

INTERLOCAL AGREEMENT FOR UTILITY RIGHT OF WAY TRAILS

460003239
2015-0348

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

ARTICLE 1
PARTIES

THIS INTERLOCAL AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF HIKE AND BIKE TRAILS ALONG CENTERPOINT TRANSMISSION CORRIDORS ("Agreement") is made effective on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a Texas home-rule city, and the HOUSTON PARKS BOARD LGC, INC. ("HPBLGC"), a nonprofit local government corporation, organized and existing under the laws of the State of Texas, acting by and through its manager, the Houston Parks Board, Inc. ("HPB"), a local 501(c)(3) non-profit corporation organized under the laws of the state of Texas.

1.1. Addresses

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

HPBLGC

City of Houston
Director, Houston Parks and Recreation Department
2999 S. Wayside Drive
Houston, Texas 77023

Houston Parks Board LGC, Inc.
300 N. Post Oak Lane
Houston, Texas 77024

The parties agree as follows:

1.2. Table of Contents

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A. Map and or description of the Hike and Bike Trail to be constructed	
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1.3. Parts Incorporated

The exhibits described above are incorporated into this Agreement.

1.4. Controlling Parts


If a conflict between the sections of this Agreement and the exhibits arises, the sections control over the exhibits.

1.5. Signatures

The parties have executed this Agreement in multiple copies, each of which is an original.

**HPBLGC:
HOUSTON PARKS BOARD LGC, INC.**

**CITY:
CITY OF HOUSTON, TEXAS**

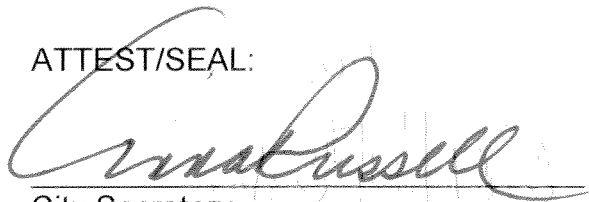
By: 

Roksan Okan Vick
Executive Director
Tax ID No.: _____



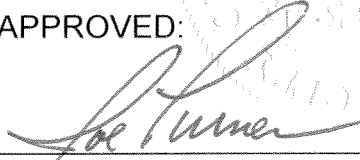
Mayor *Amanda Washington*

ATTEST/SEAL:



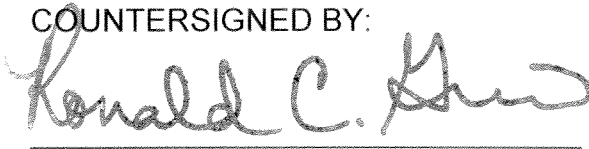
City Secretary

APPROVED:



Director, Houston Parks and Recreation
Department

COUNTERSIGNED BY:

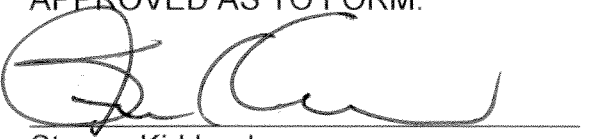


City Controller *Shannon Kella*

DATE COUNTERSIGNED:

May 5, 2015

APPROVED AS TO FORM:



Steven Kirkland
Senior Assistant City Attorney
L.D. File No.

ARTICLE 2 DEFINITIONS

As used in this Agreement, the following terms shall have meanings set out below:

2.1. “Additional Improvements” means those additional improvements to the Project that HPBLGC may undertake from time to time subject to the review and approval of the Director.

2.2 “Additional Work” means subsequent approved Projects that receive Centerpoint approval and the approval by the Director. Such Additional Work will be subject to the terms of this Agreement and will be added to this Agreement as subsequent Exhibits in alphanumeric order (i.e., Exhibit A-1, A-2, etc).

2.3. “City” is defined in Article 1 of this Agreement and includes its successors and assigns.

2.4. “City Contribution” means an amount equal to \$1,500,000.00 that the City shall initially contribute to the Work attached and described in this Agreement (Exhibit A). This amount is the same amount donated to the City from CenterPoint Energy Houston Electric LLC (“Centerpoint”) for construction of a Hike and Bike trail as described herein. As the parties may hereafter agree, additional funds may be added to the City Contribution by the City to augment and extend the Project and provide for Additional Improvements or Additional Work as more fully described on subsequent exhibits.

2.5. “Countersignature Date” is the date of countersignature by the City Controller of the City of Houston.

2.6. “Director” means the Director of the City of Houston Parks and Recreation Department or such person as he or she shall designate to administer this Agreement.

2.7. “HPB” is defined in Article 1 of this Agreement.

2.8. “HPBLGC” is defined in Article 1 of this Agreement acting by and through HPB, and includes HPBLGC’s successors and assigns.

2.9 “Master License Agreement” is the Master License Agreement for Hike and Bike Trails between the CenterPoint Energy Houston Electric LLC and the City of Houston approved by City Council in Ordinance No. 2014-0565 attached as Exhibit “B”.

2.10. “Project” means the design and construction of certain identified hike and bike

trails along CenterPoint transmission corridors as permitted under the Master License Agreement, identified in Exhibit A and subsequent subsequent Exhibits in alphanumeric order (i.e., Exhibit A-1, A-2, etc)and as described more fully below.

2.11. **“Project Costs”** means the costs associated with the Project.

2.12. **“Work”** means the Project and the Additional Improvements.

ARTICLE 3 DUTIES OF HPBLGC

3.1. Scope of Work

1. HPBLGC shall provide the City all labor, material, and supervision necessary for the Project.

2. HPBLGC will submit all plans and documents required for each trail segment to be constructed to the Director for approval. Design documents or plans will be submitted at 30% and 95% completion. The Director shall provide HPBLGC comments or approval within fourteen (14) days of receipt of HPBLGC’s submittals; provided, however, if no response is given to HPBLGC within each 14-day review period, the Plans so submitted shall be deemed to have been approved by the Director on behalf of the City.

3. HPBLGC will coordinate design work with CenterPoint as required under that Master License Agreement, and will provide any and all design, construction or other documents required under that agreement, including each Exhibit A under that agreement which shall be attached as Exhibit D and subsequent subsequent Exhibits in alphanumeric order (i.e., Exhibit D-1, D-2, etc) to this agreement.

4. HPBLGC will coordinate construction with CenterPoint as required under that Master License Agreement, and will assume the duties assigned to the City of Houston in the following paragraphs of that agreement:

- a) Paragraph 10 (Existing Easement Holders)
- b) Paragraph 13 (Construction Requirements)
- c) Paragraph 14 (Work to be performed by contractors)
- d) Paragraph 18 (Water channelization)
- e) Paragraph 19 (Lighting)
- f) Paragraph 20 (Signage)
- g) Paragraph 21 (Insurance)
- h) Paragraph 23 (Contractor Indemnity)

5. For each trail segment to be constructed, HPBLGC will provide a preconstruction budget which will, at a minimum, include the cost to plan, design, and obtain appropriate consents and permits for the construction (the “Preconstruction Budget”) and submit it to the Director for approval. Before the end of preconstruction activity, HPBLGC will provide a detailed construction budget and schedule. (the “Construction Budget”) The Director shall provide HPBLGC comments or approval

within fourteen (14) days of receipt of each budget, however, if no response is given to HPBLGC within the 14-day review period the Budget shall be deemed to have been approved by the Director on behalf of the City.

6. If, after completion of each segment of the Project, any portion of the City Contribution remains unexpended, HPBLGC may identify Additional Improvements to be funded with the remainder of the City Contribution or with additions to the City Contribution, subject to the Director's review and approval. For any such Additional Improvements, HPBLGC shall complete, and obtain the Director's approval of, all budgets and documents required for the Additional Improvements, and shall provide the City all labor, material, and supervision necessary for the Additional Improvements.

7. The City Contribution must be expended in accordance with the terms of this Agreement. If HPBLGC expends any portion of the City Contribution for purposes inconsistent with the terms of this Agreement, HPBLGC shall be in default of this Agreement and shall immediately return to the City the applicable portion of the City Contribution in accordance with the provisions of Section 5.2 of this Agreement.

8. In addition to the City Contributions, HPBLGC may, at its discretion, conduct fundraising campaigns and seek grant funding for additional projects as may be approved by the Director and CenterPoint in accordance with the agreement and the Master License Agreement and shall construct such trails under the authority of this agreement.

9. Likewise, as additional City Contributions become available for Additional Work, the City shall contact HPBLGC at its place of notice below to seek submission of a Preconstruction Budget and proposal. While this Agreement provides access for an initial term of 10 years, it is not exclusive and the City may, at its election, choose other contractors for Additional Work.

3.2. Insurance

In addition to the requirements of Paragraph 21 of the Master License Agreement, all insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Each contractor shall give 30 days' written notice to HPBLGC and the City before its policies are canceled or not renewed. Each contractor shall name HPBLGC and the City as "Specific Additional Insured" on the Commercial General Liability and Comprehensive Automobile Liability policies. Prior to commencement of any portion of the Work, HPBLGC shall require each contractor to provide the City in addition to HPBLGC with copies of bonds covering faithful performance of this Agreement and payment of obligations arising under it as required pursuant to Chapter 2253 of the Texas Government Code. Each contractor shall name the City as dual obligee on such bonds.

3.3 Accounting Report

Upon completion of the Project, HPBLGC shall provide the Director with an accounting report that itemizes the Project Costs funded by the City Contribution, for the Director's review and approval. The Director shall approve the accounting report if, in the Director's opinion, the City Contribution has been expended in accordance with this Agreement.

Upon completion of Additional Improvements, HPBLGC shall provide the Director with an accounting report that itemizes the Additional Improvements funded by the City Contribution, for the Director's review and approval. The Director shall approve the accounting report if, in the Director's opinion, the City Contribution has been expended in accordance with this Agreement.

3.4. Minority and Women Business Enterprises

1. It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Articles II and V, of the City of Houston Code of Ordinances relating to City-wide Percentage Goals for contracting with MWSBEs, are incorporated into this Agreement.

2. HPBLGC shall comply and shall require its construction contractors to comply with such Chapter 15 requirements in connection with construction subcontracts. The City's policy does not require HPBLGC to in fact meet or exceed this goal, but it does require HPBLGC to objectively demonstrate that it has made good faith efforts to do so. To this end, HPBLGC's contractors shall maintain records showing:

1. subcontracts with Minority Business Enterprises,
2. subcontracts with Small Business Enterprises, and
3. specific efforts to identify and award subcontracts and supply agreements to MBEs and SBEs.

HPBLGC shall submit periodic reports of its efforts under this Section to the Director of the Office of Business Opportunity in the form and at the times he or she prescribes.

ARTICLE 4 DUTIES OF CITY

4.1. City Contribution; Conditions of Expenditure

The City shall remit the City Contribution to HPBLGC at its address for notices and such amount shall be inclusive and include HPBLGC's 4% project management fee.

The City shall remit such amounts in two installments so that the Preconstruction Budget and Construction Budget are separate but funded in full prior to HPBLGC awarding any contract. The remittance shall occur as follows:

1. 30 days after receipt of an invoice for the Preconstruction Budget approved pursuant to 3.1.5, the City will remit the full amount approved in the Preconstruction Budget for design services; and,
2. 30 days receipt of an invoice for the Construction Budget approved pursuant to 3.1.5, the City will remit the amount approved in the Construction Budget.

4.2. Assignment of License

Subject to the obtaining the prior written consent of CenterPoint under Section 12 of the Master License Agreement, (such consent to be attached as Exhibit "C"), the City hereby assigns its right of access under the Master License Agreement to HPBLGC for the purposes expressed herein.

4.3 Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. HPBLGC may not expend any portion of the City Contribution on assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to HPBLGC.

ARTICLE 5 TERM AND TERMINATION

5.1. Agreement Term

This Agreement is effective on the Countersignature Date and expires in ten years unless sooner terminated under this Agreement. The Director may not accept the Project or the Additional Improvements unless the Director has first accepted the accounting report described in Section 3.4 of this Agreement.

5.2. Termination

1. Either party may terminate this Agreement, without cause, by 30 days' written notice to the other party. After termination under this provision, neither party shall have any further obligation under this Agreement, except as follows: HPBLGC shall return to the City any portion of the City Contribution that HPBLGC has not (i) expended in accordance with Section 4 of this Agreement or (ii) encumbered to pay its obligations for any portion of the Work under a contract existing at the time of such termination.

2. Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after receipt of such notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify HPBLGC of a default and to effect termination.

5.2. Extensions

1. This Agreement will renew on the same terms as set forth herein for two consecutive renewal terms of 10 years each, by written notice of renewal by the City no less than thirty days before the last day of the then current term. The initial and renewal terms are individually and collectively referred to as the Term.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.1. Responsibilities of the Parties

The parties agree that neither party is an agent, servant, or employee of the other party and that each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

6.2. Force Majeure

Neither party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions.

6.3. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

6.4. Entire Agreement

This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Agreement.

6.5. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and HPBLGC. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

6.7. Notices

All notices to either party to this Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article 1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.8. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the Director, or by any other employee or agent of the City, of any part of HPBLGC's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

6.10. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. HPBLGC shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining HPBLGC's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.11. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.12. Survival

HPBLGC shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

6.13. Parties in Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and HPBLGC only.

6.14. Successors and Assigns

This Agreement binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City, HPBLGC, or HPB.

6.15. Business Structure and Assignments

HPBLGC shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in § 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, HPBLGC shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. HPBLGC shall not delegate any portion of its performance under this Agreement without the Director and City Attorney's* prior written consent, such consent not to be unreasonably withheld or delayed provided that the City is not deprived of any rights or protections.

6.16. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

EXHIBIT A

Map and or description of the Hike and Bike Trail to be constructed

EXHIBIT B

Master License Agreement

EXHIBIT C

CenterPoint Consent to Assignment to HPBLGC

Exhibit D

CenterPoint approval of the Hike and Trail to be constructed (also known as Exhibit A-1, A-2, etc. of the Master License Agreement)