

HOUSTON ENDOWMENT

GRANT AGREEMENT

October 15, 2018

Dear Mr. Barrios,

It is my pleasure to inform you that the Board of Directors of Houston Endowment Inc. (the “**Foundation**” or “**Grantor**”) has authorized a grant of \$325,000 to Friends of Brazoria Wildlife Refuges subject to Grantee’s acceptance of the terms and conditions below and in Exhibits A and B as follow (collectively, the “**Agreement**”):

THE GRANTEE AND GRANTOR (AS SET FORTH BELOW) HEREBY AGREE AS FOLLOWS:

GRANTEE: Friends of Brazoria Wildlife Refuges

Ed Barrios
President
Post Office Box 505
Lake Jackson, TX 77566-0505

Reference Number: #29832

Please refer to this reference number for future communications as it will serve as the identification number for this grant.

GRANTOR: Houston Endowment Inc.
600 Travis
Suite 6400
Houston, Texas 77002

GRANT AMOUNT: \$325,000

TYPE OF GRANT: Restricted

REASON FOR SUPPORT: Toward pre-acquisition due diligence costs associated with protecting land in the Columbia Bottomlands (the “**Purpose**”) as described in your proposal.

EXPECTED PAYMENT SCHEDULE: This grant is expected to be paid in the following installment amounts (the “**Payment Schedule**”):

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Deliverable Due Date	Required Deliverables	Payment Schedule Date	Amount
10/26/2018	contract has been returned	12/31/2018	\$325,000
12/31/2019	final report	N/A	N/A

PAYMENT TERMS: After receipt by the Foundation of a fully-executed copy of this Agreement and all other documents as described below, payment of the grant funds is expected to be made as indicated in the Payment Schedule above, provided Grantee is in compliance with all terms and conditions of this Agreement at the time of each scheduled payment. The scheduled dates of estimated payments listed or for any subsequent installments may be amended from time to time in the Foundation’s sole discretion. If a Required Deliverable is completed prior to the Deliverable Due Date, you may receive your payment earlier than the Payment Schedule Date at the Foundation’s sole discretion.

REPORTS: Grantee agrees to furnish the Foundation reports on the Deliverable Due Dates (as defined in the Expected Payment Schedule) specified. Reports, if required, shall be made for each year in which Grantee receives or expends any portion of the grant funds until the Foundation’s grant funds and any income earned thereon, are expended in full or the grant is otherwise terminated or expired. Reports should be completed in accordance with the information requested in Exhibit B hereto. Failure to submit reports as requested or any contingency documentation may result in a change in the Expected Payment Schedule and possible cancellation of the grant. Failure to submit the Final Report will be documented in Grantee’s file and may negatively impact future funding requests. Required Deliverables (as defined in the Expected Payment Schedule) may be amended from time to time upon written authorization from the Foundation.

PUBLICATIONS: Permission is hereby given for Grantee to use any wording contained in this Agreement in materials for external publication, e.g. press releases. Proposed releases for publication or broadcasting containing additional information need be submitted to the Foundation for approval. Grantee may not use the name, trademark, logo, symbol, or other image or trade name of the Foundation or its employees in any advertisement, promotion, or other form of publicity or news release or that in any way implies endorsement without the prior written consent of the Foundation. Grantee agrees to forward to the Foundation copies of any news releases, published materials, or media articles mentioning this grant which come to Grantee’s notice or attention.

Both the Foundation and the Grantee retain the right to include or not include information relating to this grant on their respective websites, in periodic reports and newsletters and other materials issued by or on behalf of their organizations and to any public media. The Foundation may include any photographs Grantee may have provided, Grantee’s logo or trademark, or other information or materials about Grantee and its activities in such materials. The Foundation will make a good faith effort to seek consent of the Grantee and/or provide advance notice if the Grantee is featured prominently in such materials.

Furthermore, the Foundation desires that all resources of Grantee be dedicated to accomplishing its charitable purposes. Accordingly, Grantee agrees not to recognize the Foundation, its board members or staff, or this grant with certificates, plaques, or similar mementos. Should you have any questions, please email the Foundation’s Director of Communications and your assigned Program Officer.

RIGHT TO DISCONTINUE FUNDING: The Foundation may, in its sole discretion, discontinue or suspend funding or demand return of any unspent funds based on reasons including, but not limited to, the following:

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- (a) the reports required herein are not submitted to the Foundation on a timely basis;
- (b) the reports do not comply with the terms of this Agreement or fail to contain adequate information to allow the Foundation to determine the funds have been used for their intended Purpose;
- (c) grant funds have not been used for their intended Purpose or have been used inconsistent with the terms of this Agreement;
- (d) a payment has been made that may, in the judgment of the Foundation, expose the Foundation to liability, adverse tax consequences, or constitute a taxable expenditure;
- (e) action has been taken by Grantee which, in the Foundation's sole discretion, could reasonably result in public disrepute;
- (f) the purposes for which the grant was made can no longer be accomplished; or
- (g) the Foundation, in its sole discretion, is not satisfied with the progress of the activities funded by the grant or compliance with the contingency requirement.

The Foundation will provide notice of any determinations made under this paragraph. In the event the Foundation takes action permitted by this paragraph solely based on (f) and (g), and Grantee provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on this Agreement and the approved budget, the Foundation will consider in good faith permitting grant funds to be used to pay such obligations.

Any violation of the terms and conditions set forth herein will permit the Foundation to terminate any and all obligations with respect to further distributions, whether to be made as part of this grant or any other approved grant from the Foundation. Grantee will repay the Foundation, upon demand, the amount of any funds spent for purposes inconsistent with or contrary to this Agreement or the approved budget.

UNSPENT FUNDS: If the Foundation funds were received for a purpose other than unrestricted support and there are any Foundation funds in excess of \$999.99 remaining that were not used for the intended Purpose, Grantee shall provide a written statement of the balance of such funds and those funds must be returned to the Foundation, unless otherwise agreed to by the Foundation.

NOTICE OF CHANGES: Should any information come to Grantee's attention regarding any material changes which could affect the Purpose or administration of the grant, including but not limited to the following, Grantee is required to notify Elizabeth G. Love, Senior Program Officer, 713-238-8132 within 30 days of your knowledge of this information.

- (a) change in Grantee's tax-exempt status;
- (b) Grantee's inability to expend the grant funds for the Purpose;
- (c) any expenditure from grant funds not made in furtherance of the Purpose;
- (d) change in organizational leadership;
- (e) change in 20 percent or more of board members;
- (f) change in address or contact information;

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- (g) any adverse event which may affect ongoing operations; or
- (h) change in leadership of the project for which funds were granted.

DUE AUTHORITY: The person(s) signing this Agreement on behalf of Grantee represents and warrants to the Foundation that s/he is a duly authorized officer of Grantee and has requisite legal power and authority to execute this Agreement on behalf of Grantee and bind Grantee to the obligations herein.

By execution below, you agree to be subject to this Agreement in its entirety, specifically including the OTHER TERMS AND CONDITIONS as listed in Exhibit A and REPORT QUESTIONS as listed in Exhibit B, attached hereto and made a part of this Agreement.

Very truly yours,



Ann B. Stern

President and CEO

Accepted and Agreed:

By: Edward Barrios
Name

Edward Barrios
Signature

President FOBWR
Title

November 21, 2018
Acceptance Date

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and date on page 1 of this Agreement.

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EXHIBIT A

OTHER TERMS AND CONDITIONS:

1. These Other Terms and Conditions shall supplement those terms and conditions above.
2. **USE OF FUNDS:** If this is a restricted grant, this grant is made only for the Purpose stated in the Agreement. Grantee agrees to obtain the Foundation's prior approval in writing should there be any material changes or variances to the Purpose or the approved budget, at any point during the course of this grant. Furthermore, Grantee agrees to keep its financial and other records to adequately document that the funds were used exclusively for the grant's Purpose. Grantee agrees to supply the Foundation with such information as the Foundation may request to review the use of these grant funds and their effect upon the public charity status of Grantee.

Grantee confirms that this project is under its complete control. Grantee further confirms that it has and will exercise control over the process of selecting any subcontractor or consultant, that the decision made or that will be made on any such selection is completely independent of the Foundation and that there does not exist an agreement, written or oral, under which the Foundation has caused or may cause the selection of a subcontractor or consultant.

3. **RESTRICTIONS ON USE OF FUNDS:**

- (a) In connection with the activities to be funded under this grant, Grantee acknowledges that it is responsible for complying with all relevant laws and regulations related to such activities.

- (b) Grantee hereby agrees not to use the grant funds for any purpose prohibited by law, including those purposes specified in Section 4945 of the Internal Revenue Code. Furthermore, Grantee acknowledges grant funds will not be earmarked by the Foundation to (i) carry on propaganda, (ii) lobby or (iii) otherwise attempt to influence legislation or to conduct any activities described in Sections 4945(d) and (e) of the United States Internal Revenue Code and the Treasury Regulations thereunder. Grantee confirms it will not use any of the funds to intervene for or in opposition to a candidate for elective public office or to carry on a voter registration drive not permitted under 4945(f). Further questions regarding impermissible activities should be directed to Grantee's tax or legal advisor.

- (c) Grantee agrees that Foundation grant funds will be used in compliance with all applicable anti-terrorist financing and asset control laws, regulations, rules and executive orders, including but not limited to the USA Patriot Act of 2001 and Executive Order No. 13224.

4. **RECORDS/RIGHT TO AUDIT:** Grantee shall maintain an accurate record of the grant received and all expenses incurred under this grant. Furthermore, at the request of the Foundation, Grantee shall permit reasonable access to its files, records, and personnel by the Foundation (or its designated representative) for the purpose of making financial audits, evaluations or verifications, program evaluations, or other verifications concerning this grant as the Foundation deems necessary.

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5. **INVESTMENT OF FUNDS:** The grant may be comingled with other funds held by Grantee for investment purposes, provided that the grant's principal and any net investment income earned thereon is recorded as a separate restricted fund for the purpose of reporting to the Foundation.
6. **USE OF NAME:** Grantee acknowledges that the name and mark "Houston Endowment Inc." and all variations thereof are the sole and exclusive property of the Foundation, that any and all uses of the Houston Endowment Inc. name by Grantee shall inure solely to the benefit of the Foundation, and that Grantee shall not acquire any right, title or interest in Houston Endowment Inc. All uses by Grantee in any manner shall be subject to inspection by and approval of the Foundation, which approval may be granted or withheld in the sole and absolute discretion of the Foundation if not in accordance with the PUBLICATIONS section herein. The Foundation may require at any time, Grantee immediately discontinue and forever thereafter desist from any and all use of "Houston Endowment Inc." and/or either destroy or deliver to the Foundation, at no charge to the Foundation, stationery, brochures, proposed paid media and other similar materials bearing Houston Endowment Inc. that are in the possession or control of Grantee.
7. **U.S. TAX STATUS:** By countersigning this agreement, Grantee confirms and warrants that it currently is (i) a public charity described in Section 501(c)(3) of the Internal Revenue Code other than as described in Chapter 26 of the Code of Federal Regulations Section 1.509(a)-4(i)(5) and has received its Section 501(c)(3) determination from the Internal Revenue Service (the "IRS") or a governmental unit described in Section 170(c) of the IRS Code of 1986 (not a private foundation or a private operating foundation), and (ii) that receipt of this grant will not adversely affect Grantee's current status.

Grantee agrees to notify the Foundation immediately with any information if Grantee's determination or status under the Internal Revenue Code is revoked or modified during the course of this grant.

8. **AMENDMENT:** This Agreement may not be modified or amended except by written agreement executed by both parties.
9. **CONFIDENTIALITY:** Grantee agrees it will use any information deemed confidential by the Foundation solely in furtherance of the Purpose.
10. **NO ASSIGNMENT:** Grantee may not assign or otherwise transfer its rights or delegate any of its obligations under this grant without prior written approval from the Foundation.
11. **NO FURTHER COMMITMENT FOR FUNDING:** Grantee acknowledges that the receipt of this grant does not imply a commitment on behalf of the Foundation to continue funding beyond the terms listed in this Agreement.
12. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Texas without regard to the conflict of laws provisions thereof, regardless of the place of execution or performance.

Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Harris County, Texas, and each party waives any objection that it might raise to venue as inconvenient.

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13. **DISPUTE RESOLUTION:** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (AAA) before resorting to arbitration, litigation, or some other dispute resolution procedure. The AAA will choose a mediator within seven (7) days from referral of the matter to AAA and payment of AAA fees. The mediator shall be an experienced practicing attorney who has no conflicts of interest. All expenses shall be divided equally between the parties. Mediation shall be conducted within thirty (30) days after appointment of the mediator and is to be completed over no more than two business days. All procedures shall be set by the mediator. The results of mediation are non-binding, advisory, and confidential, and the mediator's recommendations, as well as the written or oral evidence produced from mediation, shall not be admissible for any purpose for or against the parties in any later alternative dispute resolution, administrative or legal proceeding.

14. **INDEMNIFICATION:** Grantee shall defend, indemnify, and hold the Foundation, its directors, officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of its performance of this Agreement but only in proportion to and to the extent such liability, loss, expenses, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Grantee, its officers, agents, or employees.
15. **NO WAIVER:** Failure of the Foundation to exercise any rights in this Agreement does not waive any right in this Agreement by the Foundation.
16. **SURVIVAL:** Any provisions of the Agreement that by their nature extend beyond termination will remain in effect in accordance with their terms. Without limitation, the following sections of these Other Terms and Conditions shall survive expiration or termination of the Agreement: 2, 3, 4, 5, 6, 9, 12, 13, and 14.
17. **HEADINGS:** The section headings in this Agreement are for convenience only and are not intended, and shall not be construed, to alter, limit or enlarge in any way the scope or meaning of the language contained in this Agreement.
18. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement between Grantee and the Foundation with respect to the subject matter herein and supersedes any and all prior agreements, understandings, negotiations, representations and discussions with respect thereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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EXHIBIT B

REPORT QUESTIONS:

1. Describe any significant changes to your organization (leadership, major programming, financial position, etc.) since you received this grant.
2. If this is an Unrestricted grant, please provide an update on the goals you articulated in the funding request.

OR

If this is a Restricted grant, please provide an update on the specific project or program for which you received funding. Has the project or program been completed? If so, provide a summary of the work that was accomplished and the benefits currently being provided as a result. If the project or program has not been completed, provide a report on the progress of the initiative thus far and detail what work remains.

Please refer to TYPE OF GRANT on Page 1 of the Grant Agreement to confirm Unrestricted or Restricted.

3. Provide an update on the other work of your organization since you last applied or reported. Please limit your response to no more than six sentences.
4. Share any additional learnings or opportunities that you would like to bring to Houston Endowment's attention.