Major Construction Project Administrative Burdens

Commenters warned that large workforces and the use of multiple subcontractors on major construction projects would lead to heavy administrative burdens which may discourage subrecipients or contractors from bidding. These commenters recommended contractors be allowed to self-certify to relieve administrative burdens.

HUD Response: HUD appreciates the commenters' concerns but determined that self-certification would not provide HUD with an adequate compliance oversight mechanism. There is no provision in the rule for self-certification of meeting the benchmark requirements.

Increasing Costs

One commenter stated that the requirements are already burdensome to their local governments, administrators, contractors and sub-contractors and the proposed rule would increase the burden, leading to fewer contractors willing to participate in CDBG projects, driving up costs, and leading to smaller projects and fewer beneficiaries. One commenter supported keeping reporting requirements to a minimum because both PHAs and HUD staff have limited capacity for reporting and providing constructive feedback.

One commenter stated the ability to identify workers individually rather than relying on the business concern to meet Section 3 definitions provides additional opportunity to demonstrate Section 3 compliance where there was none before, but this creates an additional burden to document safe harbor, particularly for Lead Hazard and Healthy Homes projects where a lower project dollar threshold is imposed. The commenter went on to suggest HUD consider providing additional funding for contractors to meet the financial impact of the paperwork burden of documenting compliance. Similarly, other commenters noted that under the previous rule the dollar threshold is zero, whereas under the proposed rule, despite the type of HUD funds received, every penny contracted, invested, or applied to any contract project, regardless of ownership, would have triggered full Section 3 compliance.

Commenters also expressed concern for the burden on contractors to meet hourly benchmarks while working through a pool of unskilled new hires

and potential costs to the owner if a new hire fails to meet job requirements. One commenter stated that a significant increase in Federal funding would be required to fund the increased administrative burden of the proposed rule. Other commenters stated that due to the lack of resources many PHAs have, HUD should ask for increased funding for public housing so that PHAs can sufficiently meet Section 3's intended goals. Commenters suggested HUD consider creating Section 3 technical assistance funding that can be used to build PHAs' technical knowledge and capacity.

HUD Response: HUD will continue to look for ways to reduce the impact of Section 3 reporting requirements using existing reporting and compliance systems that decrease administrative burden on recipients. HUD believes the use of labor hours, rather than new hires, will reduce costs as many construction contractors already track labor hours to meet prevailing wage requirements. This practice is proposed to provide a consistent labor hour tracking mechanism that will make compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. HUD anticipates a reduction in reporting and recordkeeping burdens equal to approximately 64,270 hours, or \$2.4 million annually. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by Congressional appropriations, authorizing statutes and regulatory formulas that set the amounts of Federal financial assistance provided by HUD grants. HUD is exploring ways to build upon ongoing Section 3 technical assistance and capacity building activities for recipients.

Disaster Recovery

A commenter warned that additional reporting requirements will be problematic for those managing disaster recovery and requested additional guidance for flexibility with the CDBG-DR program. Another commenter recommended HUD provide outreach and guidance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts.

HUD Response: Reporting requirements already exist for reporting Section 3 compliance for CDBG-DR program activities. The proposed Section 3 rule will change the reporting scope, such as reporting hours instead of new hires. The rule, however, does not create additional reporting requirements. Like current practice, the

size of a grant award and project scope will dictate the length of time it takes to complete reporting. Technical assistance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts, as well as other Section 3 topics, will be provided to grantees upon request and as part of the ongoing grant management process.

Reporting Should Be on Projects Underway

One commenter recommended CPD project reporting should be based on projects underway, not only those projects completed during the program year. The rule is unclear on how Safe Harbor is met for Section 3 projects, though Reporting § 75.25 states HUD requires a compilation of data through the recipient's fiscal year. Commenter recommends Section 3 compliance be measured by combining all workers for all Section 3 projects. If percentages of Section 3 workers and Targeted Section 3 workers are met, this will show intent to comply.

HUD Response: HUD believes that CPD project reporting should be based on those projects completed during a program year. HUD anticipates that CPD programs will continue to report on Section 3 through CPD's current data collection mechanism. At minimum, CPD programs are required to report annually, but many programs update status more frequently during a recipient's fiscal year. HUD intends to issue guidance on the Section 3 requirements and provide technical assistance on a program-by-program basis.

Special Oversight Role of States in State Programs

One commenter recommended that the proposed Section 3 rule be amended to acknowledge the special oversight role of states in State programs. The current Section 3 regulation provides guidance on this point, while the proposed rule fails to include such guidance. Any final rule should include such guidance. *See* 24 CFR 135.32(f) and 24 CFR 570.

HUD Response: HUD supports retaining the current proposed rule's language. HUD believes the proposed language does fully address the roles and responsibilities of Section 3 recipients and provides adequate guidance to implement, monitor, and enforce Section 3 requirements.

Qualitative Form

One commenter recommended that HUD should provide the form for qualitative reporting required of small



PHAs to allow commenters to provide informed feedback.

HUD Response: HUD will provide a form for Small PHAs and others to use for qualitative reporting when an entity does not meet the benchmark. The form will be issued consistent with Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and HUD will provide the opportunity for the public to provide comments on the form.

Recordkeeping (§ 75.31)

One commenter recommended moving § 75.31 to Subpart A where it would have general applicability to all recipients.

HUD Response: Subpart A and Subpart D provisions apply across the board. The rule is structured so that Section 3's general requirements are in Subpart A. Subpart B and C only apply depending on funding source. Other detailed requirements that apply across the board, such as recordkeeping and compliance, are in Subpart D. HUD believes this structure makes sense and is consistent with other rule structures.

Administrative and Compliance Costs

According to one commenter, this section implies the responsibility for ensuring workers meet the defined requirements in § 75.5, such as Census tract designation and annualized wage calculations, for CDBG Section 3 projects will lie with contractors, which will therefore be costly for contractors who lack the capacity or are already burdened by paperwork. The commenter suggested it may be easier to have recipients bear this burden.

In contrast, one commenter noted contractors would have to provide a personnel profile that includes, at a minimum, income, current address, address at time of hire, and YouthBuild status to establish whether an employee of a non-Section 3 business concern meets any of these criteria. Contractors and employees may balk at a request for this type of personal information, which may become public record. The additional administrative burden placed on otherwise qualified contractors may reduce contractor participation, thereby increasing costs and lessening the impact of Section 3 covered programs on their intended beneficiaries.

HUD Response: HUD believes the rule will not impose additional administrative and/or compliance costs for contractors. Administrative and compliance costs associated with Section 3 requirements should be properly resourced within a contractor's bid for a project and are already required for confirming compliance

with existing Section 3 requirements. Contrary to the comments, contractors do not have to provide a personnel profile or any sort of personally identifiable information. HUD has never requested this detailed information and this rule does not change that; the data is only reported in aggregate, and records are maintained for verification only. Recipients may, but are not required to, assist contractors who lack capacity to adequately implement the Section 3 requirements.

Contracting Provision § 75.17 and § 75.27

Commenters urged HUD to retain standard Section 3 language to be included in contracts because the use of consistent language makes it easier for contractors to be certain of their obligations, limits the possibility of confusion for contractors working on multiple projects, and decreases administrative burden for agencies. Other commenters expressed concern about whether the Voluntary Compliance Agreement clause will continue to exist in contracts and who will enforce it.

HUD Response: HUD considered commenters' requests for standard contract language; however, the contract language must be customized depending upon the contract and the program. HUD anticipates providing sample language and/or discussion of contracting best practices but determined that the recipient is in the best position to determine what contract language is appropriate in each context.

Multiple Funding Sources/ Recordkeeping for Multiple Funding § 75.29 / § 75.31

Clear Standards and Secure Online Tool

Other commenters recommended that there should be clear standards for reporting on Section 3 regardless of the funding source to reduce the possibility of errors and to eliminate the need to report in different formats. These commenters suggested that if HUD defers to localities, the agency that is the primary recipient of HUD funding should determine which option of reporting should be used by subrecipients to allow for consistency in reporting approach. These commenters also recommended that public housing financial assistance guidelines should dictate reporting requirements for PHAs administering projects with multiple funding sources. For projects that are mix-funded with PHA and other HUD funding, § 75.29(a) says that the other HUD funding stream (e.g. CDBG) may report using the PHA criteria.

Commenters recommended that compliance documentation be accessible in a secure online tool or standard form which would measure new hires, hours percentages and training persons and hours. These commenters went on to suggest developing a form for contractors or subcontractors to complete to confirm workers' Section 3 eligibility, which would ease administration and will foster consistency. With respect to the self-certifications discussed in proposed § 75.31, it would be helpful if HUD were to provide a form for this purpose.

HUD Response: HUD thanks the commenters for their recommendation and notes that there will be a standard set of data reporting regardless of which system is used for reporting. The same data will be collected across programs for consistency; the only difference will be how it looks when reported.

Benchmarks for Section 3 Workers and Targeted Section 3 Workers

Many commenters supported including benchmarks for Section 3 workers and Targeted Section 3 workers. Some commenters supported HUD's initial benchmarks, as a starting point, and focus on labor hours. Additional commenters supported using both benchmarks stating that limiting the benchmark to only Targeted Section 3 workers would fail to encourage hiring of other Section 3 workers. Another commenter supported elimination of the 3% goal for non-construction contracts to be Section 3 business concerns. Other commenters supported the benchmarks with the caveat that HUD retain the new hire framework for PHAs or the tracking of the labor hours if they do not have an hour tracking system already in place. These commenters suggested evaluating the efficacy of this approach and revising as necessary if data indicates the change is not supporting sustained employment.

Other commenters stated that HUD's benchmark that Targeted Section 3 workers make up 5 percent of the total number of labor hours is too low. The commenters proposed that at least 15 percent of labor hours worked be the benchmark for Targeted Section 3 workers. The commenters stated that the Section 3 statute clearly prioritizes employment for residents of public housing and other HUD-assisted housing programs.

Some commenters noted that the benchmark for labor hours is too ambitious and unreasonable. Commenters cited to the fact that low-income workers are not necessarily qualified for construction jobs, even those jobs at the lower end of the



construction pay scale, and finding low-income workers who are both qualified for the positions and willing to work in construction is much harder than identifying the number of potentially eligible low-wage workers. Commenters also noted that many low-income persons have childcare and transportation challenges and many contractors do not have open positions to fill by low-income persons.

Another comment opposed the 5% Targeted Section 3 goal, stating it was unrealistic given most PHA residents are seniors, have some form of disability, or already work. Commenters also noted that the benchmarks will be especially difficult to achieve in rural locations.

One commenter opposed the two categories of Section 3 workers, noting the pool of workers is already small, and makes achievement of benchmarks challenging. While the additional categorization provides data collection value, it creates additional burden and goes beyond the statute's requirement. The commenter noted that the benchmark fails to recognize many other initiatives to assist residents to work towards long-term employment and self-sufficiency (such as Family Self-Sufficiency (FSS) programs).

Commenters also noted the current benchmarks have been difficult to meet, and that the new bar would likely require that all positions engaged, rather than only new hires, go to Section 3 workers. The commenter recommends that in an environment of under-funding and over-regulating that HUD establish a modest benchmark that recognizes training and adjust upward later, if necessary. The commenter noted the current recommendation is extremely aggressive and unreasonable; and would result in few agencies meeting the mark. Additionally, it would fail to reduce reporting burdens, align regulations with standard business practices, or increase Section 3 successes.

Other commenters focused on the Targeted Section 3 worker benchmark, noting that the category complicates tracking and decreases the likelihood of meeting benchmarks. The commenter suggested taking an alternate approach to tracking Targeted Section 3 workers without establishing a separate benchmark. One commenter stated that the benefits and goals of the Section 3 statute would be difficult to measure by tracking only Targeted Section 3 workers in that it would fail to represent the value of providing economic opportunities to individuals who are low-income but may live outside the immediate project area, who otherwise still qualify for Section 3 preference.

Other commenters stated that for Subpart C, HUD should only measure compliance of Section 3 with overall Section 3 worker tracking and should not apply Targeted Section 3 workers metrics or benchmarks. The commenters stated support for retaining the existing 30 percent benchmark for all Section 3 new hires but that it should not be required to be disaggregated between Section 3 and Targeted Section 3 workers. The commenters stated that this approach would keep the benchmarks in line with the goals of Section 3 while providing contractors and administering agencies with the ability to tailor implementation depending on the composition of the local workforce and specific project needs.

A commenter noted that they ran numbers with the new metric, along with other PHAs, and they all reported much lower percentages, in most cases half of the proposed numbers. The commenter raised a concern with employee displacement if contractors are required to meet this new ratio, which is inconsistent with the goal of Section 3 to create new jobs rather than displace existing employees or inflate project costs. The commenter noted that recipients hiring contractors instead of replacing or hiring more employees could game the system or add significant costs by hiring additional but unnecessary Section 3 workers for the project life.

HUD Response: The statute requires Section 3 prioritization and this rule's goal is to ensure statutory adherence and streamlined reporting. HUD created the Targeted Section 3 worker category to include both the statutory priorities and policy priorities, for example, tracking the hiring of public housing residents where public housing assistance is involved and tracking the residents of the neighborhood or service area when other housing and community development assistance is used. Prioritization is meaningless without the categorical distinction and HUD believes that technology enables better tracking compared to at the statute's inception. As for the benchmarks, HUD will establish the benchmarks via Federal Register Notices which will allow them to change over time, as data is reported and gathered. HUD believes 5% is a reasonable estimate from the Office of Policy Development and Research (PD&R) data. Additionally, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the

rule. HUD believes this flexibility will deter any incentive to hire unnecessary Section 3 workers.

Qualitative Measurement

One commenter supported changes to reporting requirements and appreciated the ability to report qualitative efforts if benchmarks are not met. One commenter stated that compliance should be evaluated qualitatively rather than using hours as a benchmark. Commenters stated that the proposed certification related to prioritization of Section 3 hiring efforts would be burdensome to agencies and contractors. The commenter wrote that HUD should require agencies to certify what efforts they have implemented to achieve the goals of the Section 3 program to be considered in compliance. This approach would maintain the benefits and incentives of the program and provide HUD with a tool for accountability.

HUD Response: The statute requires agencies and contractors to prioritize their hiring efforts according to the statute's terms. The rule requires funding recipients to certify that they have acted in compliance with the statute, and to report on the quantitative outcomes of their efforts relative to the benchmarks. HUD does not consider it burdensome for a recipient of HUD funding to certify that they have acted in compliance with the statute. Furthermore, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. If reporting is above the benchmark, then HUD will presume compliance with the regulatory requirements; HUD wants to see actual positive outcomes rather than just a recipient's inputs. HUD appreciates the request for additional compliance tools but believes that requiring such reporting for all agencies would be overly burdensome.

Safe Harbor

Commenters stated that the proposed rule is not clear on how Safe Harbor would be met for Section 3 projects. The commenters questioned what type of data collection would be used to assure accurate reporting and how to meet the percentages of Section 3 and Targeted Section 3 workers. The commenters asked whether there would be a tool to assist with this data collection.

HUD Response: HUD will issue sub-regulatory guidance and provide technical assistance on a program-by-program basis to assist recipients with



clearly understanding the Section 3 safe harbor parameters. Recipients will provide data regarding Section 3 and Targeted Section 3 workers through existing HUD information systems, as defined by each covered program. HUD will not impose additional data collection burdens on recipients because of the rule.

Small PHAs Should Have a Separate Benchmark

One commenter recommended that Safe Harbor benchmarks should be established for small PHAs and suggested HUD establish a minimum threshold of work-able and non-working residents. Another commenter stated that some smaller businesses do not usually track labor hours performed on specific projects, and it can be a struggle for them to learn how to do so. On Davis-Bacon projects, contractors are required to submit certified payroll; however, some projects may be subject to Section 3 that are not subject to Davis-Bacon and related acts. The commenter stated that requiring the tracking and reporting of labor hours could pose a significant additional burden to small contractors.

HUD Response: One of HUD's goals through this rule is to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly (though not exclusively) those who receive government assistance for housing. HUD believes that it is essential to achieving this goal that small PHAs report on their efforts to comply with Section 3 but acknowledges that small PHAs may have more difficulty achieving the quantitative benchmarks and consequently has permitted a qualitative reporting alternative for small PHAs. HUD is considering further ways to streamline and ease qualitative reporting by creating a tracking form and timing submission deadlines consistently with timeframes that PHAs and other recipients of public housing financial assistance are already using to submit documents to HUD. HUD has established that small PHAs with less than 250 public housing units will not be required to report labor hours or meet benchmarks, but instead will be permitted to submit qualitative reports on their efforts to involve residents in job-seeking and training endeavors. HUD recognizes the challenge when small PHAs have very few work-able, non-working residents that would make meeting benchmarks very difficult.

Alternatives

One commenter suggested limiting the benchmark to only Targeted Section 3 workers in order to provide a more streamlined approach to reporting. The commenter stated that if the benchmark is narrowed to Targeted Section 3 workers, then tracking data for Section 3 workers should not be required. Other commenters recommended removing the Targeted Section 3 worker benchmark. One commenter stated that if labor hours are tracked, the requirement should be limited to Section 3 workers in general and that the benefits of adding the Targeted Section 3 worker subcategory are not apparent enough to outweigh the complications. One commenter supported giving PHAs and entities using housing and community development assistance a choice to use either targeted Section 3 workers or Section 3 workers as their benchmark.

Other commenters recommended other benchmarking alternatives. Some commenters recommended that the benchmark include a focus on Section 3 business concerns, such that 3% of all contracts are for Section 3 business concerns. One commenter stated benchmarks should ensure that local jobs are provided to local persons to reduce commute times and recommended using geographically determined numbers. The commenter noted that many factors can affect regions and a national number can skew the worker availability distribution. One commenter suggested that such regional benchmarks allow HUD to forecast how many PHAs and Section 3 projects could meet the benchmarks assuming agencies are using their "best efforts" to hire Section 3 workers and Section 3 projects are hiring and contracting with Section 3 workers and business concerns to the "greatest extent feasible." According to comments, regional benchmarks can help account for uneven distribution of potential Section 3 workers throughout the country. Geographic standards may also help address differences between union and non-union states. If HUD were to set regional standards, there should be a national level appeals process. Commenters also suggested allowing use of local adjustment factors and economic data when establishing compliance benchmarks, especially unemployment rates which affect the ability to meet benchmarks.

One commenter stated the benchmark does not ensure Section 3 workers are engaged in a mix of job categories or trades, or opportunities for upward mobility; 30% of hours worked should

be measured for each job category/trade and protected classes. Other commenters suggested HUD consider the type of public housing financial assistance or other variables. The commenter recommended that in addition to different types of benchmarks HUD should maintain a ceiling for these benchmarks. The commenter noted a goal of 80% of entities meeting the benchmarks would be appropriate.

Other commenters stated that in order to fulfill the statutory objectives of Section 3 to direct the financial opportunities to low- and very low-income persons and recipients of housing assistance, the final rule must: (1) Set benchmarks in a way that actually prioritizes HUD tenants; and (2) employ a definition of Section 3 worker and Targeted Section 3 worker that includes exclusively low-income individuals. Commenters also proposed separate benchmarks for public housing projects and non-public housing projects and provided a specific hierarchy of workers. Other commenters noted proposed benchmarks for PHAs should reflect the law's emphasis on providing opportunities for public and assisted housing recipients.

Commenters suggested an alternative approach for workforce utilization setting goals for all construction and other blue-collar employment, such as landscaping and janitorial. The commenters suggested that labor hours also consider demographics, length of project, geography, and size of contractors.

One commenter recommended that the determination of Section 3 compliance be measured by combining all workers for all Section 3 projects to get an overall picture of the number of low-income workers being paid with these federal dollars. If the percentages of Section 3 and Targeted Section 3 workers are met, this better shows intent to comply with the spirit of Section 3.

HUD Response: HUD appreciates the suggestions and has considered multiple benchmarking options. Creating separate benchmarks would make projects with co-funding difficult; the commenter's suggestions increase both complexity and the burden of reporting. HUD believes the current benchmark is a good starting place and notes that the regulation permits adjusting the benchmarks via **Federal Register** publication. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD is most interested in strong outcomes for



Section 3 employees. In addition, HUD has no programs that align with specific regions and intends to see reporting data before making any additional distinctions, if appropriate.

Compliance (§ 75.33)

General

A comment stated HUD needs to strike a balance between the limits of state and local agency resources and Section 3's goals to provide more effective resources to foster compliance. Similarly, another comment suggested HUD utilize Community Compass technical assistance funds to create best practice resources and employ contractors to provide Section 3 compliance support to those jurisdictions and PHAs without designated staff for this purpose. Another comment recommended HUD simplify the compliance requirements by establishing a "presumed eligibility" criteria for businesses or residents located in HUD-approved Neighborhood Revitalization Strategy Areas, Choice Neighborhood target areas, Promise Zones, Empowerment Zones and Enterprise Communities, Opportunity Zones and other areas defined at 24 CFR part 570.208(a)(1)(vii).

A commenter suggested states and entitlement communities be required to develop Section 3 Plans that become part of the 5-year Consolidated Plan to allow time for compliance with the labor hours percentages while requiring demonstrated improvement over time. The plan should track Section 3 performance and demonstrate labor partnerships, construction, and training programs to target and find workers and an environment that promotes Section 3 goals. HUD should describe the plan's components, including how to notify the public of opportunities for involvement in designing the plan, how and when to notify the public when Section 3 employment and bidding opportunities arise, how to inform workers of their rights, and complaint processes. Commenters recommended HUD establish ethics standards for organizations who have a fiduciary responsibility over Section 3 funds. Other commenters suggested compliance failures to adhere to Section 3 business concern criteria should be cured within two payroll periods or be terminated; terminated contractors should be banned from receiving HUD funds for 3 years from the termination date; and that persons found to have falsified their residence to qualify as a Section 3 worker should be suspended from participation for 3 years.

Commenters stated HUD should: provide greater clarity on the obligations created by § 75.33(a), especially since the preceding section, § 75.31, imposes highly specific recordkeeping requirements; explain whether the recordkeeping obligation in § 75.33 is a restatement of the recordkeeping obligations set forth in § 75.31, or whether additional records are required to demonstrate compliance; and HUD should provide guidance on documentation and recordkeeping related to "best efforts" or "greatest extent feasible" efforts.

HUD Response: This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reporting and recordkeeping burden reduction. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. HUD will issue sub-regulatory guidance on reporting by program area and provide technical assistance to recipients for Section 3 compliance. HUD appreciates the suggestions and notes that there will be standardized compliance procedures across programs, and this will include ethics standards. Section 75.33 is a reaffirmation of the recordkeeping requirement set forth in § 75.31, as recipients of HUD funding will need to have the records described in § 75.31 available if HUD needs to do a compliance review of a recipient's Section 3 performance. HUD determined not to define the difference between "best efforts" or "greatest extent feasible," but rather to increase the emphasis on outcomes as a result of these efforts. Please see the "Best efforts" and "greatest extent feasible" section above. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced.

Complaints and Monitoring

Commenters stated each HUD program should have a detailed complaint process. A commenter supported the integration of Section 3 into each program area but noted the

lack of detailed complaint provisions, and suggested the final rule require each HUD program to have a detailed complaint process, with enforcement assigned to Davis-Bacon and Labor Relations (DBLR), Office of Field Policy and Management (FPM), or the Office of Fair Housing and Equal Opportunity (FHEO).

Commenters supported removing Section 3 enforcement from FHEO but strongly suggested HUD identify an office independent of the program offices to monitor and enforce Section 3 requirements, such as FPM, or a new Section 3 office fully funded and trained to work on Section 3. Giving responsibility for Section 3 compliance to the program that is responsible for funding that triggers Section 3 obligations is problematic because (1) HUD program staff have in the past referred to PHAs and jurisdictions, not the residents who are supposed to benefit from HUD programs, as their "constituents," (2) there is currently no process for accepting and reviewing complaints in the proposed rule, (3) significant training and resources will be required to prepare program staff to oversee Section 3 compliance since they are not currently engaged in it. HUD should require that Section 3 policies, plans, procedures, and complaints are made publicly available by both the recipient and on HUD's website.

Other commenters agreed with the proposed shift of oversight from FHEO to program offices and believed this will improve oversight because program offices already monitor recipients on a day-to-day basis, thus Section 3 monitoring will become part of normal overall monitoring. Another commenter stated transferring oversight and compliance from FHEO to program offices is an appropriate change on the condition that oversight practices are standardized across program offices. Another commenter was concerned about the Section 3 complaint process for residents; HUD program areas do not have detailed provisions for residents to file complaints on the part of PHAs or jurisdictions that do not meet program requirements. At a minimum, if HUD defers to grantees to field complaints from individuals, the process should require a grantee to inform HUD of the resolution of each complaint much like CPD does with CDBG-DR complaints.

A further commenter stated it is not clear how the public will make complaints if the current complaint process is removed and asked how they will know which program office to contact. Other commenters suggested the final rule require a detailed complaint process identical or similar to



what is in the current rule. Further commenters expressed that HUD should keep the existing complaint process until it adopts a new one after public review and comment. Other commenters were concerned about the 958 Complaint Form's elimination and the impact on residents who will be left without protections or a process for monitoring and overseeing contractors who are violating Section 3 requirements. One commenter felt that to move the review process from FHEO to local HUD CPD would be disastrous.

A commenter noted that HOME and CDBG recipients do not seem to understand the importance of Section 3 and the compliance enforcement—appropriate remedies are not in place. According to one commenter, the promise of Section 3 has not yet been realized, largely due to the fact that none of the entities responsible for its administration—HUD, state and local governments, PHAs—have been sufficiently resourced to implement, monitor, and enforce Section 3 requirements. The HUD program offices responsible for funding all are currently under-resourced and could better fulfill their obligations in monitoring and enforcing Section 3 with dedicated staff.

One commenter had concerns about moving Section 3 regulations from 24 CFR part 135 under FHEO to the new part 75 under the Office of the Secretary; the commenter assumed Office of Field Policy and Management would have oversight of Section 3 under the proposed rule amendment and expressed concern over FPM's lack of capacity and technical knowledge to oversee monitoring and enforcement of Section 3. The commenter argued HUD has never seriously monitored and enforced the statute and that HUD program staff treat PHAs and jurisdictions as their constituents, not the residents who are the intended beneficiaries. Additionally, alternative procurement provisions should be created to help Section 3 business concerns compete with larger more established businesses.

One commenter was concerned about different program offices providing conflicting information and hoped HUD would provide standardization and clear guidance; others suggested HUD request adequate funding to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3, as well as seeking adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations. A commenter has

received conflicting guidance from different program offices, resulting in findings and fines on several occasions.

HUD should provide further detail as to what standards each program office would be using to provide oversight and what procedures are in place to ensure that PHAs receive consistent oversight across offices. Further clarification is also needed as to how the responsible program office would be designated for oversight when a project uses multiple funding sources and triggers oversight from multiple program offices.

A commenter recommended HUD strengthen its compliance practices to incentivize performance while recognizing legitimate constraints. The commenter also recommends stating in the rule that HUD will deduct points in relevant HUD program Notices to applicants for competitive HUD funding who have not achieved Section 3 benchmarks and allowing applicants the ability to provide justifications for failure to meet benchmarks despite good faith efforts. The commenter also recommended allowing program offices to incentivize Section 3 compliance in funding Notices but have a Department-wide entity focus on all aspect of compliance (reporting, analysis, and information technology systems).

HUD Response: HUD took the concerns about the complaint process under advisement, and § 75.33(b) has been amended to include "or local HUD field office." HUD believes Section 3's objectives will be better achieved by moving Section 3 oversight into the program offices so that HUD staff who are actively engaged with recipients in their program planning and activities will bring Section 3 concerns and considerations into their routine interactions with the recipients. HUD will provide external and internal technical guidance on complaint handling and routing. The Office of Field Policy and Management (FPM) will be taking a greater role at the field level by filtering complaints to the corresponding office, rather than every HUD program office having its own complaint process. The local HUD field office is part of the FPM organizational structure, and also provides individuals with a complaint venue when the complainant does not know which program office would be responsible. There will be variation in what guidance and/or compliance looks like for each program office, but HUD will provide support to the extent it is standardized across program offices.

Enforcement

Commenters stated any contractor or Section 3 resident found to falsify data

in order to receive benefits from HUD funded training, contracting, and employment should be immediately removed and/or barred from participation in Section 3 programs for ten years. Violations should be posted and made available to the public for review. Every PHA should have a written Section 3 Plan-Policy in place and attached to any Request for Proposals for bids.

HUD Response: HUD believes that recipients should have the flexibility to determine how to implement Section 3. HUD also believes this new regulation will make such implementation easier. While the final rule does not require recipients to have Section 3 plans or policies, HUD views having them as a best practice that will aid recipients in achieving the Section 3 benchmarks. As for the concern about potential fraud, program offices will continue to monitor compliance with Section 3 requirements through evaluation of qualitative or quantitative reporting, complaint review, and program audits, if appropriate.

General Comments

One commenter said all policies should be expressed in "simple" terms for all stakeholders, especially residents, to understand. Commenters stated there is little point in creating policies and programs that produce only six-week or six-month jobs, or jobs that do not lead workers out of poverty. HUD recipients have difficulty in assisting residents in obtaining and maintaining any jobs, let alone high-wage jobs that will lead to careers and help residents leave poverty behind.

A commenter expressed the Section 3 rule is "of great benefit to have in effect and keep up to date." Section 3 funding recipients should be mandated to actively seek employment at all times to the best of their ability and report an employment log to track job applications.

One commenter indicated many of the proposed changes do not reflect the construction trade's current realities and would impose costly new obligations on PHAs without a funding source to pay for those requirements. Another commenter argued Section 3 is "just another burdensome regulation" that "doesn't produce a positive outcome." One commenter stated the proposed rule would have an adverse impact on the Section 3 participation that HUD desires, whereas others supported the proposed rule amendments.

One commenter stated public housing living conditions are poor; Section 3 programs are practically non-existent in the commenter's area; and the way that



public housing residents' income is calculated is problematic.

A commenter stated Section 3 is one of HUD's most important responsibilities since it creates the standards for employment, training, and contracting opportunities generated from HUD financial assistance. This commenter felt a stronger Section 3 rule can lead to increased hiring and contracting opportunities; overall the proposed rule has many merits and is an improvement. Similarly, another commenter stated the potential benefits of Section 3 have never been realized; the improvements to the rule have potential to improve outcomes.

According to one comment, the proposed rule amendments try to address Section 3 program implementation difficulties but still present incongruities; HUD should consider methods to enact preferences or incentives. A commenter stated it is difficult to find Section 3 employers in some jurisdictions, and some jurisdictions have no active YouthBuild program. Commenters noted most HUD households are headed by or include females, minorities, or female minorities. Section 3 regulations should be designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty, and PHAs should be required to work with organizations that have a proven track record of successfully recruiting, training, and retaining women and minorities in the construction industry. A commenter recommended HUD work directly with the National Task Force on Tradeswomen's Issues.

HUD Response: HUD thanks the commenters for their responses. This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reduction of reporting and recordkeeping burdens. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD agrees that this regulation is designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty. There is no mandate in the rule for Section 3 funding recipients to constantly apply for new jobs, nor are there requirements for PHAs to work with certain organizations.

Other Programs

Commenters noted opportunity discrimination is unconstitutional; all citizens have a right to wealth and prosperity. States can support and invest in their cities' workforce through equity and management but should first complete a local needs assessment. One commenter referred to Perkins V (the Strengthening Career and Technical Education for the 21st Century Act) requirements for eligible recipients to conduct a comprehensive local needs assessment every two years. One commenter suggested creating a Section 3 Score Card for public information to capture grantee compliance and ensure that contractor compliance with Section 3 requirements are considered for future employment and contracting opportunities, and improving the effectiveness of the program will enhance compliance to realistically measure targeted outcomes.

A commenter recommended HUD consider developing an annual recognition program for PHAs, subrecipients, contractors, and subcontractors for excellence in Section 3 performance, rather than redesigning the tracking and reporting requirements.

HUD Response: HUD thanks the commenters for their responses. HUD affirms that discrimination based on protected classes is unconstitutional. The Perkins programs noted in the comment are administered by the U.S. Department of Education and there are no requirements for eligible recipients to conduct a comprehensive local needs assessment every two years in the rule. There are no provisions to create a public Section 3 Score Card or an annual PHA recognition program at this time.

Technical Fix

One commenter noted in the amendment to 24 CFR 93.407(d), the proposed rule still references 24 CFR part 35 instead of 24 CFR part 75. The commenter recommended that HUD change the citation to reflect 24 CFR part 75.

HUD Response: Thank you for your comment, but HUD declines to change the citation. The amendment referred to is a technical amendment to the regulations unrelated to the Section 3 regulations. The cross-reference to 24 CFR part 35 is in reference to records demonstrating compliance with lead-based paint requirements, which continue to be covered by 24 CFR part 35.

HUD Program Collaboration

Commenters stated that funding for Section 3 coordinators, and technical

assistance or written guidance on coordination with other self-sufficiency programs such as FSS would allow for Section 3 to more effectively meet its goals. One commenter opposed changes to the rule stating that HUD should not scale back its existing operations and rule. The commenter also recommended that HUD and other agencies ensure coordination with benefit planners so that people with disabilities are involved in planning neighborhoods and community opportunities for work.

HUD Response: HUD appreciates the suggestion for more funding for Section 3 coordinators. HUD believes that this rule will streamline the Section 3 regulations to create additional incentives and streamline reporting requirements, thereby offsetting the need for more funding. HUD notes that by conducting in-service trainings and proactively engaging with appropriate partners in the Social Security Administration (Work Incentives Planning Assistance), Department of Labor (ETA & ODEP) and Health and Human Services (CMS, ACF & ACL) to identify best practices and model approaches, FPM will make the appropriate decisions regarding potential coordination with FSS, other self-sufficiency programs, and/or programs for people with disabilities. HUD continues to encourage PHAs and recipients of HUD funds to coordinate with other agencies and local communities to assist in hiring Section 3 workers. This rule does not change that. Moving the oversight of the rule to FPM and the program offices will not scale back HUD's role in ensuring compliance with Section 3 requirements. HUD believes that the move will actually ensure better compliance given the new location of oversight and the new tracking mechanisms.

Title VI

One commenter suggested the Section 3 rule should include information that Title VI of the Civil Rights Act also applies to Section 3, prohibits against discrimination, and requires language assistance.

HUD Response: Title VI applies to any program or activity receiving Federal financial assistance from HUD. Section 3 is a requirement, not a program that receives HUD funding.

Extend Comment Period

One commenter recommended HUD extend the comment period for affordable housing developers to suggest more effective changes.

HUD Response: HUD believes that the 60-day comment period provided ample



opportunity for affordable housing developers and other members of the public to suggest changes to this rule.

Outside the Rulemaking Scope

One commenter, a stakeholder in a major metropolitan area PHA that is being monitored by a "Federal Monitor" as a result of a 958 Complaint, stated that the appointed Federal Monitor has no housing experience and that all parties involved have missed the most important purpose of Section 3, which is economic empowerment for low and very low-income persons residing in local communities for HUD invested projects.

One commenter proposed defining an execution fee as a "percentage of bidder's final submitted price added by the recipient or general contractor because the contractor/subcontractor provided no Section 3 benefit."

One commenter stated concern about the lack of focus on higher level training as a vehicle for individuals to develop skills and build a better future. The commenter stated that the proposed benchmarks and guidelines provide no framework for differentiating training or skilled work classifications from general labor, so there would be no incentive for creating higher level opportunities. The commenter requested that HUD provide guidance on how to encourage this sort of activity under the new benchmarks.

HUD Response: HUD thanks the commenters for their suggestions, however, these comments are outside the scope of this rulemaking.

Miscellaneous

Impact on Rural Areas and States

Commenters stated it is difficult to comply with Section 3 requirements in rural areas. The goals of Section 3 are more feasible in densely populated urban areas. The proposed rule does not improve this circumstance. Section 3 eligible individuals cannot take advantage of Section 3 opportunities in rural areas because they are nonexistent. There are not ample conditions to facilitate Section 3 in small communities and rural areas. Rural areas have less availability of contractors and employees and there needs to be flexibility to engage people outside their service area to complete projects. One commenter noted benchmarking methodology seems strongly skewed toward large urban centers and overlooks geographically large states with relatively small rural populations, and asked HUD to make exceptions for jurisdictions with smaller and more rural populations. Some commenters noted that contractors in

rural states rarely need to hire new employees because the projects are small, the contractors have limited growth potential, or the employers have tenured staff. The commenter further stated that the new hire's length of employment coincides with the project and terminates at project completion.

Commenters noted Section 3 is particularly difficult for states to administer. Another commenter explained that as a state, it does not hire the contractors for the CDBG projects. The local jurisdictions do that. It has no opportunity to promote the hiring of Section 3 business concerns. The very small communities with which it works have implemented procurement policies that award contracts to the lowest responsible bidder. They will not award a contract to a higher bidder just because the bidder is a Section 3 business concern. The commenter stated that the Section 3 regulation should apply to the CDBG Entitlement program and not the Small Cities program. One commenter suggested that state CDBG recipients should have the same flexibility in reporting as small PHAs.

HUD Response: HUD acknowledges that implementing Section 3 in various geographic areas presents different challenges for rural areas versus densely populated urban areas. HUD believes this has been addressed within the proposed Section 3 regulation by using a circle centered around the worksite that expands until it reaches a population of at least 5,000. HUD further acknowledges that, in particularly remote areas, the expandable circle may reach a size that may be impracticable to match those benefiting from the project with the Section 3 benchmark. If the recipient is unable to meet the Section 3 benchmark described in § 75.11, it will be required to report in a form prescribed by HUD on the qualitative nature of its activities or those of its contractors and subcontractors. This will allow the recipient to explain in qualitative means why it was unable to meet the Section 3 benchmark. HUD is sympathetic to the issues raised for rural areas and will watch implementation carefully as it progresses, allowing for updates as deemed necessary. HUD will also provide sub-regulatory guidance on the submission of qualitative reports to enable smoother implementation of the requirement.

Coordination With Nonprofit Organizations and Other Agencies

Commenters suggested HUD require PHAs and other recipients to work with organizations with a proven record of accomplishment of success in the

recruitment, training, and retention of women and minorities in the construction industry and other blue-collar occupations. The Department of Labor is already working with many of these organizations and has a list of apprenticeship training and technical assistance providers to help with the recruitment of Section 3 residents, pre-apprenticeship training and ongoing support. Commenters also suggested that HUD work directly with the many tradeswomen organizations, and other nonprofits already providing construction readiness training programs (also called pre-apprenticeship training) and the National Task Force on Tradeswomen's Issues. In 2018, women made up only 3.4% of construction workers. While this figure represents progress, it demonstrates the need for HUD and its recipients to partner with tradeswomen and other organizations who have expertise in successfully getting women and minorities into the construction trades, and, more importantly, creating a real opportunity for careers in the construction industry. One commenter recommended forging closer ties with the Tribal Employment Rights Offices and directing the HOME and CDBG programs to consider this approach to ensure tribal communities' benefit from HUD program projects nearby. Other commenters suggested planning grants to form or strengthen partnerships with Workforce Investment Boards or inter-agency collaborations with workforce programs within the Department of Labor.

HUD Response: HUD concurs that building strong collaborations between and among several Federal, state, and local partners will aid Section 3's goals. HUD will consult with the Departments of Labor, Health and Human Services, Commerce, Small Business Administration, and other agencies as determined by the HUD Secretary to meet the Section 3 statute's mandate at 12 U.S.C. 1701u(f). HUD will also take the comments provided under consideration as it looks for ways to conduct successful outreach and technical assistance strategies for Section 3 implementation.

Outreach and Training

Commenters recommended that HUD facilitate the competition for Section 3 excellence among developers and contractors by developing an online database of completed Section 3 covered projects that includes the names of the developer and general contractor, the nature and size of the project, and the Section 3 employment, contracting, training and retention outcomes



achieved. Commenters urged HUD to create a national database of Section 3 outcomes and to facilitate the inclusion of training and retention programs in bid materials by collecting and sharing best procurement practices.

One commenter suggested HUD should explicitly require PHAs and CDBG recipients to make reasonable efforts to connect Section 3 workers and Targeted Section 3 workers with local workforce development and career and technical education training. Another commenter recommended that the rule should give emphasis to training opportunities as is emphasized in the Section 3 statute because training is a potential response for recipients who are submitting qualitative reports for failure to meet Section 3 benchmarks.

One commenter stated there are no provisions in the rule regarding training. Similarly, another commenter noted the benchmark fails to recognize the statutory reference to training and employment opportunities. Likewise, commenters requested HUD clarify whether it is proposing new ways to track or report on Section 3 training. In the discussion of proposed §§ 75.15 and 75.25, HUD states that one of the qualitative measures a locality could use is paying for apprenticeship programs and/or offsite job training. One commenter welcomes any opportunity to expand these programs and recommends that HUD make job training an economic development activity instead of public service under the CDBG regulations. Alternatively, HUD could consider raising the public service cap for CDBG funds in order to accommodate additional job training programs.

A commenter recommended HUD provide outreach on training, employment and asset building programs to HUD assisted residents, including Family Self Sufficiency, Jobs Plus, and the Resident Opportunity and Self-Sufficiency programs. HUD should create resource guides on how CDBG has been used to support effective job training programs. A commenter suggested HUD should design a Section 3 worker's rights poster with input from HOME and CDBG grantees. Commenters noted changes to Section 3 reporting and tracking requirements may require additional resources for administering agencies, particularly PHAs in receipt of public housing assistance funds. HUD funding for the implementation of an IT system to enhance the current system and integrate with contractors would be particularly welcome to ease Section 3 monitoring and reporting for all parties. Having dedicated funding for the overall program, including support for resident

training, IT system enhancements, and other related measures, would help to further Section 3 goals while limiting potential administrative burdens.

One commenter stated PHAs noted they are most successful in helping residents find employment when they can offer employment services and trainings to help them gain the skills necessary to access jobs. However, additional funding is needed for programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative, and the Public Housing Operating Fund. One commenter recommended that HUD provide recipients the addresses of all public housing, PBRA projects, and Housing Choice Voucher projects by counties to assist in matching workers' addresses and automatically designating them as Section 3 workers; that HUD assist Section 3 workers in housing assistance; that Section 3 workers receive a living wage; that HUD help provide life skills such as budget counseling; and that HUD be proactive in supporting and developing (in conjunction with the Department of Labor) apprenticeship and other training programs for assisted housing residents and other low-income people.

One commenter recommended that HUD incentivize widespread replication of successful mentorship programs; create regional programs patterned after successful mentorship programs that smaller PHAs can access cooperatively; ensure the program allows for a tiered approach that allows Section 3 contractors to gain vital experience on smaller projects then graduate up to increased responsibility; and ensure that the Section 3 program continues to allow PHAs to use Section 3 contractors to complete work at all levels, including very small projects. One commenter suggested HUD request that the President's Budget include adequate funding to enable HUD to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3. Also, the President's Budget should seek adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations.

HUD Response: HUD thanks the commenters for their suggestions; as HUD updates its systems, HUD will take the suggestions under advisement. HUD encourages CDBG recipients to collaborate with local workforce development boards and training providers to create effective connections between them and Section 3 and Targeted Section 3 workers. HUD will

also provide sub-regulatory guidance and technical assistance promoting career and technical education training. HUD believes tracking labor hours provides a picture as to the success of providing job opportunities with HUD financial assistance, but as noted in the proposed rule the qualitative reporting will consider training. Reporting entities may consider training to help meet its employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD will not provide a separate funding source; however, HUD will build on this final rule by providing technical assistance guidance for all HUD Section 3 programs. HUD will consider such guidance in creating materials for use by grantees. PHAs should already be tracking labor hours for Davis-Bacon or wage requirements and should not be doing anything more than what they did before to verify Section 3 workers as new hires. This rule just lays out the process for such verification. Once a PHA determines a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with Operating and Capital Funds as the denominator.

HUD appreciates the input on ways HUD can help residents and is continuing to look at ways to make programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative more effective. HUD will be sure to consider those recommendations in future rulemaking. Section 3, however, is focused on how to provide job opportunities created by HUD federal financial assistance and does not have funding directly associated with it that can be used for those programs. Reporting entities may consider training to help meet their employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD does not think it is appropriate to provide access to a list of all public housing, PBRA projects and Housing Choice Voucher residents to the public; such data sharing would implicate privacy concerns. Additionally, the PHA would have that information for seeking to hire such persons as Targeted Section 3 workers for public housing assistance.

HUD appreciates the suggestions and will consider them in providing guidance and technical assistance by both FPM and the program offices. HUD believes that there will be adequate funding for Section 3 technical assistance and monitoring in FPM. The FY2020 President's Budget Request



Congressional Justification specifically requested: “\$51.5 million to support 334 FTEs, consistent with the estimated 2019 Annualized CR level. Resources will support ongoing community engagement, monitoring and technical assistance pertaining to Section 3, compliance with the Davis-Bacon and Related Acts, enhancement of the overall customer experience and disaster recovery responsiveness at the state and local levels for clients and customers.”⁶ Federal financial assistance recipients should make their own determinations about staffing levels necessary to implement the assistance received.

Rental Assistance Demonstration (RAD)

Commenters recommended the RAD Notice should be amended to indicate that Section 3 obligations be extended post-conversion to PBV because currently Section 3 no longer applies unless additional Federal financial assistance is later used for rehabilitation. Commenters also asked for further clarification regarding RAD conversion applicability during and after construction. Eliminating RAD projects from Section 3 applicability will reduce contract awards that can provide opportunities to Section 3 residents. HUD should revise the rule to expand the definition of Targeted Section 3 worker to cover RAD and other HUD assisted tenants, and should require owners and managers of RAD-converted projects to hire, train, and contract with Section 3 residents to the greatest extent feasible in their own operations.

HUD Response: The Section 3 statute does not apply to properties that are recipients of Section 8 rental assistance unless they are recipients of other Federal funding covered by the Section 3 statute. A RAD transaction is a conversion at a moment in time and, subsequent to the conversion, the property is governed by the Section 8 requirements. HUD has administratively applied Section 3 during the RAD-related construction period even though not required by the RAD statute or the Section 3 statute. See RAD Notice Revision 4 and RAD program documents.⁷ HUD has declined to extend Section 3 to the Section 8 portfolio, as that would be a significant expansion of the Section 3 statute's parameters. HUD has defined “Targeted

Section 3 workers” to include residents of public housing and Section 8 housing, which means that HUD funding recipients must report on hiring of these types of HUD-assisted tenants, which includes tenants of RAD-converted Section 8 properties.

Notice of Funding Availability (NOFA)

One commenter wrote in support of the NOFA certification's removal. Several commenters supported the current requirement that NOFA applicants submit a certification of intent to comply with Section 3 requirements along with a statement of their proposed Section 3 activities. Commenters noted that performance among PHAs, developers, and contractors varies greatly when it comes to meeting Section 3 requirements. One commenter gave an example where a contractor might merely hold a job fair and interview any qualified Section 3 residents who apply, while another might make Section 3 hiring a condition of all major subcontract awards, contract with a community organization to conduct outreach and referral services, establish a pre-construction and/or on-the-job training program, provide job coaching and other supports, and retain Section 3 workers after completion of the Section 3 project. Commenters went on to state that using a bidder's past Section 3 performance and the quality of their proposed Section 3 plan can have a profound effect on the quality of economic opportunities provided to Section 3 residents.

HUD Response: HUD decided to continue with the change in the proposed rule and to omit specific requirements for Notices of Funding Availability (NOFA) in the final rule; however, the final rule will require that all NOFAs issued by HUD that announce the availability of funding covered by section 75.3 will include notice that part 75 is applicable to the funding and may include, as appropriate for specific NOFAs, points or bonus points for Section 3 plans. Where Section 3 is applicable, the inclusion of specific requirements in the regulation regarding the NOFA does not change the recipient's obligation to have a compliant Section 3 implementation strategy. Similarly, where Section 3 is not applicable, the regulatory language would not apply. The presence or absence of the NOFA clause in the regulation has no effect on applicability of Section 3. HUD anticipates that program offices will include scoring for Section 3 plans where relevant and exclude Section 3 scoring where the nature of the grant being awarded is incompatible with Section 3 endeavors

(such as funding for sweat-equity homeownership initiatives). HUD is in the process of developing improved databases to inform program offices, funding recipients, and the public-at-large regarding Section 3-covered projects and the outcomes achieved. HUD hopes that these databases, plus anticipated technical assistance to disseminate information regarding Section 3 best practices, will provide a foundation for more impactful implementation of Section 3 over time.

Professional Services Exclusion

Commenters stated HUD should retain the 3% benchmark for professional services contracts, as it is not uncommon for professional services companies to meet the qualifications of a Section 3 business concern. It helps businesses who employ workers who were low-income when they were hires or businesses who were started by low-income or public housing residents that have grown professionally to provide employment opportunities to other low-income people.

Other commenters noted excluding professional services positions—typically higher paying, higher career growth—would effectively limit Section 3 workers to construction services, diminishing the potential positive impact of the statute. Ultimately, it will not provide HUD with adequate data on positive or negative impacts of Section 3's intended goals. The intended goal of the Section 3 statute is to positively impact the lives of HUD assisted residents through meaningful job placement and training that will ultimately lead to greater self-sufficiency. The current rule includes a goal of 30% of new hires in management and administrative jobs, technical, professional, building trades, and non-construction jobs and all levels. Professional service jobs include accounting, legal services, financial consulting, architectural and engineering services. The proposed rule indicates that professional services will be excluded from benchmarking requirements, but HUD will allow voluntary reporting of these workers. A commenter suggested maintaining the current rule's requirement of reporting on professional services but moving to total labor hours worked in both construction and non-construction services, and better tracking this data through streamlined reporting systems.

Other commenters supported excluding professional services from benchmarking requirements while allowing voluntary reporting of such workers; excluding certain types of contracts such as material and supply,

⁶ HUD's FY2020 Congressional Justification for President's Budget, <https://www.hud.gov/sites/dfiles/CFO/documents/2020HUDCongressionalJustifications4-2-19.pdf>.

⁷ Rental Assistance Demonstration—Final Implementation, Revision 4 Notice H-2019-09 PIH-2019-23 (HA), issued September 5, 2019.



and professional service; and excluding professional services from covered activities and suggested adding a benchmark for training activities. One commenter noted it experienced the same challenges as other HUD partners in meeting Section 3 goals when working with professional service vendors. However, the commenter noticed that in some cases vendors can carve out small segments of highly skilled work or training for low-income residents (e.g., providing an internship or hiring a recent graduate to perform a small scope of work.) While the rule allows voluntary participation of professional service vendors, commenter suggests that HUD give discretion to recipients to mandate Section 3 participation by these partners, without necessarily holding them to specific benchmarks like contractors.

HUD Response: HUD acknowledges that there are occasions when employers can create opportunities for Section 3 employment in the professional services context, and HUD lauds these efforts. At the same time, data indicate that there are relatively few such opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific Federally funded project or activity. To ensure that the carve-out for professional services is relatively narrow, however, HUD has revised the definition of professional services. While keeping the modified exclusion for professional services in the final rule, HUD notes that the reporting structure in the proposed rule allows a recipient to count as Section 3 labor hours and as Targeted Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hours in the professional services context. As referenced in the comments, vendors can sometimes create opportunities in the professional services context, and HUD seeks to reward this behavior. In addition, recipients are provided significant discretion in how they seek to implement their Section 3 obligations. A recipient could elect to require, at the local level, additional Section 3 obligations with respect to

professional services through the terms of the funding contract.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule creates new part 75 regulations that would replace the part 135 regulations, with the intention to make compliance with Section 3 more effective and less burdensome, and therefore, help to contribute to job creation for low- and very low-income persons. HUD has prepared a Regulatory Impact Analysis (RIA) that addresses the rule’s costs and benefits. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800-877-8339.

Environmental Impact

The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new

construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule updates HUD’s Section 3 regulations and replace them with a new 24 CFR part 75, for which the objective is to increase employment opportunities for low- and very low-income persons and businesses that are owned by or employ such persons. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 business concerns. This rule also considers the burden on small public housing agencies (PHAs), defined in this rule as a PHA that manages or operates fewer than 250 public housing units, and reduces the burden on them through a new streamlined reporting process that would not require them to report labor hours or new hires. There are approximately 2,950 PHAs, of which approximately 2,250 are small.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that must comply with this rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. The current recordkeeping and reporting requirements for Section 3 is 90,180



hours with a cost of \$1,817,000. HUD estimated that this new rule will reduce the number of hours by 68 percent to 25,910 hours. The biggest reduction will be for small PHAs that will no longer need to do quantitative analysis with a total estimated time saving of 12,375 hours with a cost of \$281,036, or approximately \$125 for small PHAs. HUD also anticipates an across the board savings in recordkeeping given the time savings resulting from less time reporting new hires as a separate metric. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

Currently, 24 CFR part 135 requires that all recipients track and report Section 3 information to HUD, includes prescriptive contractual language, requires compliance by contractors of the Section 3 requirements, contains reporting and recordkeeping requirements, and provides for the filing of Section 3 complaints. SPEARS is the main site in which HUD captures the number of Section 3 residents hired and the number of contracts awarded to Section 3 business concerns. The existing information collection requirement for these requirements has

been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2529–0043.

The rule would change the existing reporting requirement to decrease qualitatively those who need to report, excluding small PHAs and recipients of Section 3 projects under the \$200,000 threshold, and require reporting only once a year by recipients of completed projects. HUD provides in §§ 75.15 and 75.25 that recipients would be required to submit reports to HUD annually either in a qualitative form or quantitative form. HUD includes all the large PHAs in the § 75.15(a) reporting number for reporting on the Section 3 benchmarks and estimates 2 hours to track and report annually given the amount of funds handled by these PHAs. HUD also estimates that a PHA will employ approximately seven contractors or subcontractors each fiscal year that would need to track and report up to the PHA, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 700 large PHAs may fail the Section 3 benchmarks and would need to report on their qualitative efforts along with the 2,250 small PHAs and estimates that such reporting would take one-half an hour.

As for § 75.25(a), HUD estimates that 66 percent of most program recipients would complete projects in a fiscal year that need to be reported except that for the HOME program, HUD estimates that 90 percent of HOME recipients would complete projects in a fiscal year, at an estimate of 3,600 recipients. Given these projects are more diverse in size, HUD estimates that the average time to report on the Section 3 benchmarks for recipients would be 1 hour. HUD also estimates that a Section 3 project will engage approximately five contractors or subcontractors each fiscal year that would also need to track and report up to the Section 3 project recipient, each

at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 3,600 recipients may fail the Section 3 benchmarks and would need to report on their qualitative efforts and estimates that such reporting would take one-half an hour.

HUD also notes that the rule no longer requires the inclusion of prescriptive contractual language. See §§ 75.17 and 75.27. HUD believes that this change will result in a de minimis upfront burden related to updating contracts, if recipients, subrecipients, and contractors chose to do so, but that removing the requirement will actually reduce burden on recipients, subrecipients, and contractors on a sustained basis by giving them flexibility to use alternative or existing contractual language. HUD also provides for recordkeeping requirements at § 75.31 and believes that the maintaining of records by recipients will take a recipient approximately 2 hours. However, HUD notes that some programs, such as HOME, already have recordkeeping requirements that are part of existing approved Information Collection Requests and, thus, excludes those programs from the burden matrix. Lastly, HUD maintains the option for individuals to file complaints and retains the frequency number that was in the existing Section 3 reporting burden.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current recordkeeping requirements for Section 3 is 90,180 hours with a cost of \$1,817,000. HUD estimates that this new rule will reduce the number of hours by 68 percent to 25,910 hours for a total cost savings of approximately \$1.2 million. The overall reporting and recordkeeping burden is estimated as follows:

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.15(a) Labor Hour or New Hire Reporting for PHA	700	1	2	1,400	\$22.71	\$31,794.00
§ 75.15(a) Labor Hour or New Hire Reporting for Contractors or Subcontractors of PHAs	4,900	1	0.5	2,450	22.71	55,639.50
§ 75.15(b)–(d) Qualitative Reporting for PHAs	2,300	1	0.5	1,150	22.71	26,116.50
§ 75.25(a) Labor Hour Reporting for Section 3 Projects	3,600	1	1	3,600	22.71	81,756.00
§ 75.25(a) Labor Hour Reporting for Contractors and Subcontractors on Section 3 Projects	10,800	1	0.5	5,400	22.71	122,634.00



Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.25(b) Qualitative Reporting for Section 3 Projects	180	1	0.5	90	22.71	2,043.90
§ 75.31 Recordkeeping	5,900	1	2	11,800	22.71	267,978.00
§ 75.33 Complaints	20	1	1	20	10.00	200.00
Total				25,910		588,161.90

HUD will update the appropriate OMB control number 2529-0043 to reflect this reduction in burden.

Congressional Review of Final Rules

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104-121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 75

Administrative practice and procedure, Community development, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 266

Intergovernmental relations, Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, under the authority 12 U.S.C. 1701u; 42 U.S.C. 3535(d), HUD amends 24 CFR parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701u and 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-115, 119 Stat.



3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

■ 2. Amend § 5.105(a) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.”

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

■ 4. Amend § 14.115 by removing and reserving paragraph (a)(5).

■ 5. Add part 75 to read as follows:

PART 75—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Sec.

75.1 Purpose.

75.3 Applicability.

75.5 Definitions.

75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

Subpart B—Additional Provisions for Public Housing Financial Assistance

75.9 Requirements.

75.11 Targeted Section 3 worker for public housing financial assistance.

75.13 Section 3 safe harbor.

75.15 Reporting.

75.17 Contract provisions.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

75.19 Requirements.

75.21 Targeted Section 3 worker for housing and community development financial assistance.

75.23 Section 3 safe harbor.

75.25 Reporting.

75.27 Contract provisions.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping and Compliance

75.29 Multiple funding sources.

75.31 Recordkeeping.

75.33 Compliance.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.

1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability.

(a) *General applicability.* Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) *Public housing financial assistance.* Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in paragraphs (a)(1)(i) through (iii) of this section.

(2) *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) The Secretary must update the thresholds provided in paragraph (a)(2)(i) of this section not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment. When the Secretary finds it is warranted to ensure

compliance with Section 3, the Secretary may adjust, regardless of the national construction cost factor, such thresholds through **Federal Register** notice, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) *Contracts for materials.* Section 3 requirements do not apply to material supply contracts.

(c) *Indian and Tribal preferences.* Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) *Other HUD assistance and other Federal assistance.* Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD*, *Public housing*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an



advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

(i) It is at least 51 percent owned and controlled by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of

someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for the quality of Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) **Employment and training.** (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing

financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) **Contracting.** (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

(a) **Targeted Section 3 worker.** A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;



(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) *General.* PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the *Federal Register*. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the *Federal Register*, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of PHAs and other recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.15 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.15(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by

all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

(a) *Reporting of labor hours.* (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance in the fiscal year of the PHA or other recipient, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) PHAs and other recipients may report on the labor hours of the PHA, the recipient, a contractor, or a subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the PHA's or other recipient's reporting under paragraph (a) of this section indicates

that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.13, the PHA or other recipient must report in a form prescribed by HUD on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, PHAs or other recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) *Reporting by Small PHAs.* Small PHAs may elect not to report under



paragraph (a) of this section. Small PHAs that make such election are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) *Employment and training.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) Participants in YouthBuild programs.

(b) *Contracting.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5; or

(ii) A YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) *General.* Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.25 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.25(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

(ii) The number of labor hours worked by Targeted Section 3 workers as defined in § 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

§ 75.25 Reporting.

(a) *Reporting of labor hours.* (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is



otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

- (1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (2) Provided training or apprenticeship opportunities.
- (3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (5) Held one or more job fairs.
- (6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
- (7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- (8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where

required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For such a project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

- (i) The total number of labor hours worked on the project;
- (ii) The total number of labor hours worked by Section 3 workers on the project; and
- (iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, subrecipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

(D) A worker's certification that the worker is a YouthBuild participant.



(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

(d) A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

§ 75.33 Compliance.

(a) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with this part, consistent with other recordkeeping requirements in 2 CFR part 200.

(b) *Complaints.* Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

(c) *Monitoring.* HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.215 [Amended]

■ 7. Amend § 91.215(j) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.225 [Amended]

■ 8. Amend § 91.225(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.325 [Amended]

■ 9. Amend § 91.325(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.425 [Amended]

■ 10. Amend § 91.425(a)(1)(vii) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 12. Amend § 92.508 as follows:

■ a. Remove paragraph (a)(7)(i)(B);

■ b. Redesignate paragraph (a)(7)(i)(C) as (a)(7)(i)(B); and

■ c. Add paragraph (a)(7)(xi).

The addition reads as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

PART 93—HOUSING TRUST FUND

■ 13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 14. Amend § 93.407 as follows:

■ a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);

■ b. Remove paragraph (a)(5)(i)(B);

■ c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);

■ d. In newly redesignated paragraph (a)(5)(iv), remove “24 part 35” and add in its place “24 CFR part 35”; and

■ e. Add paragraph (a)(5)(xi).

The addition reads as follows:

§ 93.407 Recordkeeping.

(a) * * *

(5) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [AMENDED]

■ 15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove designated subchapter headings A and B.

PART 135 —[REMOVED]

■ 16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

■ 18. Amend § 266.220(c) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135”.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 570.487 [Amended]

■ 20. Amend § 570.487(d) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 570.607 [Amended]

■ 21. Amend § 570.607(b) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 22. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 574.600 [Amended]

■ 23. Amend § 574.600 by adding “and part 75” after the phrase “24 CFR part 5”.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 24. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).



§ 576.407 [Amended]

- 25. Amend § 576.407(a) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 578—CONTINUUM OF CARE PROGRAM

- 26. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

§ 578.99 [Amended]

- 27. Amend § 578.99 by removing “federal” in the section heading and adding in its place “Federal” and removing “24 CFR part 135” in paragraph (i) and adding in its place “24 CFR part 75”.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

- 28. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z-2, 42 U.S.C. 1437z-7, and 3535(d).

§ 905.308 [Amended]

- 29. Amend § 905.308(b)(10) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

- 30. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

- 31. Revise § 964.320 to read as follows:

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 75, PHAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 75.3) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

- 32. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

- 33. Amend § 983.4 by removing the definition of “Section 3—Training, employment and contracting opportunities in development”.

§ 983.154 [Amended]

- 34. Amend § 983.154 by removing (c) introductory text and paragraph (c)(1) and redesignating paragraph (c)(2) as paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

- 35. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

- 36. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient's tribe in accordance with Section 101(k) of NAHASDA.

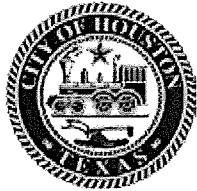
Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2020-19185 Filed 9-28-20; 8:45 am]

BILLING CODE 4210-67-P





EXECUTIVE ORDER CITY CONTRACTORS' PAY OR PLAY PROGRAM

EO No.	EO 1-7
Effective Date:	Upon Approval

1. AUTHORITY

Article VI, Section 7a, of the City Charter of the City of Houston; and City of Houston Code of Ordinance, Chapter 15.

2. BACKGROUND

- 2.1. Contractors that do not provide healthcare benefits for their workforce impose a burden on the public and private agencies that provide this care to uninsured persons in the City of Houston, Harris County, and to individuals and businesses whose health insurance premiums increase because of the shifting of costs onto those payers.
- 2.2. The provision of health benefits is instrumental in attracting and retaining a good workforce and is a characteristic of a responsible contractor.
- 2.3. The City intends to enhance fairness in the competition for contracts between bidders that choose to offer a health benefit to their workforce and those that do not.

3. PURPOSE

The purpose of this Executive Order is to:

- 3.1. require certain contractors to provide to certain employees a minimum level of healthcare benefits or to contribute a designated amount to be used to offset the costs of providing healthcare to uninsured people in the Houston/Harris County area;
- 3.2. establish the Pay or Play Program (Program) and the procedures for the administration thereof;
- 3.3. authorize studies to evaluate the effectiveness and impact of the Program on contracting firms and the City;
- 3.4. provide funding to the Office of Business Opportunity (OBO) to pay the actual costs of implementing, auditing, and monitoring compliance with this Order and related mandates; and
- 3.5. augment and enhance the goals and purposes of Chapter 15 of the City's Code of Ordinances by supplementing the measures authorized and/or required therein with the Program to enhance fairness in competition for City contracts. No provision of this Executive Order shall be construed to excuse compliance with any law or any procedure authorized by law.

4. SCOPE

4.1. The Program applies to:

- 4.1.1. Contracts for services in which the total expenditure by the City, including contingencies, amendments, supplemental terms and/or change orders, equals or exceeds \$100,000.

Approved:

Date Approved:

1/26/2021

Page 1 of 5



- 4.1.2. Subcontracts for services in which the total value of the subcontract, including contingencies, amendments, supplemental terms and/or change orders, equals or exceeds \$200,000. The contractor is responsible to the City for compliance of covered employees of covered subcontractors.
- 4.2. The Program does not apply to:
 - 4.2.1. Any contract in which the primary purpose (51% or more) is the procurement or purchase of property, leases, goods, supplies, and/or equipment;
 - 4.2.2. An intergovernmental contract, interlocal agreement, bulk purchasing or purchasing cooperative.
 - 4.2.3. Any contract for which the City of Houston has not expended funds, regardless of funding source.
- 4.3. This Executive Order applies to any advertised procurements, sole source procurements, any bids or for services or construction.
- 4.4. This Executive Order applies to all On-Call, Work Order and Job Order solicitations and contracts.
- 4.5. This Executive Order applies to all departments within the City of Houston.
- 4.6. This Executive Order will prospectively apply to all contracts that exceed \$100,000 and/or all subcontracts that exceed \$200,000 throughout the life of the contract.
- 4.7. This Executive Order applies to employees of a covered contractor or subcontractor, including contract labor, who are over age 18, work at least 30 hours per week with any amount of time worked on the covered City contract or subcontract.
- 4.8. No later than thirty (30) days after the effective date of the Executive Order, the City's Chief Procurement Officer and departments with delegated authority shall make best efforts to:
 - 4.8.1. Incorporate the requirements of this Executive Order into all formal competitive procurements issued after the effective date of this Executive Order and resulting contracts for which contract negotiations begin after the effective date of this Executive Order using the language approved by the Legal Department;
 - 4.8.2. Add to the currently published Terms and Conditions for Purchase Orders (<http://purchasing.houstontx.gov>) the language approved by the Legal Department that requires the contractor to comply with this Executive Order.
- 4.9. No later than thirty (30) days after the effective date of the Executive Order, City Departments shall make best efforts to:
 - 4.9.1. Ensure that City Department staff that administers or manages contracts are aware of this Executive Order.
 - 4.9.2. Incorporate the requirements of this Executive Order into all applicable City Contracts for which contract negotiations begin after the effective date of this Executive Order by using the language approved by the Legal Department;
 - 4.9.3. Encourage contractors that perform work for a department to comply with this Executive Order.

5. PROCEDURES



- 5.1. Prior to the commencement of a covered contract, the contractor must declare its intent to comply with the Program and will submit a plan for compliance in the form and manner prescribed by the Office of Business Opportunity, which shall serve as the Director and/or Designee of the Program.
- 5.2. Contractors will report to the City regarding the identity of covered subcontracts and covered employees working under subcontracts in the form and manner prescribed by the Director and/or Designee.
- 5.3. Pay – If the contractor elects to comply by paying, the contractor will pay to the City \$1 for each hour of work performed by covered employees within a 40-hour work week, including covered employees of covered subcontractors on a City contract. The OBO Director and/or Designee will prescribe the time and form of payment. All payments to the City under this section shall be deposited to the Contractor Responsibility Fund, which shall not be used for any other purpose except to assist in providing health care services to uninsured persons in the Houston area and the Pay or Play program administrative costs, as described in this Order.
- 5.4. Play – If the contractor elects to comply by playing, the contractor will provide documentary proof in a form acceptable to the Director and/or Designee that it provides health benefits to each covered employee, and that covered employees of covered subcontractors are provided health benefits. The health benefits must meet or exceed the following standards:
 - 5.4.1. The employer contributes no less than 75% of the total premium costs per covered employee per month toward the total premium cost; and
 - 5.4.2. The covered employee contributes, if any amount, no greater than 25% of the total monthly premium costs. A contractor is deemed to have complied with this provision with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and provides proof of insurance or an approved Employee Waiver (POP-8) form.
- 5.5. Pay and Play – A contractor may pay on behalf of some covered employees and play on behalf of other covered employees, including subcontractors' covered employees.
- 5.6. Contractors will submit information regarding compliance with the Program in a form and manner prescribed by the Director and/or Designee.
- 5.7. In cooperation with the Director and/or Designee, all City departments shall implement procedures to facilitate the administration of the Program. This shall include, but not be limited to, the development of standards for management of data necessary to monitor the compliance by contractors and the establishment of accounting procedures to ensure accurate accounting for and disbursement of any monies collected from contractors.
- 5.8. In cooperation with the Director and/or Designee, the Legal Department shall develop language for inclusion in contracts that includes the obligation of covered contractors to meet the Program requirements and specifies the right of City personnel, including Controller's Office personnel, to examine the books and records of all contractors and subcontractors that relate to compliance with the Program.

6. IMPLEMENTATION AND OVERSIGHT

- 6.1. A portion of the Contractor Responsibility Fund shall be used to pay the actual costs of implementing the program, including but not limited to paying the salaries and benefits of employees approved by the Mayor to work on the Pay or Play Program and related issues.
- 6.2. In the event the balance of the Fund is insufficient to cover salaries and benefits due to contractors' decisions not to "pay" or the allocation of funds for other purposes, the positions funded by this Order shall be laid off pursuant to section 14-141.4 of the Code of Ordinances.
- 6.3. OBO and the Finance Department shall cooperate in determining the funding for the Program each

Subject: EO 1-7: City Contractors' Pay or Play Program

Page 3 of 5



fiscal year.

6.4. OBO and the contracting department shall cooperate to enforce compliance and remedy noncompliance by contractors.

6.4.1. The Office of Business Opportunity will audit contracting departments' POP program to determine if the department is in compliance.

6.4.2. OBO may request that the contracting department reassign the POP Liaison responsible for departmental POP compliance, if OBO determines that the department unsatisfactorily enforced the program during the review period.

6.4.3. Pursuant to the terms of the purchase order or Contractor's agreement with the City and to the extent allowed by law, Contractors that have been found to not be in compliance with this Executive Order may be subject to suspension or termination of the relationship with the City if no remedial action is taken in a manner acceptable to the City. .

7. EXCEPTIONS

7.1. The City of Houston will award a contract to a contractor that neither Pays nor Plays if the contractor has received an exemption (POP-4 Prime/Subcontractor Waiver Request Form) from OBO.

7.2. A contract or subcontract is appropriate for an exemption based on the following:

7.2.1. Adverse Impact – Compliance with the Pay or Play Program would cause an unreasonably adverse impact on the City's ability to obtain services or an unreasonably adverse financial impact on the City.

7.2.2. Foreign Company – The contract or subcontract is with a company whose headquarters and/or employees are located outside of the United States of America and provide universal health insurance to employees traveling and working in the United States of America.

7.3. The contracting department must submit to OBO a waiver request and back up documentation to support the waiver request.

8. RELATED DOCUMENTS AND INFORMATION

- Ordinance No. 2009-1293 (Dec. 9, 2009)
- Ordinance No. 2007-534 (May 2, 2007)

9. ATTACHMENTS

9.1. POP FORMS: OBO reserves the right to publish revised POP forms at their discretion, which revision shall not require an amendment to this Executive Order.

Attachment 1 – Form POP-1 Acknowledgement Form
Attachment 2 – Form POP-2 Certification of Compliance
Attachment 3 – Form POP-3 Participating Subcontractors
Attachment 4 – Form POP-4 Prime/Subcontractor Waiver Request
Attachment 5 – Form POP-5 Monthly PAY Option Report
Attachment 6 – Form POP-6 Department Monthly Update
Attachment 7 – Form POP-7 Quarterly Play Option Report
Attachment 8 – Form POP-8 Employee Waiver Request
Attachment 9 – Form POP-9 Self-Insured Contractor Request

10. CONFLICT AND REPEAL

Subject: EO 1-7: City Contractors' Pay or Play Program

Page 4 of 5



10.1. In the event of a conflict between this Executive Order and any federal or state law, statute, or regulation, the federal or state law, statute or regulation supersedes this Executive Order.

10.2. This Executive Order supersedes Executive Order 1-7, effective January 3, 2012, which shall be of no further force or effect. All other departmental and City policies that are inconsistent with this Executive Order are hereby superseded.

11. POLICY SPONSOR

Department: Office of Business Opportunity

Subject: EO 1-7: City Contractors' Pay or Play Program

Page 5 of 5



Appendix 15

City Workforce Protection Measures

The City is committed to ensuring that the construction it finances protects workers on these projects by making sure they are safe, are compensated in accordance with applicable law and have access to pathways for sustainable careers in the construction industry. Contractors who work on developments financed under CBDG-MIT will be required to implement certain policies designed to ensure every worker on the project is safe, receives appropriate pay, and has a path toward building a career in construction. All contractors of any tier that perform work on the development, unless otherwise specified, will be required to comply with the following workforce protection program and employment measures.

The City acknowledges many of these provisions may require additional costs. The department will consider award requests sufficient to cover additional costs associated with the new requirements. However, the City will still require the limitation of CDBG-DR awards to no greater than 50% of total development costs. The City reserves the right to revise the requirements of the workforce protection measures on an as-needed basis before and after issuance of CDBG-DR awards.

Pay or Play

In an effort to create a level playing field for competing contractors, the Pay or Play program (POP) mandates City Contractors to offer their employees a minimum level of health benefits or contribute a prescribed amount towards "Contractors Responsibility Fund" to defray the costs of providing health care to uninsured people in the Houston and Harris County area.

This program applies to contracts for services in which the total expenditure by the City, including contingencies, amendments, supplemental terms and/or change orders equals or exceeds \$100,000. This program also applies to subcontracts for services in which the total value of the subcontract, including contingencies, amendments, supplemental terms and/or change orders equal or exceeds \$200,000.

All project contractors (of any tier) must comply with the City's Pay or Play policies with regard to every Section 3 worker and apprentice-level worker that they employ for work on the project. Prior to the commencement of a covered contract, the contractor will declare its intent to comply with the Program and will submit a plan for compliance. Contractors will report to the City regarding the identity of covered subcontracts and covered employees working under subcontracts in the form and manner prescribed by the Administer (060).

Pay

If the contractor elects to comply by paying, the contractor will pay to the City \$1 for each regular hour of work performed by covered employees, including covered employees of covered subcontractors. All payments will be deposited into the City shall be deposited in the Contractor Responsibility Fund.

Play

If the contractor elects to comply by "playing", the contractor will provide documentary proof in a form acceptable to the Administrator that it provides the requisite level of health benefits to each covered employee, and that covered employees of covered subcontractors are

provided with health benefits. A contractor must contribute no less than \$150 per covered employee per month toward the total premium cost; and the covered employee may not contribute more than \$150 per month toward the premium. A contractor is deemed to have complied with this provision with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month. Program exceptions such as waivers and types of contracts that do not require participation can be found in Executive Order 1-7. For additional information regarding the City of Houston, Housing and Community Development Department compliance requirements you may visit: <http://vwww.houstontx.gov/housing/multifamilycompliance.html>

Workers' Compensation

The owner and general contractor will provide workers' compensation coverage provided with either project level policy or umbrella policy provided by the owner or GC HCDD will require that the owner and GC place signage onsite to properly inform workers of their benefits under this coverage. Developer must provide the Director of HCDD or his or her designee with evidence of worker's compensation coverage at the time of loan closing.

Awardees will be subject to these terms which will be included within the loan agreement.

Safety Training and Hourly Base Wage Rate

The owner and general contractor will be required to ensure that (1) all individuals performing project work, regardless of job designation or employment status, have received OSHA 10 certification and (2) at least one (1) on-site supervisor with OSHA 30 certification is present on the job site at all times that work is being performed.

In addition, any individual performing project work, regardless of job designation or employment status, will receive a minimum hourly wage of no less than the higher of (1) \$15.00 per hour or (2) the Federal prevailing wage.

If the applicant elects to include their statement on safety training, they will be required to certify within the HCDD contract they will employ contractors with adequate OSHA training. HCDD will require the construction contract with the general contractor include this provision as an addendum. HCDD will test compliance during onsite visits and payment applications.

If the applicant elects to include their statement on an hourly base wage rate, they will be required to certify within the HCDD contract they will comply with the Hourly base rate requirement of \$15.00 per hour for each worker. HCDD will require the construction contract with the general contractor include the Hourly Base Rate of \$15.00 requirement along with the applicable DBRA wage scale as an addendum. HCDD will test compliance during construction.

Awardees will be subject to these terms which will be included within the loan agreement.

Employment Training and Apprenticeships

HCDD expects project contractors to commit to the development of their craft workforce and invest in skills training linked to construction career paths. A minimum of 10% of all labor hours

on each project must be performed by individuals enrolled in apprenticeship or craft training programs that are certified by the U.S. Department of Labor.

Owners will be required to certify within the HCDD contract they will employ contractors that adhere to the employment and apprenticeship policy. HCDD will require the construction contract with the general contractor include acknowledgement that 10% of all labor hours will be performed by apprentices enrolled in apprenticeship or craft training programs that are certified by the Department of Labor. HCDD will test compliance during construction. Awardees will be subject to these terms which will be included within the loan agreement.

Section 3

Awardees must, to the greatest extent feasible, employ Section 3 Residents (as defined in Title 24 CFR Part 135) for 30 percent (30%) of the aggregate number of new hires for each year over the duration of the project. At a minimum, awardees must, to the greatest extent feasible, ensure that 10 percent (10%) of all project work hours are performed by Section 3 Residents.

Awardees will be subject to these terms which will be included within the loan agreement.

Employment Classification

HCDD expects its awardees to hire responsible contractors who can reliably verify the proper employment classification of all individuals they engage to perform work on covered projects and provide verified reporting of wages owed and paid to employees and monthly certified payroll data to the City.

All Section 3 workers and apprentice-level workers must be directly employed by a project contractor. In addition, all self-employed workers will be subject to the same compensation standards and protections as other employees/contractors outlined in this policy.

Awardees will be subject to these terms which will be included within the loan agreement.

Davis Bacon and Related Acts (DBRA)/Labor Standards Provisions

All City financed developments require compliance with the Davis-Bacon Labor Standards no matter the use of HCDD's funds. Davis-Bacon and Related Acts require that prevailing wage rates be paid to all construction laborers regardless of job designation or employment status.

Compliance Plan

The Borrower and Owner will be required to submit a plan for implementing these measures. The plan is not required to have detailed procedure, but at minimum an acknowledgement that the applicant will inform general contractors that they and all subcontractors of any tier will be subject to these terms when solicited for the referenced development.