

# Memorandum



CITY OF DALLAS

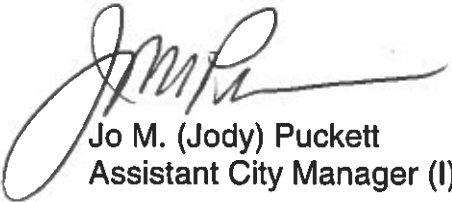
DATE July 28, 2017

TO Honorable Mayor and Members of the City Council

SUBJECT **Recreational Development in the Dallas Floodway: Creation of a Local Government Corporation**

On Wednesday, August 2, 2017, you will be briefing on the Recreational Development in the Dallas Floodway: Creation of a Local Government Corporation. The briefing materials are attached for your review.

Please feel free to contact me if you have any questions or concerns.



Jo M. (Jody) Puckett  
Assistant City Manager (I)

c: T.C. Broadnax, City Manager  
Larry Casto, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager  
Majed A. Al-Ghafry, Assistant City Manager

Raquel Favela, Chief of Economic Development & Neighborhood Services  
Jon Fortune, Assistant City Manager  
Joey Zapata, Assistant City Manager  
M. Elizabeth Reich, Chief Financial Officer  
Nadia Chandler Hardy, Chief of Community Services  
Theresa O'Donnell, Chief of Resilience  
Directors and Assistant Directors

# Recreational Development in the Dallas Floodway: Creation of a Local Government Corporation

Dallas City Council

Jody Puckett  
Assistant City Manager (I)

August 2, 2017



**City of Dallas**

# The Purpose

- Provide briefing on efforts to move recreational development forward in the Dallas Floodway by creating and utilizing the benefits of a Local Government Corporation

# Background

- In April 2015, the U.S. Army Corps of Engineers (Corps) signed the Modified Dallas Floodway Record of Decision (ROD), marking a major milestone in reducing flood risk and supporting the City's Balanced Vision Plan (BVP), which includes recreational development
- On September 15, 2016, Annette C. Simmons (Donor) committed \$50 million as a contribution to The Trinity Trust, currently known as The Trinity Park Conservancy:
  - For the creation of the Harold Simmons Park (HSP) in the Dallas Floodway between the Margaret McDermott Bridge and the Ronald Kirk Bridge
  - Philanthropy provided a catalyst for consideration of long term view of implementation of the recreation component of the BVP
- Utilization of a Local Government Corporation (LGC) for the focused development of recreation in the Dallas Floodway provides benefits for both implementation and raising capital in the form of equity or debt

3

# What is an LGC?

- A LGC is formed by a municipality or county to act on its behalf to raise capital; debt or equity
  - Can serve as a valuable tool to leverage private funding sources by engaging in private fundraising as a non-profit
- For projects such as:
  - Transportation, water and sewer infrastructure, economic development, recreation development and other public projects
- Examples of such LGC's for recreational development include:
  - Bayous Greenways – Houston
  - Waller Creek – Austin

# Benefits of a LGC

- City controls the scope and purpose of a LGC
- Can fundraise and accept donations for Dallas Floodway recreational projects
- Board shall be singularly purposed to provide long-term leadership, focusing on specific development of recreational uses in the Dallas Floodway
- Solely financially obligated for all design, construction, maintenance, management, and operation of future recreation projects
- Creates no City financial commitments except as authorized by City Council to the LGC

# City Council Role

- Controls board appointments and replacements
- Retains authority over actions affecting Dallas Floodway until or unless Council votes to delegate authority
- Controls flow of any City funds for LGC recreation project expenditures

# Creation of an LGC - Governance

- City Council would approve creation of Trinity River Corridor LGC
- Powers of the LGC shall be vested in a Board of Directors with up to 7 members
  - Appointed by the Dallas City Council, upon recommendation of the Mayor
  - Must be resident of Dallas
  - Must be registered voter of the State of Texas
- Footprint for LGC covers Dallas Floodway from Elm/West Forks through the main stem of the Trinity River ending at the ATSF Bridge
  - City fee-owned property located inside and within one-quarter mile outside of the centerline of the levees
  - Allows for inclusion of existing and other future recreational developments within the Dallas Floodway

7



# LGC's Authority

- Without a resolution of the City Council specifically authorizing the action, the LGC cannot
  - Acquire property, issue bonds, amend its formation documents, propose legislation, call any election, create another entity, or take any action requiring the approval or consent of a state or federal agency

# Proposed LGC Board of Directors

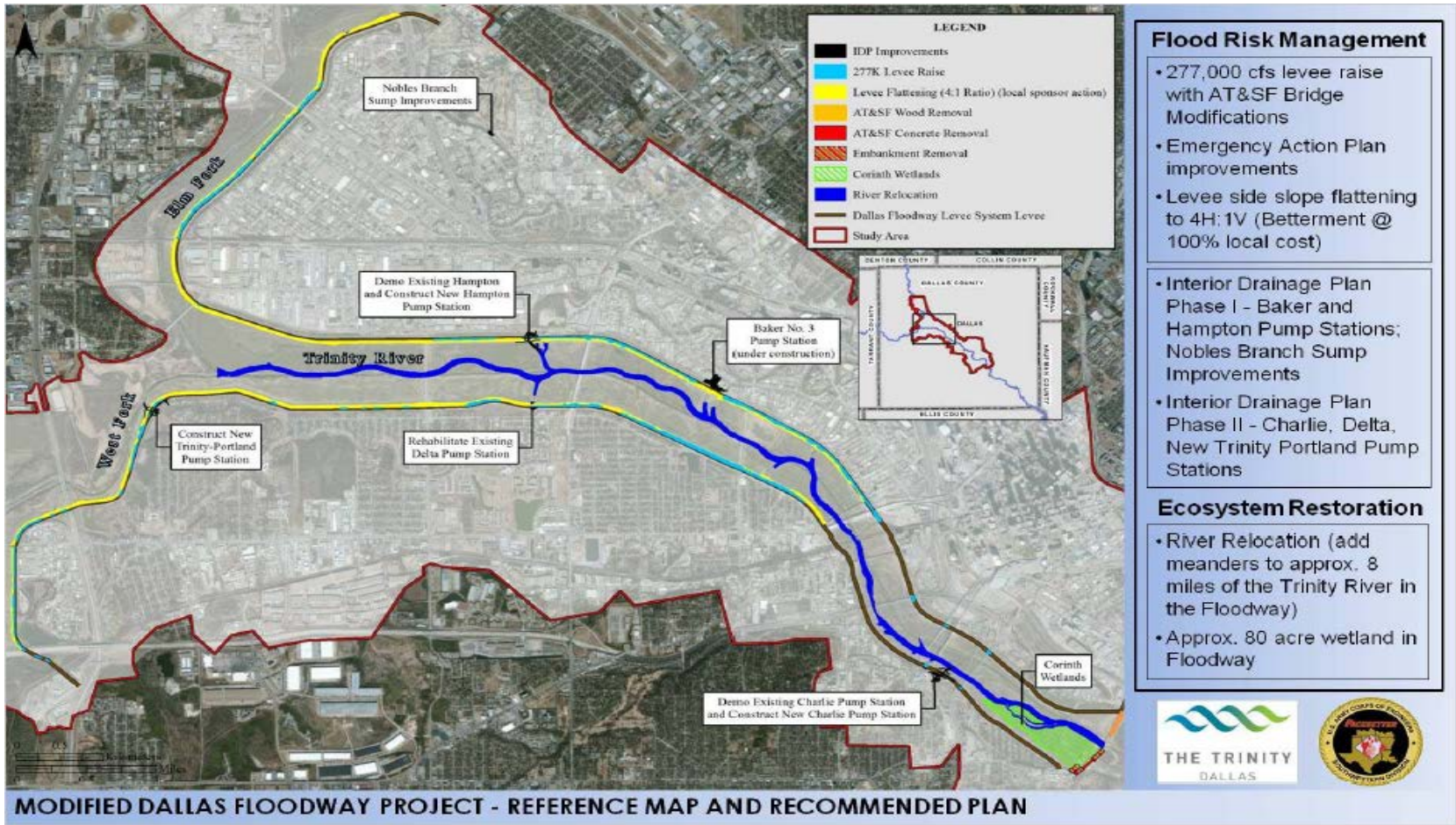
- Michael Ablon, Chair
  - Principal, PegasusAblon, Dallas-based commercial real estate development, investment and management company
- Randy Bowman
  - Founded and operated successful minority-owned logistics company; Dallas Employees' Retirement Fund board member; chaired Parkland Foundation Board
- Wendy Lopez
  - Senior vice president with AECOM, a premiere, fully integrated global infrastructure company

# Terms for Master Development Agreement

- City Council to approve terms to authorize a Master Development Agreement with Trinity River Corridor LGC
  - Agreement sets funding, design, construction, management, operation and maintenance and construction frame work for future recreation projects
  - City to assign administrative and legal liaison for support in kind to LGC
- LGC responsible for all design and construction, operation and maintenance of future recreational projects
  - City Council may elect to undertake and expend public monies for certain costs for flood risk management
  - City will be responsible for flood risk management obligations except as delegated to LGC
  - The LGC's use of the floodway property for recreational uses is subservient to the City's paramount use of the floodway
- Includes specific direction for the LGC to specifically pursue undertaking the development of Phase 1 – anticipated to be the Harold Simmons Park (HSP)

10

# Approximate Area Identified in LGC





# Balanced Vision Plan



With its 2,300 acres, the Trinity Lakes area of the Balanced Vision Plan will augment, by more than 10 percent, the city's overall green space assets, more than doubling the miles of trails and outdoor venues. No other city green space will match the variety of activities or the richness in landscape—both urban and natural—of the Trinity Lakes area.

Although the existing Trinity River floodplain is already an altered landscape and will be further altered through the construction of the project, the design intent is to create or re-create, self-sustaining, viable and high ecologically functioning landscapes that reflect the native landscapes of the region.



The Trinity Lakes area is the portion of the Trinity River Corridor Project between the confluence and the DART Bridge. The area is 2.5 times larger than New York's Central Park.



CITY OF DALLAS BALANCED VISION PLAN RENDERINGS – THE TRINITY RIVER CORRIDOR DESIGN GUIDELINES (2009)

# LGC Funding Commitments

- A Master Development and Use Agreement will provide mechanism for funding commitments sufficient for the construction, maintenance and operation of future recreational projects (proposed terms attached)
- Potential City funding for leveraging 1998 bond program funds - \$47.7M for parks, lakes and flood control efforts (Council Resolution No. 151486)
  - Significant portion may be required for flood risk management
- LGC will secure funding from any source for the costs through private donations, federal, or state funds grants, letters of credit to the extent not in conflict with the City

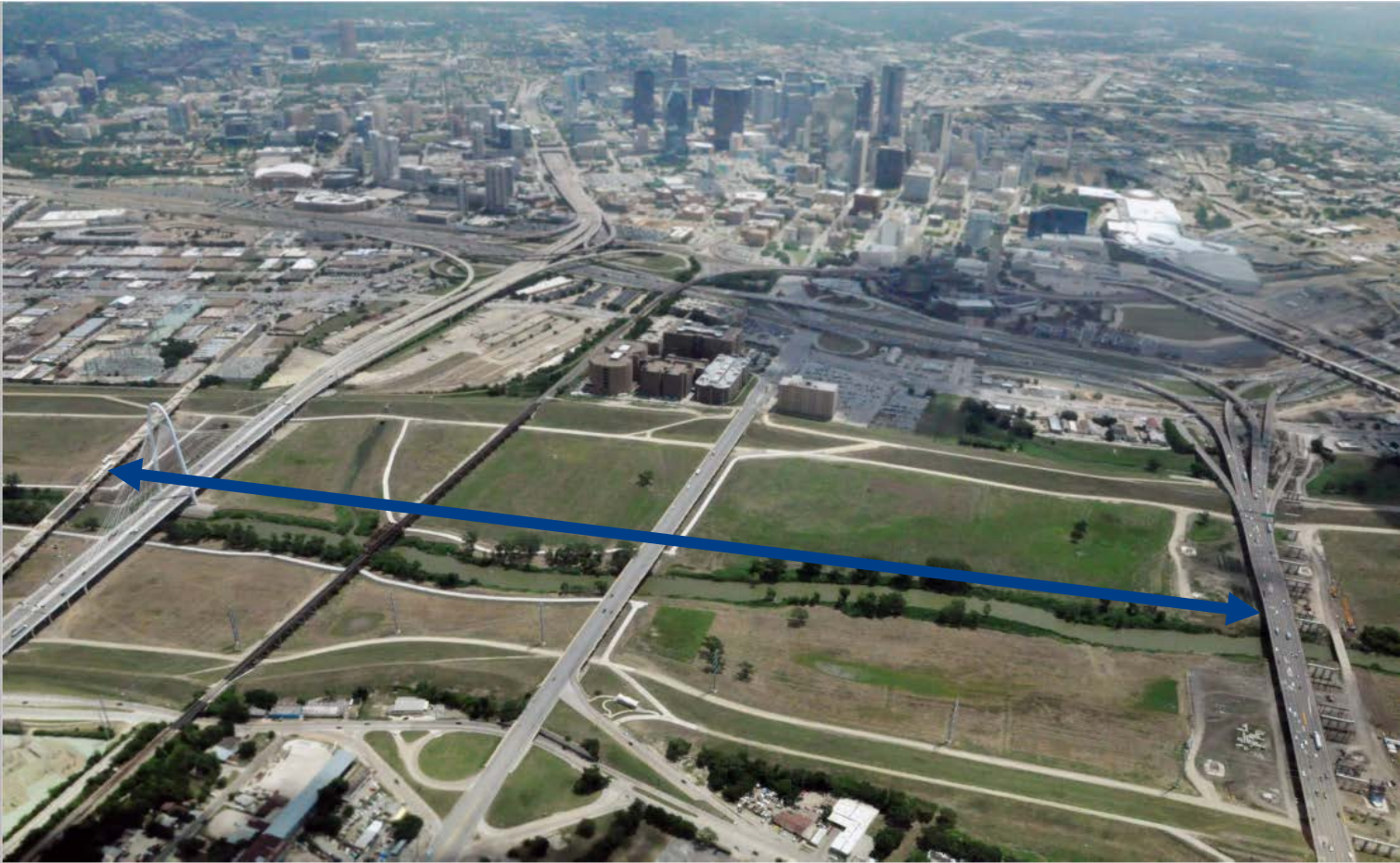
13

# The HSP

- Assuming City Council approves the LGC, agreements (i.e. Master Development and Use Agreement) shall follow providing for HSP as Phase 1 of the recreational development by LGC
- Phase 1 is proposed to be an area of public recreation space spanning the Dallas Floodway from the Margaret McDermott Bridge to the Ronald Kirk Bridge
- HSP is defined as a recreation area and not defined as a park for the purposes of The City Charter and state law



# Location of HSP Area





# Current Schedule

- August 2 – Full City Council Briefing
- August 9 – Schedule City Council vote to authorize the LGC, including a term sheet to complete the Master Development Agreement

# Recreation Development in the Dallas Floodway: Creation of a Local Government Corporation

Dallas City Council

Jody Puckett  
Assistant City Manager (I)

August 2, 2017



**City of Dallas**

# Appendix

- Conceptual Drawing of Possible Harold Simmons Park (HSP)
- Simmons letter to Trinity Trust
- LGC Formation Documents
- Term Sheet for Master Development and Use Agreement

# Conceptual Drawing of Possible Harold Simmons Park (HSP)



Photo courtesy of Rick A. Turner. <http://trinityparkconservancy.org/the-trinity-project/trinity-river-park/trinity>

19



*Annette C. Simmons*

September 15, 2016

The Trinity Trust  
1444 Oak Lawn Avenue  
Suite 200  
Dallas, Texas 75207

**Re: \$50 Million Contribution for  
The Harold Simmons Park**

Ladies and Gentlemen,

I am pleased to make a commitment to fund \$50 Million as a contribution to The Trinity Trust (the "Trust") for the creation of a park in the Trinity from the Margaret McDermott Bridge on the south to the Ron Kirk Bridge on the north, to be named, in perpetuity, The Harold Simmons Park (the "Park"). \$10 Million of this commitment is a current gift, to be expended by the Trust for the purposes of planning, designing, promoting and constructing the Park (the "Purposes"). The remaining \$40 Million of my gift, also to be used for the Purposes, will be contingent upon my, or in the event of my incapacity or death, my attorney-in-fact's or my executor's, reasonable satisfaction no later than the third anniversary of the date of this letter, with:

1. Governance, management and operations for the Park; and
2. Funding commitments sufficient for the construction, maintenance and operation of the Park.

Thank you for cultivating the Trinity, in accordance with the Balanced Vision Plan approved by Dallas Citizens, as the iconic resource that our Trinity will become in connecting, binding, nurturing, inspiring and elevating the future of our City for all Citizens of Dallas.

With great enthusiasm for this grand endeavor,



**CERTIFICATE OF FORMATION FOR  
TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION**

The undersigned natural persons, each of whom is at least eighteen (18) years of age or more and a resident of the City of Dallas, Texas (the “City”) acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), Chapter 394, Texas Local Government Code (“TLGC”) and Chapter 22, Texas Business Organizations Code (the “TBOC”), do hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I**

The name of the corporation is TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION (the “Corporation”).

**ARTICLE II**

The Corporation is a public nonprofit local government corporation.

**ARTICLE III**

The period of duration of the Corporation shall be perpetual.

**ARTICLE IV**

The Corporation is organized for aiding, assisting, and acting on behalf of the City in the performance of its governmental functions; namely, the design, planning, development, financing, operation, and maintenance of public recreation uses of City fee-owned property located in a portion of the Trinity River Corridor, that portion also known as the “Dallas Floodway” and located on the Elm and West Forks through the main stem of the Trinity River through Dallas, Texas and ending at the ATSF Bridge, including City fee-owned property inside and within one-quarter mile outside of the centerline of the levees (the “Property”). It is understood by the Corporation that any use of the Property would be subservient to the City’s paramount use of the Property, which is to maintain the flood control system in conformance with the requirements of (i) the United States Army Corp of Engineers, (ii) the Record of Decision Modified Dallas Floodway Project Feasibility Report and Environmental Impact Statement Dallas, Texas, and (iii) the Trinity River Corridor Project’s Balanced Vision Plan as approved by the City Council of City in Resolution No. 03-3391 on December 8, 2003, as amended by Resolution No. 04-1252 approved by the City Council of City on April 14, 2014. In addition, the Corporation will not and shall not have authority to undertake or construct any kind of roadway infrastructure except for transportation-related infrastructure incidental to vehicular and pedestrian access to recreational area facilities and which shall function only as private internal recreational vehicular and pedestrian accessways.

The Corporation is formed pursuant to the provisions of the Act and TLGC as they now or may hereafter be amended, which authorize the Corporation to assist and act on behalf of the City to accomplish any governmental purpose of the City and to engage in activities in furtherance of the

purposes for its creation.

The Corporation shall have and exercise all the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations incorporated under the Act and under the TBOC.

The Corporation shall have all powers which are available to nonprofit and local government corporations in Texas under the laws of the State of Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes, or other debt obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue bonds, notes, or other debt obligations without the consent of the City Council of the City in conformance with the Bylaws of the Corporation.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental, and not proprietary, functions. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time, provided that the Corporation shall not acquire land without the consent of the City Council of the City in conformance with the Bylaws of the Corporation.

In the exercise of its powers, the Corporation may enter into lease, trust, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation, subject to the consent rights of the City Council of the City as described herein and in the Bylaws. In connection with any issuance of bonds, notes, or other debt instruments or obligations approved by the City Council of the City, the Corporation shall select, at the Corporation's sole cost, bond counsel and financial advisors acceptable to the City in City's sole discretion.

#### **ARTICLE V**

The Corporation shall have no members and shall have no stock.

#### **ARTICLE VI**

Subject to actions requiring City Council approval as identified below, all powers of the Corporation shall be vested in a Board of Directors consisting of at least three (3) and up to seven (7) persons who shall be appointed by the City Council of the City, upon recommendation of the Mayor of the City (the "Mayor"). To be eligible to serve as a Director, a person must be (1) a registered voter of the State of Texas, and (2) a resident of the City.

The initial three Board of Directors members are identified in Article IX below and shall serve for the term expiring on the date set forth therein, or until his or her successor is appointed by the City Council of City. Additional Board members may be appointed by the City Council of City to serve terms expiring on September 30, 2021 in conformance with the Bylaws of Corporation. Subsequent Board members shall serve for a term of three (3) years or until his or her successor is appointed by the City Council of the City, unless such Board member has been appointed to fill an unexpired term, in which case the term of such Board member shall expire on the expiration date of the term of the Board member whom he or she was appointed to replace. Board members shall be eligible for reappointment. Any Board member may be removed from office at any time,

with or without cause, by the recommendation of the Mayor and the affirmative vote of the City Council of City.

Actions taken by the Board of Directors which require prior approval by resolution of the City Council of the City are:

- a) Amendment or restatement of the Bylaws or Certificate of Formation of the Corporation;
- b) acquisition of land;
- c) any action affecting or involving the Property, except as may be delegated to Corporation by written agreement with the City;
- d) any action or decision, including but not limited to applications for grants or other funding, requiring the approval or consent of any federal or state governmental agency or department;
- e) issuance of bonds;
- f) issuance of notes or other evidence of indebtedness with a term greater than one year;
- ~~g) construction of a toll road or any other regional, state, or federally sponsored roadway infrastructure, but not including roadway infrastructure incidental to vehicular and pedestrian access to the Property which shall function as internal recreational vehicular and pedestrian accessways and not publicly dedicated right of ways;~~
- h)g) \_\_\_\_\_ proposing or sponsoring legislation, or calling any election or voter referendum;  
and
- i)h) \_\_\_\_\_ creating a subsidiary entity or any other entity.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with this Certificate of Formation or the laws of the State of Texas.

**ARTICLE VII**

The street address of the initial registered office of the Corporation is 1500 Marilla, Dallas, Texas 75201, which is within the city limits of the City, and the name of its initial registered agent at such address is T.C. Broadnax, City Manager.

**ARTICLE VIII**

The name and street address of each incorporator is:

- \_\_\_\_\_ 1500 Marilla, Dallas, Texas 75201
- \_\_\_\_\_ 1500 Marilla, Dallas, Texas 75201
- \_\_\_\_\_ 1500 Marilla, Dallas, Texas 75201



**ARTICLE IX**

The Corporation shall be governed by a Board of Directors consisting of at least three (3) and up to seven (7) Directors. The names, addresses and initial terms of office of the initial three Directors are:

NAME	ADDRESS	INITIAL TERM EXPIRES
_____	_____	September 30, 2020
_____	_____	September 30, 2020
_____	_____	September 30, 2020

**ARTICLE X**

A resolution approving the form of this Certificate of Formation has been adopted by the City Council of the City on \_\_\_\_\_, 2017.

**ARTICLE XI**

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director’s capacity as a Director, except for liability (i) for any breach of the Director’s duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, regardless of whether the benefit resulted from an act taken within the scope of the Director’s office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

**ARTICLE XII**

The Corporation: (a) shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (b) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (c) shall not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office; and (d) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives.

Any income earned by the Corporation after payment of necessary expenses, debt, and such reserves as may be required by a lender in the authorizing documents related to the issuance of debt as approved in writing by City, shall accrue to the City. The City shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover the expenditures described herein. Any income of the Corporation received by the City shall be deposited into such account or fund as determined by the City Council of City. No part of the Corporation's income shall inure to the benefit of any private interests.

### **ARTICLE XIII**

If the Corporation is a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, the Corporation (a) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

### **ARTICLE XIV**

If the Board determines by resolution that the purposes for which the Corporation was created have been substantially met and all bonds issued by and all obligations incurred by the Corporation have been fully paid, the Board may execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026 of TLGC or with applicable law then in existence. The City Council may at any time consider and approve by a two-thirds vote an ordinance or resolution directing the Board to proceed with the dissolution of the Corporation, subject to any limitation on the impairment of contracts or other obligations entered into by the Corporation, at which time the Board shall proceed with the dissolution of the Corporation in accordance with applicable state law. The failure of the Board to proceed with the dissolution of the Corporation in accordance with this Section shall be deemed a cause for the removal from office of any or all of the Directors as permitted by Article VI of this Certificate of Formation. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the City for deposit into such accounts as the City Council of City shall direct.

### **ARTICLE XV**

This Certificate of Formation may be changed or amended by a two-thirds (2/3) vote of the Directors and approval of the changes by resolution of the City Council of City, or by approval of the City Council of City alone. Any such amendment must be filed with the Office of the Texas Secretary of State to be effective.

### **ARTICLE XVI**

The Corporation is a constituted authority and a public or governmental instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code. Although the Corporation is authorized to act on behalf of one or more governmental entities as provided in this Certificate, the Corporation is not a political subdivision or political authority of the State of Texas within the meaning of the Constitution and laws of the State of Texas, including, without limitation, Article III, Section 52 of the Texas Constitution, and no agreement, bond, debt, or obligation of the Corporation shall be deemed to be the agreement, bond, debt, or obligation, or the lending of credit, or a grant of public money or thing of value, of or by the City or any other political subdivision or authority or agency of the State of Texas, or a pledge of the faith and credit of any of them. No action of the Corporation shall be an action of the City or its agents or employees, and neither this Certificate nor any action by the Board or the City Council shall create a joint enterprise.

#### **ARTICLE XVII**

This Certificate of Formation shall be effective when fully executed and filed with the Office of the Texas Secretary of State. Each of the undersigned executes this instrument subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that he and she is authorized to execute this instrument.

IN WITNESS WHEREOF, we have hereunto set our hand this \_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, each being sworn on his or her oath that he or she is an individual residing in the City of Dallas, Texas.

Given under my hand and seal of office this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public State of Texas

DRAFT

**BYLAWS OF**  
**TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION**

**ARTICLE 1**  
**STRUCTURE, PURPOSES AND MEMBERS**

**1.01 Structure.** Trinity River Corridor Local Government Corporation (the “Corporation”) is a public nonprofit corporation organized under the laws of the State of Texas for the purpose of aiding, assisting and acting on behalf of the City of Dallas, Texas (the “City”) in the performance of its governmental functions; namely, the design, planning, development, financing, operation and maintenance of public recreation uses of City fee-owned property located in a portion of the Trinity River Corridor, that portion also known as the “Dallas Floodway” and located on the Elm and West Forks through the main stem of the Trinity River through Dallas, Texas and ending at the ATSF Bridge, including City fee-owned property inside and within one-quarter mile outside of the centerline of the levees (the “Property”). It is understood by the Corporation that any use of the Property would be subservient to the City’s paramount use of the Property, which is to maintain the flood control system in conformance with the requirements of (i) the United States Army Corp of Engineers, (ii) the Record of Decision Modified Dallas Floodway Project Feasibility Report and Environmental Impact Statement Dallas, Texas, and (iii) the Trinity River Corridor Project’s Balanced Vision Plan as approved by the City Council of City in Resolution No. 03-3391 on December 8, 2003, as amended by Resolution No. 04-1252 approved by the City Council of City on April 14, 2014. In addition, the Corporation will not and shall not have authority to undertake or construct any kind of roadway infrastructure except for transportation-related infrastructure incidental to vehicular and pedestrian access to recreational area facilities and which shall function only as private internal recreational vehicular and pedestrian accessways.

The Corporation is formed pursuant to the provisions of Subchapter D, Chapter 431, Texas Transportation Code (the “Act”) as it now or may hereafter be amended, which authorizes the Corporation to assist and act on behalf of the City to accomplish any governmental purpose of the City and to engage in activities in the furtherance of the purposes for its creation, in the manner specified by Chapter 394 of the Texas Local Government Code, and in conformance with Chapter 22 of the Texas Business Organizations Code (the “TBOC”).

The Corporation shall have and exercise all rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations incorporated under the Act including, without limitation, the TBOC.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to nonprofit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created.

The Corporation is created as a local governmental corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code.

The operations of the Corporation are governmental, not proprietary, functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code.

**1.011.02** Purposes. The Board of Directors shall administer the Corporation for the purposes set forth in the Certificate of Formation.

**1.021.03** Members. The Corporation has no members.

## **ARTICLE 2 OFFICES**

**2.01** Principal Place of Business. The principal place of business of the Corporation is located at 1500 Marilla, Dallas, Texas 75201. The Corporation may have such other offices within Dallas, Texas as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**2.02** Registered Agent and Registered Office. The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent whose office is the Corporation's registered office, as required by the TBOC. The registered office may but need not be identical to the principal office of the Corporation in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors in accordance with applicable law. The Corporation shall not maintain offices outside of the State of Texas.

## **ARTICLE 3 BOARD OF DIRECTORS**

**3.01** General Powers. The property, business, and affairs of the Corporation shall be managed and controlled by the Board of Directors (the "Board") and, subject to the restrictions imposed by law, the Certificate of Formation and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

**3.02** Number, Appointment and Term. The Board of Directors shall consist of at least three (3) and up to seven (7) Directors (the "Directors") who shall be appointed by the City Council of the City (the "Council"), upon recommendation of the Mayor of the City (the "Mayor"). To be eligible to serve as a Director, a person must be (1) a registered voter within the State of Texas, and (2) a resident of the City. In addition, the Board shall have such ex-officio non-voting Directors ("Ex-Officio Directors") as may be determined from time to time by the Board.

Except as otherwise provided in this Section, each Director shall serve a term of three (3) years, which term may be renewed in successive three-year terms. The initial three Directors shall serve terms expiring on September 30, 2020. Each renewal term, or the terms of any new appointees to the three Directors' positions, will expire on each the three-year anniversary thereof. If additional Directors are appointed by the Council they will serve terms expiring on September 30, 2021. Each renewal term, or the terms of any new appointees to the additional Directors' positions, will expire on each the three-year anniversary thereof. Each person serving as a Director shall hold office until the

earlier to occur of (a) his or her successor has been appointed or (b) his or her death, resignation, or removal as hereinafter provided.

**3.03 Removal.** Any Director may be removed from office, with or without cause, by recommendation of the Mayor and the affirmative vote of the Council.

**3.04 Vacancies.** Any vacancy occurring in the office of a Director, whether by death, resignation, removal, or otherwise, shall be filled by recommendation of the Mayor and appointment by the Council. A Director appointed to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

**3.05 Meetings of Directors.** The Directors may hold meetings, maintain an office, and keep the Corporation's books and records at such place or places within the State of Texas as the Board of Directors may from time to time determine; provided, however, that in the absence of any such determination, such place shall be the Corporation's principal office in the State of Texas.

The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of the Council under Chapter 551, Texas Government Code (the "Open Meetings Act").

The Corporation and the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

**3.06 Organizational Meeting.** After approval of the Certificate of Formation by the Council and filing of the Certificate of Formation with the Texas Secretary of State, the Board will hold an organizational meeting to adopt and approve the Bylaws, to elect officers, and to transact such other business as may be included in the meeting agenda. The organizational meeting shall serve as the first Annual Meeting (as defined in Section 3.07 below) of the Board.

**3.07 Annual Meetings.** The annual meeting of the Board of Directors (the "Annual Meeting") shall be held at such time and place as shall be designated from time to time by resolution of the Board for the purpose of (a) electing officers for the ensuing year, and (b) transacting such other business as may be properly brought before such Annual Meeting.

**3.08 Regular Meetings.** Regular meetings of the Board ("Regular Meetings") shall be held at such times and places as shall be designated from time to time by the Chairperson or by resolution of the Board.

**3.09 Special Meetings.** Special meetings of the Board ("Special Meetings") may be called by or at the request of the Chairperson, and shall be called by the Secretary whenever requested in writing by at least a majority of the Directors then in office.

**3.10 Notice.** The Secretary shall give notice of the time and place of each Annual, Regular and Special Meeting to each Director in person, by facsimile, electronic message, regular mail or telephone at least three (3) business days before such meeting. Notice of such meeting shall also be given in the manner required of the Council under the Open Meetings Act.

**3.11 Quorum.** A majority of the then-appointed Directors shall constitute a quorum for the consideration of any matters pertaining to the Corporation's purposes. Ex-Officio Directors will not

be counted in determining whether a quorum is present. If at any meeting of the Board there is less than a quorum present, the meeting shall be cancelled, or if the meeting is already underway, shall immediately adjourn. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number required by law, the Certificate of Formation or these Bylaws.

**3.12** Conduct of Business. At meetings of the Board, matters pertaining to the Corporation's purposes shall be considered. At all meetings of the Board of Directors, the Chairperson shall preside, and in the absence of the Chairperson, the Vice-Chairperson shall preside, and in the absence of the Vice-Chairperson, a chair shall be chosen by the Board from among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the Secretary, the chair of the meeting may appoint any person to act as secretary of the meeting. The chair of any meeting of the Board of Directors shall determine the order of business and the procedure at the meeting, including, without limitation, conduct of the discussion and the order of business.

**3.13** Compensation of Directors, Expenses. Persons serving as Directors shall not receive any salary or compensation for, their services as Directors. A Director shall be entitled to reimbursement for reasonable expenses actually incurred by him or her in carrying out his or her duties as a Director.

**3.14** Director's Reliance of Consultant Information. Directors shall discharge their duties in good faith, with ordinary care, and in a manner each Director reasonably believes to be in the Corporation's best interests. In this context, "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. A Director shall not be liable if while acting in good faith and with ordinary care, the Director relies on information, reports, or statements, including financial statements and other financial data, concerning the Corporation or any matters pertaining to the Corporation's purposes that were prepared or presented by (a) one or more officers or employees of the Corporation, (b) the City Manager of City, or (c) legal counsel, public accountants, or other persons if such Director reasonably believes the information, reports, or statements are within that person's professional or expert competence. A Director is not relying in good faith if he or she has knowledge that renders such reliance unwarranted or unreasonable.

## **ARTICLE 4 OFFICERS**

**4.01** Officers. The officers of the Corporation shall be a Chairperson, a Vice Chairperson, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of the Certificate of Formation or these Bylaws. The Board of Directors may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed herein or prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary. The offices must be held by persons serving as Directors of the Corporation.

**4.02** Election and Term of Office. Each year at the Annual Meeting of the Board, the Board of Directors shall elect officers. All officers shall hold office for a term of one (1) year, commencing



upon his or her election at an annual meeting and expiring when an election of officers is held at the next Annual Meeting following the Annual Meeting at which he or she was elected, and may be reelected to such office any number of times. Notwithstanding the above, each officer shall continue to hold office until his or her successor shall have been duly elected or until his or her earlier, death, resignation, or removal.

**4.03** Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation would be served thereby.

**4.04** Vacancies. A vacancy in any office because of death, resignation, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**4.05** Chairperson. The Chairperson shall preside at all meetings of the Board of Directors, shall perform such other duties as are specified in these Bylaws, and, in general, shall perform all duties incident to the office of Chairperson and such other duties as may be prescribed by the Board of Directors from time to time.

**4.06** Vice Chairperson. The Vice Chairperson shall generally assist the Chairperson in the performance of the Chairperson's duties and, in the absence of the Chairperson or in the event of his or her inability or refusal to act, shall perform the duties of the Chairperson, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall also perform such other duties as from time to time may be assigned to him or her by the Chairperson or Board of Directors.

**4.07** President. The President shall be the chief executive officer and shall manage the business of the Corporation, take such actions as may be necessary to effectuate the policies and decisions of the Board, and, in general, perform all duties incident to the office of president of a corporation and such other duties as may be prescribed by the Board of Directors from time to time. The President may sign, along with a second signature to be provided by any other officer of the Corporation in conformance with Section 6.01 below, bonds, notes, deed conveyances, franchises, assignments, mortgages, notes, contracts and other instruments of any kind in the name of the Corporation which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by these Bylaws, or by statute, to some other officer or agent of the Corporation. The President's duties shall include, without limitation, positively representing the Corporation to the City and the public, supervising employees of the Corporation, seeing that bills are paid in a timely manner, keeping expenses within budgeted levels, and working with the appropriate staff and officers of the Corporation to see that timely financial reports are made to the Directors.

**4.08** Vice President. Each Vice President shall have such powers and duties as may be assigned to such officer by the Board of Directors including the performance of the duties of the President (other than unusual or extraordinary duties or powers conferred by the Board of Directors upon the President) upon the death, absence, or resignation of the President or upon the President's inability to perform the duties of such office. Any action taken by a Vice-President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

**4.09 Treasurer.** The Treasurer shall have custody of all of the Corporation's funds and securities that come into such officer's hands. When necessary or proper, the Treasurer may endorse or cause to be endorsed, in the name and on the behalf of the Corporation, checks, notes, and other obligations for collection and shall deposit or cause to be deposited the same to the credit of the Corporation in such bank or banks or depositories and in such manner as shall be designated and prescribed by the Board of Directors; may sign or cause to be signed all receipts and vouchers for payments made to the Corporation either alone or jointly with such other officer as may be designated by the Board of Directors; whenever required by the Board of Directors, shall render or cause to be rendered a statement of the cash account; shall enter or cause to be entered regularly in the Corporation's books to be kept by such officer for that purpose full and accurate records of all moneys received and paid out on account of the Corporation; shall perform all acts incident to the position of Treasurer subject to the control of the Board of Directors; and he or she shall, if required by the Board of Directors, give such bond for the faithful discharge of his or her duties in such form as the Board may require.

**4.10 Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; shall attend to the giving and serving of all notices; shall have charge of the Corporation's books, records, documents, and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall be open at reasonable times to the inspection of any Director upon application at the Corporation's office during business hours; and shall in general perform all duties incident to the office of Secretary subject to the control of the Board of Directors.

**4.11 Assistant Treasurers and Assistant Secretaries.** The Assistant Treasurers and Assistant Secretaries, if any, shall perform the duties of the Treasurer or Secretary, respectively, when the Treasurer or Secretary is unable to perform such duties and shall perform such other duties as may be assigned to them by the Treasurer or the Secretary, by the Chairperson, or by the Board of Directors.

**4.12 Officer's Reliance of Consultant Information.** Officers shall discharge their duties in good faith, with ordinary care, and in a manner each officer reasonably believes to be in the Corporation's best interests. In this context, "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. An officer shall not be liable if while acting in good faith and with ordinary care, the officer relies on information, reports, or statements, including financial statements and other financial data, concerning the Corporation or any matters pertaining to the Corporation's purposes that were prepared or presented by (a) the City Manager of City, or (b) legal counsel, public accountants, or other persons if such officer reasonably believes the information, reports, or statements are within that person's professional or expert competence. An officer is not relying in good faith if he or she has knowledge that renders such reliance unwarranted or unreasonable.

## ARTICLE 5 COMMITTEES

**5.01** Board Committees. Pursuant to, and subject to the terms of, Sections 22.218 and 22.219 of the TBOC, the Board of Directors may from time to time create advisory committees that shall advise the Board of Directors on whatever topic the Board may determine in the resolution that creates the committee. The Board of Directors may appoint individuals who are not members of the Board of Directors to any committee.

**5.02** Standing Committees. The Board of Directors may have standing committees as determined from time to time by the Board. Such standing committees shall advise the Board of Directors on whatever topic the Board may determine in the resolution that creates the committee. A list and description of the current standing committees of the Board of Directors shall be maintained and provided to the Board.

**5.03** Procedures; Meetings; Quorum. Any committee created by the Board of Directors under these Bylaws, unless otherwise expressly provided herein or in the Board resolution creating such committee, shall (a) have a chair designated by the Board of Directors, (b) fix its own rules or procedures, (c) meet at such times and at such place or places as may be provided by such rules or by resolution of such committee or resolution of the Board, and (d) keep regular minutes of its meetings and cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation; and report the same to the Board at its next succeeding meeting or at such other times as may be designated by the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any recommendation, unless otherwise provided in the committee's rules or procedures, these Bylaws or by the Board of Directors.

**5.04** Term of Office. Unless otherwise expressly provided herein, each member of a committee shall continue as such until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

**5.05** Removal. Any member of a committee may be removed by the Board of Directors, with or without cause.

## ARTICLE 6 CONTRACTS, CHECKS, AUDITS, DEPOSITS, AND RECORDS

~~**6.01** — Contracts, Procurement, and MWBE. All bonds, notes, deed conveyances, franchises, assignments, mortgages, notes, contracts and other instruments of any kind executed in the name of the Corporation must be signed by the President (or by the Vice President acting pursuant to Section 4.08) and one other officer of the Corporation. The corporation shall comply with all state and local procurement laws applicable to a Texas local government corporation. In all construction contracts executed by the Corporation, Corporation shall use best efforts to comply with the City's Minority and Women-Owned Business Enterprises/Good Faith Effort Plan, as amended, and -shall cause all of its contractors to comply with the same requirements. For purposes of this Section 6.01,~~

~~“best efforts” is defined to mean attendance at all pre-bid conferences scheduled by City, communicating with and attempting to obtain quotes from at least 5% of MWBE companies listed on the City’s MWBE list, contacting the City’s Business Development and Procurement Services director (“Director”) for assistance in identifying potential MWBE subcontractors, and either meeting the 25% minimum participation goal on each construction contract, or documenting to the satisfaction of the City Manager of City that Corporation made a good faith effort to comply with the minimum participation goal.~~

#### 6.026.01

~~6.036.02~~ Checks and Drafts. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by the Treasurer or an Assistant Treasurer and, if in an amount that exceeds Five Thousand Dollars (\$5,000.00), countersigned by the Chairperson, Vice Chairperson, or President of the Corporation.

~~6.046.03~~ Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, depositories, or investment funds or companies as shall be designated from time to time by or in accordance with Board resolution.

~~6.05~~ Audits. The Board shall cause to be maintained a proper and complete system of records and accounts of all transactions, business, and affairs of the Corporation. Within six months after the end of each fiscal year, the Board shall cause the preparation of a financial statement for the Corporation, which shall be audited by an independent certified public accountant or firm of independent certified public accountants retained by the Board for such purpose. A copy of such audited financial statement shall be delivered to the Chief Financial Officer of City upon completion but not later than 90 days after the end of the Corporation’s fiscal year. The Corporation’s fiscal year shall match the City’s fiscal year. In addition, the city manager shall have access to the premises, documents, records, and other materials of the Corporation at any reasonable time and shall have the right to audit same. The Corporation shall require that any entity with which it contracts grant a right of audit by the city manager related to the contract and any other dealings with the Corporation or the Property. The Corporation shall reimburse the city manager for any costs of such audits.

#### 6.04

~~6.066.05~~ Books and Records. The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Board. All books and records may be inspected by representatives of the City at any time.

~~6.076.06~~ Operating and Capital Budgets. Prior to the commencement of each fiscal year, the Corporation shall deliver to the Chief Financial Officer of City a copy of the annual operating and capital budgets of Corporation, as well as any other financial information requested by the Chief Financial Officer.

~~6.07~~ ~~6.07~~ Legal Counsel. The Corporation shall engage legal counsel to advise it on all contracting and procurement matters and other legal issues. Additionally, the Corporation may from time to time seek the advice and counsel of the City Attorney's Office.

## **ARTICLE 7 INDEMNIFICATION**

**7.01** Right to Indemnification. Subject to the limitations and conditions as provided in this Article 7 and the Certificate of Formation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, is or was a Director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the TBOC, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article 7 shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article 7 shall be deemed contract rights, and no amendment, modification or repeal of this Article 7 shall have the effect of limiting or denying any such rights with respect to action taken or proceedings arising prior to any such amendment, modification or repeal. Notwithstanding the foregoing, the indemnity described above does not apply to a Director or officer's bad faith or gross negligence, or any illegal act. In addition, Board members are considered Plan members as defined under Chapter 31A of the Dallas City Code. If City incurs any cost under Chapter 31A, the LGC will reimburse the City.

**7.02** Advance Payment. The right to indemnification conferred in this Article 7 shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 7.01 above who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article 7 and verification satisfactory to the Board as to such person's ability to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article 7 or otherwise.

**7.03** Appearance as a Witness. Notwithstanding any other provision of this Article 7, the Corporation may pay or reimburse reasonable expenses actually incurred by a Director or officer in connection with his or her appearance or other participation in a legal proceeding involving the

Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

**7.04** Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article 7 shall not be exclusive of any other right which a Director or officer may have or hereafter acquire under any law (common or statutory) or provision of the Certificate of Formation or these Bylaws.

**7.05** Insurance. The Corporation shall, at its expense, secure and maintain at all times such directors and officers liability insurance coverage as is recommended by the Office of Risk Management of City. The Corporation may also purchase and maintain, at its expense, any additional insurance it deems necessary to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation.

**7.06** Notification. Any indemnification of or advance or reimbursement of expenses to a Director or officer in accordance with this Article 7 shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification, reimbursement, or advance.

**7.07** Savings Clause. If this Article 7 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article 7 as to costs, charges and expenses (including attorneys' fees), judgments, fines and in amounts paid in settlement with respect to any action, suit of proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article 7 that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**8.01** Supremacy of Certificate of Formation. These Bylaws are subject to and governed by the Certificate of Formation.

**8.02** Fiscal Year. The fiscal year of the Corporation shall be the same as the City, or such other consecutive twelve-month period determined by the Corporation and approved by the City. Currently, such fiscal year begins on the first day of October and ends on the last day of September in each year.

**8.03** Seal. The Corporation's seal, if any, shall be such as may be approved from time to time by the Board of Directors.

**8.04** Notice and Waiver of Notice. Whenever any notice is required to be given by mail under the provisions of these Bylaws, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed postpaid wrapper addressed to the person entitled hereto at such person's post office address, as such appears in the records of the Corporation, and such notice shall be deemed to have been given on the date of such mailing. If transmitted by facsimile or electronic message, such

notice shall be deemed to be delivered upon successful transmission of the facsimile or electronic message. A member of the Board of Directors or a committee may waive notice of any meeting. The attendance or participation of a member of the Board of Directors or a committee at any meeting shall constitute a waiver of notice of such meeting unless such attendance or participation is for the purpose of objecting to the failure of notice. A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

**8.05 Resignations.** Any Director, officer or committee member may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**8.06 Gender.** References herein to the masculine gender shall also refer to the feminine in all appropriate cases, and vice versa.

**8.07 Appropriations and Grants.** The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State of Texas, any political subdivision or municipality in the State, or from any other source, except as specifically limited by Section 8.08 herein or in the Certificate of Formation.

**8.08 Actions Requiring Prior Council Approval.** The following actions must be pre-approved by resolution of the Council before the Board may take any such action:

- (1) amendment or restatement of the Bylaws or Certificate of Formation of the Corporation;
- (2) acquisition of land;
- (3) any action affecting or involving the Property, except as may be delegated to Corporation by written agreement with the City;
- (4) any action or decision, including but not limited to applications for grants or other funding, requiring the approval or consent of any federal or state governmental agency or department;
- (5) issuance of bonds;
- (6) issuance of notes or other evidence of indebtedness with a term greater than one year;
- ~~(7) construction of a toll road or any other regional, state, or federally sponsored roadway infrastructure, but not including roadway infrastructure incidental to vehicular and pedestrian access to the Property which shall function as internal recreational vehicular and pedestrian accessways and not publicly dedicated right-of-ways;~~

~~(8)~~(7) proposing or sponsoring legislation, or calling any election or voter referendum;  
and

~~(9)~~(8) creating a subsidiary entity or any other entity.

## **ARTICLE 9 CODE OF ETHICS**

### **9.01 Policy and Purposes.**

(1) It is the policy of the Corporation that Director and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board of Directors establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(2) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

### **9.02 Conflicts of Interests.**

(1) Except as provided in subsection (3) below, a Director or officer is prohibited from participating in a vote, decision, or award of a contract, and all Board deliberation related to same, involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefitted by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the second degree by affinity (marriage relationship) or the third degree by consanguinity (blood relationship) to a Director or officer is considered a substantial interest.

(2) If a Director or a person related to a Director in the first or second degree by affinity or the first, second, or third degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniary affected by any official action taken by the Board of Directors, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.

(3) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the City will receive a similar pecuniary benefit.

(4) An employee of a public entity may serve on the Board.

**9.03 Acceptance of Gifts.** No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, a benefit does not include:



(1) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Director or officer;

(2) a gift or other benefit conferred on account of kinship or a personal, professional or business relationship independent of the official status of the Director or officer;

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

- a. not more than one honorarium is received from the same person in a calendar year;
- b. not more than one honorarium is received for the same service; and
- c. the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services;

(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest if reported as may be required by law.

**9.04 Bribery.** A Director or officer shall not intentionally or knowingly offer, confer or agree to confer on another, or solicit, accept, or agree to accept from another:

(1) any benefit as consideration for the Director's or officer's decision, opinion, recommendation, vote, or other exercise of discretion as a Director or officer;

(2) any benefit as consideration for the Director or officer's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of duty imposed by law on the Director or officer.

**9.05 Nepotism.** No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty days prior to the appointment of the Director or officer so appointing or voting.

**9.06 Annual Statements.** Each Director and officer shall annually sign a statement which affirms such person:

(1) has received a copy of the Code of Ethics policy, has read and understands the policy, and

(2) has agreed to comply with the policy.

**ARTICLE 10**  
**AMENDMENTS TO BYLAWS**

These Bylaws may be altered or amended in whole or in part, or repealed and new bylaws may be adopted, by a two-thirds (2/3) vote of the Directors present at any meeting where a quorum of Directors is present, if at least seven (7) days' written notice is given of an intention to alter, amend, or repeal these Bylaws or to adopt new Bylaws at such meeting, and such notice contains the proposed amendment(s). Any proposed alteration, change, amendment, repeal, or adoption of new bylaws approved by the Directors must be approved by the Council to be effective. Alternately, the Bylaws may be altered or amended in whole or in part, or repealed and new bylaws may be adopted, by resolution of the Council.

\* \* \* \* \*

The undersigned, being the duly elected and qualified Secretary of the Corporation, does hereby certify that the foregoing Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation at a meeting held on \_\_\_\_\_, 2017, at which a quorum was present and voting throughout.

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**TERM SHEET**  
For the  
**TRINITY RIVER CORRIDOR  
MASTER DEVELOPMENT AND USE AGREEMENT**

Between

**CITY OF DALLAS,  
a Texas municipal corporation**

And

**THE TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION,  
a Texas non-profit corporation**

**1. Parties**

- The Trinity River Corridor Local Government Corporation, a Texas non-profit corporation (the "LGC")
- The City of Dallas, Texas, a Texas municipal corporation (the "City")

**2. Purpose of Term Sheet**

The purpose of this Term Sheet (the "Term Sheet") is to set out the general understanding of the parties regarding the design, development, funding, construction, operation, and maintenance of various recreational areas to be located in a portion of the Trinity River Corridor, that portion consisting of City fee-owned property being also known as the "Dallas Floodway", located on the Elm and West Forks through the main stem of the Trinity River through Dallas, Texas and ending at the ATSF Bridge, including City fee-owned property inside and within one-quarter mile outside of centerline of the levees (the "Property"). The Dallas Floodway is subject to *the Record of Decision Modified Dallas Floodway Project Feasibility Report and Environmental Impact Statement Dallas, Texas* (the "ROD") and the Balanced Vision Plan (the "BVP"). The ROD was issued by the U. S. Army Corps of Engineers (the "Corps"). The BVP was adopted by the Dallas City Council on December 8, 2003 by Resolution No. 03-3391, and further amended on April 14, 2004 by Resolution No. 04-1252.

All terms contained in this Term Sheet are subject to the negotiation and execution of definitive agreements, specifically a contemplated master development and use agreement (the "Master Development and Use Agreement"), to be entered into between the parties.

Actions or commitments of the City contemplated by this Term Sheet that are governed by applicable law or ordinance require future City Council action are subject to the unqualified discretion of the City Council.

None of the City's boards, commissions, or governing body shall be bound or restricted by anything contained in this Term Sheet. The City makes no representation and provides no assurances to the LGC, and the LGC understands and agrees that any necessary zoning, replatting, abandonment, building inspection, or other approval decisions, including any decision of the City Council, will be made by the appropriate body of the City or another entity, and that such approval is solely within the discretion of that body and may be denied.

The Master Development and Use Agreement and any supplemental agreements documenting the contemplated transaction are subject to approval by the Dallas City Council after approval as to form by the Dallas City Attorney. The Master Development and Use Agreement and any supplemental agreements will contain representations and warranties, covenants, defaults, and other provisions appropriate to agreements of such nature. Each supplemental agreement shall be incorporated in its entirety as part of the Master Development and Use Agreement and to extent of conflict shall be controlling as to its affected recreational development phase.

### 3. **The Project**

The development of recreational areas in the ~~Dallas Floodway~~Property (the “Project”) shall generally consist of the design, development, funding, construction, use, maintenance, and management of various public recreational improvements and infrastructure (the “recreational area facilities”), coupled with various flood risk management improvements as shall be authorized by the City, all to be located within the Dallas Floodway. The Project is anticipated to fulfill the recreational vision of the BVP and the ROD, as they both relate to the Project, through the comprehensive coordination and management of the LGC and the City. ~~In addition, the LGC~~ The Project does will not and shall not have authority to undertake or construct any kind of roadway infrastructure except for transportation-related infrastructure incidental to vehicular and pedestrian access to recreational area facilities and which shall function only as private internal recreational vehicular and pedestrian accessways.

~~Upon consent of City, as evidenced by a resolution of the City Council, the LGC shall be authorized to construct publicly dedicated right of ways within the Project.~~

Acknowledging the enormousness of realizing the recreational vision components of the ROD and the BVP, the parties agree that all work related to realize the recreational vision shall be phased, subject to prior City authorization and approval. The parties shall enter into a Master Development and Use Agreement to govern the Project. Specifically, the Master Development and Use Agreement shall (i) establish the framework and terms for the City’s evaluation, review, and authorization of all LGC proposed recreational development for the Project; (ii) authorize the LGC to use, manage, maintain, and operate the completed recreational area facilities located within the Project for a specified term; and (iii) at the election of the City Manager, delegation by written assignment to the LGC of all current recreational facilities subject to agreements between the City and third parties presently serving the Dallas Floodway, to extent not expired. Upon assignment, these recreational facilities and/or applicable third party agreements shall be part of the Project.

For Phase I recreational development within the Project, the LGC specifically shall pursue undertaking the development of the following improvements:

- i. Approximately 200 acres of public recreational area facilities space spanning the Dallas Floodway from the Margaret McDermott Bridge on the south to the Ron Kirk Bridge on the north, which is anticipated to be known as the “Harold Simmons Park”; and
- ii. utilities and other infrastructure supporting the Harold Simmons Park, including but not limited to floodway risk management infrastructure required by the ROD and BVP, to be located in and out of Harold Simmons Park, subject to the City’s right to participate in undertaking the floodway related infrastructure described herein.

### 4. **Design and Construction**

#### A. Design

The LGC will oversee and cause to be performed the planning and design of every recreational development phase of the Project, provided however, the LGC's design obligations for each Project phase shall not be effective until the LGC submits a proposal to the City for the subject recreational development phase and City has provided the LGC with its approval and authorization. The LGC acknowledges and agrees that all planning and design plans shall incorporate and satisfy ROD identified recreational and floodway risk concerns or requirements and any City approval, which shall not be unreasonably withheld, and authorization shall not be required or forthcoming until all Corps reviews have been completed and Corps' requirements have been incorporated into the LGC's final design submittals to the City.

The City will have the right to review plans and specifications relating to every recreational development phase of the Project, to make comments and suggested changes to applicable plans and specifications, and to approve the final plans and specifications for each recreational development phase of the Project, provided that approval of each phase shall not be unreasonably withheld, conditioned, or delayed. Any denial resultant from compliance with the ROD or other federal, state, regional or local requisite requirements shall not be deemed unreasonable.

The LGC will be responsible to satisfy any of the above-mentioned requirements that the City elects not to undertake, including but not limited to assembling, preparing, and scheduling for any planning and design documentation submittals; provided however the LGC shall not independently contact or interface with the Corps but rather direct all interaction with the Corps to the City. Notwithstanding that the City will need to interface with the Corps on behalf of the LGC to assure planning and design compliance with the ROD requirements, the LGC shall be solely responsible for any costs related to reviews and approvals required by the Corps under the Master Development and Use Agreement. The LGC shall also be responsible for all costs incurred by the City to obtain additional support staff and hire consultants for review of any Project design and development plans, including required submissions to the Corps.

**B. Construction**

The LGC shall undertake all construction required for every recreation development phase of the Project as described in the final design documents, including the plans and specifications. If the design documents include flood risk management construction components, the City, at its election and upon resolution of the City Council, may undertake any related flood risk management construction, including but not limited to levee raising, levee flattening, removal of any trestle and interior drainage improvements. The City may also delegate those activities to the LGC in which case they will be completed by the LGC. In either event, the parties shall coordinate the allocation of costs resulting from the City's delegation.

With respect to all recreational development phases of the Project, if selected and authorized by the City, the LGC will manage, and cause the selection, engagement,

termination, and replacement of the architects, engineers, construction consultants, and contractors through completion of that recreational development phase of the Project, except as otherwise directed by the City. In selecting such vendors, the LGC will comply with all relevant procurement laws, and will only select vendors that are properly licensed and authorized to do business in the state of Texas.

- C. Insurance The LGC will obtain and maintain insurance as required by the City. LGC will include and cause its contractors to include the City as an additional named insured on all construction contracts and insurance policies entered into by LGC with respect to the Project, and LGC will submit its construction contracts to the City's risk management department for evaluation and review of the appropriateness of such contracts' insurance coverage. The City and LGC will be joint obligees on all performance and payment bonds, in amounts that will be set by the City. LGC will obtain at its expense all building permits, zoning approvals, insurance certificates, payment and performance bonds, and lien waivers from contractors. The LGC will indemnify, defend, and hold harmless the City with regard to design and construction of the Project to the extent such design and construction is the responsibility of the LGC.

~~The LGC will be required to comply with the City's procurement policies for any contracts it administers that are funded in whole or in part with City funds.~~

~~With respect to contracts funded in whole or in part with non-City funds, the LGC will exercise good faith efforts to comply with the goals and objectives of the City's Business Inclusion and Development Plan in connection with its planning, design, and construction activities.~~

D. Funding of Design and Construction

All costs of design and construction of every development phase of the Project will be the sole responsibility of the LGC; provided however that the City, at its election and subject to City Council approval, may elect to undertake and expend public monies for certain costs related to flood risk management design and construction costs necessary to fulfill the ROD, and any applicable planning, engineering, and design agreements with the Corps. The LGC will secure funding from any source for the costs of design and construction, including but not limited to through private donations, federal funds, state funds, local funds, grants, letters of credit, or any other sources of private and public monies available for the Project; provided however with regard to any federal, state, and local funds, or grants (including those from private foundations that have historically granted funds to the City), the LGC shall have obtained the prior approval of the City before seeking such funds. In any event, unless otherwise authorized by the City, the LGC shall not compete for the City's ability to obtain federal, state, and local funds for City projects within the Dallas Floodway. The LGC will provide quarterly reports to the City Manager detailing the results of its fundraising activities.

E. Commencement of Design and Construction

Unless otherwise provided in a project specific agreement, with respect to each phase of the Project or improvement of existing recreational area facilities subject to assigned third party agreements, the LGC (i) shall commence design work, if applicable, no later than 6 months from City authorization of a recreational development phase; and (ii) shall commence construction work, if applicable, within 36 months of City approval of the completed design and construction plans for said recreational development phase; or improvement of existing recreational area facilities subject to assigned third party agreements. Otherwise, the City's authorization for said recreational development phase may be deemed null and void, and the City may terminate its authorization for the affected recreational development phase; or for any improvement work to existing recreational area facilities subject to assigned third party agreements.

"Commence construction" shall mean that (i) the LGC must enter into an agreement with a contractor to construct the improvements described in the final design and construction plans; (ii) the LGC has secured financing sufficient to complete the improvements; (iii) the LGC has secured all necessary permits and approvals, and; (iv) the LGC has actually begun the work described in the agreement with the contractor. If the LGC fails to meet either deadline, then at the City's sole option the City's prior authorization or approval shall be deemed null and void and of no further effect.

F. Master Development and Use Agreement and Supplemental Phase Specific Agreements.

Notwithstanding that the Master Development and Use Agreement is intended to set a design and construction framework to govern design and construction for every phase of the Project, the parties shall enter into supplemental phase or project specific agreements as shall be appropriate for all LGC recreational development work, including improvement of existing recreational area facilities subject to assigned third party agreements.

5. **Maintenance Costs**

A. Authorized Recreation Areas Maintenance

Upon completion of all construction work required for the effective operational opening of any recreational area facilities within any authorized recreation area, and subject to the oversight and approval of the City Manager, the LGC shall be obligated to operate, manage, and maintain said recreational area facilities within the authorized recreation areas on behalf of the City. The LGC will be solely responsible for funding of the maintenance, operation, and capital improvement of all recreational area facilities within the authorized phased recreation areas for the term of the Master Development and Use Agreement.

Additionally, the LGC shall accept the assignment and assumption of the City's position in current recreational agreements between the City and third parties presently serving the Dallas Floodway. Provided however such assignment shall be effective only upon written delegation from the City Manager and agreement by the affected third party. Upon such assignment and assumption, the LGC shall be



responsible for all City's obligations under said agreements, including but not limited to grants for agreement amendments or extensions; but not for extending any City funding commitments. Any such funding must be authorized by resolution of the City Council.

Aside from City's flood risk management obligations, the City will have no financial obligations for the funding of ongoing maintenance, operation, and improvement of any recreational area facilities within the Dallas Floodway. Under no circumstances shall the LGC's operational and management rights over the recreational area facilities include any flood management infrastructure improvements, regardless of whether the LGC is responsible for construction of such facilities. The flood risk management obligations of the City shall at all times be paramount and superior to the LGC's management and operational functions, and the City shall not be liable for any interference with the LGC's management and operations of authorized recreational area facilities.

B. Dallas Floodway Levee System Infrastructure

Except as otherwise delegated to the LGC by the City, the City will be responsible for the maintenance, operation, and improvement of all floodway infrastructure within the entire Dallas Floodway.

6. **Facilities Ownership**

The City will own all land and capital improvements comprising the Project. To the extent not in conflict with the LGC's authority set forth in its by-laws and certificate of formation, the LGC may delegate its obligations by and through third-party agreements, including but not limited to development, use, and operations agreements.

7. **Term**

Term and Extensions of the Master Development and Use Agreement

Forty (40) years commencing upon the date that the last of the parties executes the Master Development and Use Agreement (such period, the "Primary Term").

The LGC will have three options to extend the Primary Term of the Master Development and Use Agreement, with each extension period to be for an additional ten years, upon the expiration of the Primary Term or any extension term, with each extension term being subject to City Council consent and approval.

8. **Permitted Uses**

The LGC will have the right and obligation to construct, maintain, and operate the recreational area facilities developed in all authorized recreation areas. The LGC shall also, if delegated by the City Manager, assume City's position and obligations under current recreational agreements between the City and third parties presently

servicing the Dallas Floodway. Upon completion and acceptance by the City of any recreation area facilities within authorized recreation areas, such recreation areas will be generally open to public use without a general admission fee, but with the right of the LGC to charge reasonable fees for special events and activities. Special events are defined in the Dallas City Code and will be subject to all City of Dallas requirements and other regulatory requisite requirements. The LGC shall manage and operate all special events so as not to interfere with flood risk management activities and to comply with all applicable City ordinances.

The LGC shall not create restricted access to any recreational area facilities. Any parking fee arrangements for access to any recreational area facilities shall be subject to the approval of the City, which shall not be unreasonably withheld.

The LGC will fund and manage the maintenance, programming, security, operation, and capital improvement of all authorized recreation areas and is entitled to all revenues generated by all authorized recreation areas amenities, including, but not limited to, charitable gifts, endowment income, fees, assessments, rents, advertising, promotion and events revenues, and scholarships. All such revenues shall be applied toward maintenance, operation, improvement, and endowment for the authorized recreational areas. At a minimum, the LGC will maintain authorized recreation areas in a manner consistent with the City's standards for maintenance of similar public improvements throughout the City. The LGC shall not mortgage, securitize, or place a lien, or allow a lien to be filed against any authorized recreation areas or on any of the City's facilities or property within the Dallas Floodway.

## 9. Consideration

Subject to compliance with the ROD, consideration from the LGC will be:

- i. subject to the City's flood risk management operations, the LGC being responsible for the design and construction of all recreational development phases authorized by the City to be undertaken by the LGC;
- ii. subject to the City's flood risk management operations, the LGC being responsible for all programming, maintenance, management and operation of authorized recreation areas as first-class recreational area destinations;
- iii. subject to the City's flood risk management operations and local ordinances, the LGC being responsible for all improvement, maintenance, and operation of all recreational area facilities within the Project as facilities generally open to public use without a general admission fee, but with the right of the LGC to charge reasonable fees for specific events and activities;
- iv. **the LGC will indemnify, defend, and hold harmless the City for the term of the Master Development and Use Agreement for claims resulting from the use, management, operation, and maintenance of**

**authorized Recreation Areas, or other action or inaction related to same or the Master Development and Use Agreement, as may be amended, except for claims resulting solely from the City's own negligence or willful misconduct or that of the City's agents, contractors, employees, or consultant; and**

- v. Upon assignment and assumption as described hereinabove, the LGC being responsible for all of the City's obligations under the recreational agreements between the City and third parties serving the Dallas Floodway.

**10. Capital Expenses**

The LGC shall be responsible for the cost of all recreation area facilities capital maintenance, improvement, and repair in authorized recreation areas. Unless necessitated by the LGC's recreational area development and operations activities, the City shall be responsible for the cost of flood management facilities capital maintenance, improvement, and repair in the entire Dallas Floodway, subject to City Council appropriations.

**11. Management and Revenues**

Subject to the City's flood risk management operations within the Dallas Floodway and any existing recreational agreements, the LGC (i) will determine and manage the use of all recreational area facilities within authorized recreation areas and related improvements, and (ii) will retain all revenues from the operation of such improvements. The City Manager will approve operating hours for public access. At no cost to the City other than direct event costs, including, but not limited to, clean-up, security, lighting, etc, the City shall have the right to schedule City events within the Project, upon 30 days' notice to the LGC, provided those events do not interfere with events or programs previously scheduled or publicly announced by the LGC prior to the date of the City's notice. The City Manager, will approve rates, fees, and charges for public access to authorized recreation areas within the Project.

The revenues generated by authorized recreation areas (including from conveyance of naming rights) shall be utilized by the LGC solely to fund operation, maintenance, capital improvement, and repair of authorized recreation areas and to provide reserves or an endowment for such purposes, as described herein.

The LGC will maintain its status as a not-for-profit corporation. The LGC will provide the City Manager with its annual operation budget in advance of the next fiscal year, and shall provide audited financial statements to the City Manager within 120 days of the end of each fiscal year. The City will have the right to review and inspect the financial books and records of the LGC relating to the Project, and any future projects and operation and management of authorized recreation areas at any time, and the LGC records are subject to disclosure under the Texas Public Information Act.

12. Procurement/Minority and Women-Owned Business Enterprise (M/WBE)City's BID Program

The LGC shall comply with all state and local procurement laws applicable to a Texas local government corporation. In all contracts executed by the LGC, LGC shall comply with the City's Minority and Women-Owned Business Enterprises/Good Faith Effort Plan -as amended, and shall cause all of its contractors to comply with the same requirements. The LGC shall comply in good faith efforts with the City's Business Inclusion and Development Program as amended from time to time.

13. Audit

Formatted: No underline

The city manager shall have access to the premises, documents, records, and other materials of the LGC at any reasonable time and shall have the right to audit same. The LGC shall reimburse the city manager for any costs of an audit. The LGC shall require that any entity with which it contracts grant a right of audit by the city manager related to the contract and any other dealings with the LGC or the Property. The City will have the right, upon reasonable notice, to inspect the LGC's books and records.

14. Liaisons

A. The City designates the City Manager as the City's liaison (the "City Liaison") for the Project. The City Manager shall have the power to appoint other City staff as designee in his stead. The City Liaison shall be the LGC's point of contact with the City. The City Liaison shall provide reasonable assistance, as deemed appropriate by the City Manager, in obtaining and conveying relevant information regarding the Project to the appropriate municipal departments, committees, boards, and City Council and for promptly transmitting to the LGC any comments, from any of those bodies, as promptly as reasonably possible. Unless otherwise specified, "City" approval and authorization shall mean approval and authorization by the City Manager. The City Liaison shall be invited to all LGC meetings.

The City Manager, at the City Manager's discretion, shall provide administrative support services for the LGC, and shall perform duties as prescribed by the City Council. The LGC staff functions also may be performed by City staff, as directed by the City Manager, and the LGC shall pay the costs for such services as from time to time shall be billed to the LGC by the City.

The LGC shall be responsible for procuring, at its sole cost, its own legal representation. Upon the City Manager's request, however, the City Attorney shall assign one or more Assistant City Attorneys to assist the LGC or the LGC's legal counsel. At the request of the City Attorney, LGC counsel will provide legal status reports, and will participate from time to time in executive session briefings of the City Council and its committees and the Board of Directors of the LGC.

\_\_\_\_\_ shall be the LGC's authorized representative (the "LGC Liaison") and the City may reasonably rely on and deal with the LGC Liaison\_ to the maximum extent

allowed under law, without further authorization. The LGC shall cause the LGC Liaison to take reasonable steps to coordinate construction of authorized recreational areas within the Project. The LGC Liaison shall update the City Liaison at least monthly on the progress of all LGC activities.

**15. Marketing and Logo Requirements**

- A. The LGC shall not adopt any trademark, trade name, logo, slogan, domain name or other source identifier that is identical to, incorporates, or is confusingly similar to any City trademark or copyright; provided, however, that (i) the LGC may adopt and use the trade name “Trinity River Corridor Local Government Corporation,” and (ii) the LGC shall not be restrained from using the word “Dallas” in its ordinary geographic meaning.
- B. The LGC shall not use or display any of its own trademarks or copyrighted materials in the design, construction, operation or maintenance of the authorized recreation area(s) nor shall the LGC create any trademarks or copyrighted materials for the Project except as permitted in this Section 15.
- C. In the course of the design, construction, operation, management and maintenance of the Project, the LGC shall use the City’s then-current trademarks, trade dress and copyrights to brand the authorized recreation areas and all structures thereon. As such, the City grants to the LGC a limited license to use, reproduce, modify and create derivative works of the City trademarks and copyrights relevant to the Project, including but not limited to the word mark THE TRINITY®, the Trinity Logo mark, the City of Dallas “D” logo, and such other trademarks and copyrights the City may permit from time to time (the “City Branding”).
- D. The LGC will use the City Branding on and in connection with wayfinding signage, safety signage, exterior and interior signage of facilities within the authorized recreation areas, mile markers, temporary construction banners and signage, and the like.
  - (i) The LGC must submit all proposed designs for such signage, together with the specifications for the size and materials of each installation, to the City Manager for approval, which shall not be unreasonably withheld.
  - (ii) To the extent that any such materials incorporate third-party rights or individual likenesses, the LGC represents and warrants that it has obtained the proper licenses and/or releases from the owners of the rights or individuals pictured and, further, LGC will indemnify the City against claims that any material infringes the intellectual property, publicity, privacy or other proprietary rights of a third party.
- E. The LGC will use the City Branding on and in connection with advertising, marketing, public relations and other promotional programs for the authorized recreation areas.

- (i) The LGC shall negotiate, execute (in its own name and not the name of City) and perform all contracts concerning the advertising, marketing, public relations and other promotional programs for the authorized recreation areas.
  - (ii) Each such advertising, marketing, public relations and/or other promotional program and contract therefor for the LGC's operations shall be in all respects subject to and in compliance with applicable copyright, trademark and trade-name laws.
  - (iii) Each contract shall contain language substantially similar to that found in the Master Development and Use Agreement, including but not limited to (1) requiring approval of any promotional materials by the City Manager, (2) requiring assignment of all rights in and to intellectual property created under such contract to the City; (3) subordinating and subjecting the contract to the terms of the Master Development and Use Agreement and (4) exculpating City from any obligation or liability.
- F. The City may also, in its sole discretion, grant to the LGC a limited license to use the City Branding in connection with the production and distribution of promotional items (e.g., clothing, hats, paper products, etc.) for the authorized recreation areas.
  - (i) In the event the LGC requests, and the City grants, such a license, the design for any all promotional items, together with specifications for the materials and quantity of such items and an identification of the supplier from which the items will be sourced, must be submitted to the City Manager for approval, which shall not be unreasonably withheld.
  - (ii) To the extent that any such items incorporate third-party rights or individual likenesses, the LGC represents and warrants that it has obtained the proper licenses and/or releases from the owners of the rights or individuals pictured and, further, **the LGC will indemnify the City against claims that any material infringes the intellectual property, publicity, privacy or other proprietary rights of a third party.**
- G. Without limiting the generality of the foregoing or limiting the City's right of approval over all uses of the City Branding, the parties understand and agree that the nature and quality of the derivative works, signage designs, promotional items, and other uses of the City Branding will be equal to or greater than the City's then-current standards for branded materials.
- H. The LGC may not, under any circumstances, register or assist or permit any other party to register any domain name that incorporates any trademark or service mark of the City. Should the LGC deem it advisable or desirable to operate a website to promote the authorized recreation area(s), the LGC may request that the City register the desired domain name(s) at the LGC's sole expense, and the City will allow the LGC sufficient access to operate the domain for that purpose.

- I. The LGC will not, and will not assist or permit any other party to, challenge the validity of or the City’s ownership of the City Branding.
- J. All inventions, improvements, printed and/or digital materials, and other work product created by the LGC or by any permitted subcontractor of the LGC related to or in furtherance of the Project—including, but not limited to, plans, renderings, signage designs, marketing and promotional materials, and all drafts, revisions, translations, and derivative works thereof (the “Project Materials”)—shall be at all times owned by the City.
  - (i) The LGC shall assign to the City all right, title and interest in and to any invention, know-how, trademark, trade dress, copyright and related proprietary rights in Project Materials developed and created by the LGC pursuant to the Master Development and Use Agreement.
  - (ii) The LGC will cause each permitted subcontractor to assign to the City all right, title and interest in and to any invention, know-how, trademark, trade dress, copyright and related proprietary rights in Project Materials developed and created by such permitted subcontractor pursuant to its contract with the LGC.
  - (iii) To the extent that any such Project Materials incorporate works of authorship or trademarks that are owned by third parties or in the public domain, the City shall own all other elements of such Project Materials, including but not limited to selection and arrangement of elements and choice of colors or fonts.
  - (iv) The LGC shall, and shall cause each permitted subcontractor to, execute any documents requested by the City to give effect to the intention of this section (J).
  - (v) If for any reason the assignment contemplated by this section (J) is not permitted by law, then the LGC shall, and shall cause each permitted subcontractor to, grant to the City a perpetual, exclusive, royalty-free license to use such Project Material(s).
- K. Neither the LGC nor any permitted subcontractor shall use any Project Materials unless such use is for the sole and exclusive purpose of promoting the Project and the City’s interests in the Project as authorized under the Development and Use Agreement.
  - i. For clarity, no Project Material shall be used or displayed to advertise, solicit business for or otherwise promote the LGC or a permitted subcontractor unless expressly authorized by the City in writing in advance of such use.
  - ii. Notwithstanding the foregoing, the LGC will be permitted to display plans and/or renderings for the Project if and only if such plans and/or renderings



have been approved by the City as to concept and are conspicuously marked as “preliminary” in each such display.

**16. Naming Rights**

The LGC will have the right to sell, license, or otherwise convey the naming rights to authorized recreation areas and all recreational area facilities located in the authorized recreation areas, including naming rights for improvements or subparts of authorized recreation areas, and to any and all programs, series, and other events held in authorized recreation areas, subject to approval of the City Manager, which approval shall not be unreasonably withheld.

City approval shall not be deemed to be unreasonably withheld if the City Manager reasonably believes that a particular name would be tarnish or call into question the City’s reputation or otherwise associate the City with an individual or organization whose values are inconsistent with the City’s values.

Upon the City Manager’s approval of the conveyance of naming rights to authorized recreation area(s) and facilities, improvements, or programs located and/or held thereon (each a “Named Property”), the LGC will enter into a suitable naming rights agreement with the grantor of the right. Any such agreement shall provide for a limited license allowing the City to do each of the following for the purpose of promoting and/or operating the Named Property: (1) use the grantor’s name, (2) incorporate the grantor’s name into or combine the grantor’s name with City Branding, (3) register one or more domains incorporating the grantor’s name, and (4) own and/or register any trademarks or copyrights that incorporate the grantor’s name, provided that the City will disclaim any rights in grantor’s name apart from the overall mark or design. The LGC will submit to the City Attorney a copy of the proposed naming rights agreement for review and evaluation.

The City reserves the right to require renaming if a named corporation ceases to exist or if a named individual or corporation is convicted of a felony or a crime of moral turpitude.

**17. Use of Names in City Publicity Efforts**

During the term of the Master Development and Use Agreement, the City (i) will endeavor to use the name of the commercial or other sponsors of authorized recreation areas including any recreational area facilities (and any and all applicable programs, series, or other events held therein) in City-funded advertisements that make reference to authorized recreation areas (or such programs, series, or other events held therein), and (ii) will use reasonable efforts to cause organizations funded in whole or in part by the City (including, without limitation, the Dallas Convention Visitors Bureau and any similar or successor organization) to use such names in advertisements that are funded by such organizations and that make reference to authorized recreation areas (or to any programs, series, or other events held therein). Notwithstanding the foregoing, the City shall not be required to incur

any additional cost or expense in ensuring said use. The LGC shall ensure that the City is free to use said images and names without cost.

**18. Termination.**

The City shall have the right to terminate this Agreement at any time, with or without cause, whereupon the city shall assume all of the LGC's obligations and rights thereunder. ~~There is no termination for convenience; both parties may terminate for cause.~~

DRAFT