

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

RECITALS

WHEREAS, the District and the City have determined to enter into a regional participation agreement as authorized by the Act; Now, Therefore,

FOR AND IN CONSIDERATION of the mutual promises, benefits, covenants, undertakings, payments and deposits hereinafter described, the District and the City contract and agree as follows:

Section 1.1. Definitions. Unless otherwise required by the context of this Agreement, the following terms and phrases shall have the meanings specified below:

"Alternate Parcel 8" means all of the lands and properties situated within the territory described in Exhibit "B" attached hereto and made a part hereof for all purposes.

"City" is defined in the recitals hereto and includes any governmental entity at any time succeeding by operation of law

to the principal powers, authority, rights and duties of the City.

"District" is defined in the recitals hereto and includes any governmental entity at any time succeeding by operation of law to the principal powers, authority, rights and duties of the District.

"Effective Date" means, as to each Article and Section of this Agreement, the effective date for such Article or Section applicable pursuant to Section 7.1 hereof.

"Eligible Projects" means any one or more of the programs or projects described in Section 3.1 of this Agreement.

"ETJ" means the extraterritorial jurisdiction of the City, as same is now established and may hereafter be adjusted from time to time by the City in any manner provided by Chapter 42, Texas Local Government Code, or other applicable law, or as provided in this Agreement.

"Expanded District" means the District, as expanded by the addition of the Territory.

"Fund Administrator" means the administrator of the Regional Participation Fund, as designated pursuant to Section 2.2 of this Agreement.

"Fund Representative" means the representative selected by a party to oversee administration of the Regional Participation Fund, as provided in Section 2.2 of this Agreement.

"Initial Deposit" means the initial deposit of funds into the Regional Participation Fund to be made by the District, as provided in Section 2.7 of this Agreement.

"Matching Deposit" means any one or more of the matching deposits into the Regional Participation Fund required of the City pursuant to Section 2.9 of this Agreement.

"Periodic Deposits" means any one or more of the periodic deposits into the Regional Participation Fund required of the District pursuant to Section 2.8 of this Agreement.

"Project Costs" means any and all costs and expenses directly related to a Selected Project, including, without limitation, the costs of real estate, easements, rights-of-way, consulting services and expenses, construction,

acquisition, site preparation, equipment, furnishings, fixtures, operations, maintenance and administration, but does not include the management, planning, administrative, supervisory, legal or oversight costs of a party or its Fund Representative.

"Project Manager" means the party or person designated to implement a Selected Project, as provided in Section 4.1 of this Agreement.

"Regional Participation Fund" or "Fund" means the regional participation fund to be established, funded, administered and applied as provided in Article II of this Agreement.

"Selected Projects" means any one or more of the Eligible Projects selected for implementation, as provided in Section 3.3 of this Agreement.

"Territory" means and includes all of the lands and properties situated within the territory described in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 1.2. Supplemental Definitions. Except as otherwise provided herein, the terms and phrases used in this Agreement shall have the meanings ascribed to them in Section 43.0754(a) of the Act.

Section 1.3. Interpretation. This Agreement shall be liberally construed so as to comport with the Act, other applicable law and the intentions and purposes of the parties as expressly stated or clearly implied herein.

ARTICLE II: REGIONAL PARTICIPATION FUND

Section 2.1. Creation of Fund. A separate special fund or escrow account (the "Regional Participation Fund" or "Fund") shall be created and established by the parties, used solely for funding Project Costs, and any necessary Fund administration costs and expenses, and administered, funded, invested and applied as hereinafter set forth in this Agreement.

Section 2.2. Designation of Officials. Each party shall designate in writing from time to time one (1) representative (the "Fund Representative") for purposes of administering the Fund as provided herein. The party or person with the responsibility and authority for the administration of the Fund (the "Fund Administrator") shall be designated and authorized by agreement between the Fund Representatives to act for and on behalf of the

parties as herein provided. Unless otherwise agreed between the Fund Representatives, the City shall initially be the Fund Administrator. The Fund Administrator shall be responsible for the safekeeping, investment and collateralization of the Fund, receipts into and disbursements from the Fund and the securing of accounting, auditing and reporting services in respect of the Fund. Investments of and disbursements from the Fund shall be made only as provided in this Agreement.

Section 2.3. Investments. To the extent not required for the payment of Project Costs or the costs of administration of the Fund, moneys deposited in or to the credit of the Fund shall be invested or reinvested from time to time, but only in investments permitted by applicable law for the City. All investments and any profits realized from or interest accruing on such investments shall belong to the Fund and shall be allocable to the parties in the proportions to which the principal balances in the Fund are allocable to the parties. If any moneys are so invested, the Fund Administrator shall have the right to have sold in the open market a sufficient amount of such investments to meet any obligations payable out of the Fund. All uninvested funds and banking deposits on hand in the Fund shall be collateralized in the manner required by law for the City.

Section 2.4. Disbursements. Amounts on deposit to the credit of the Fund, including cash, cash equivalents, investments, certificates of deposit and interest earnings on and investment profits from same, shall be applied solely and exclusively to the payment of Project Costs, or for banking, accounting, auditing or similar third party fees and expenses relating to the administration of the Fund, as provided herein. Disbursements from the Fund for Project Costs shall be subject to the provisions of Section 2.9 below, but otherwise shall be made by the Fund Administrator upon receipt of a requisition or request for payment by the Project Manager accompanied by invoices, vouchers, bills or statements setting forth in detail the basis and justification for such requisition or request for payment.

Section 2.5. Books and Records; Auditing. The Fund Administrator shall preserve the books, records, bank statements, ledger of receipts and disbursements, investment reports and other records relating to the Fund for a period of five (5) years or for such longer period as may be required by applicable law. Any party shall have the right at all reasonable business hours to examine the books, records and charts of the Fund Administrator to the extent necessary to verify the accuracy of any statement, charge, balance, deposit, requisition or other computation made pursuant to the provisions of this Agreement.

Section 2.6. Standard of Performance. The standard of care and performance of the Fund Administrator shall be that of a reasonably prudent fiduciary.

Section 2.7. Initial Deposit. Within one (1) year from the Effective Date of this Agreement, the District shall make or cause to be made an initial deposit (the "Initial Deposit") into the Fund in the sum of \$320,000.

Section 2.8. Periodic Deposits. In addition to the Initial Deposit, the District shall also make periodic deposits into the Fund (the "Periodic Deposits"), not less frequently than on a calendar quarter basis, within thirty (30) days following each calendar quarter ending on or after September 30, 2008, equal in amount to the net sales and use tax collections received by the District during such calendar quarter resulting from the imposition within the Territory of a sales and use tax at the rate of 1/16th of 1% (1/16%). For purposes of this Agreement, net sales and use tax collections means the proceeds actually received by the District from the Office of the Comptroller of the State of Texas during the preceding calendar quarter, after deduction of all administrative fees and expenses, reserves or withholdings for losses, errors or refunds, or other similar withholdings, deductions or expenses. Such Periodic Deposits by the District into the Fund shall continue for so long as this Agreement shall remain in force and effect.

Section 2.9. Matching Deposits. Except as provided in Section 3.5 hereof, and unless otherwise agreed in writing by the Fund Representatives, prior to making any expenditure or disbursement from the Fund from any amounts deposited by or attributable to the District, a matching deposit (the "Matching Deposit"), at least equal to the amount proposed to be disbursed or expended from amounts on deposit in, or to the credit of, the Fund attributable to the District, shall have been deposited, or firm banking arrangements satisfactory to the Fund Representative of the District shall have been made for such deposit, into the Fund by the City. In lieu of an actual deposit into the Fund, the Fund Representatives may agree in writing on one or more alternative means of receiving, accepting or applying such Matching Deposits of the City. Unless otherwise agreed in writing by the Fund Representatives, any amounts deposited to the credit of the Fund or paid toward Project Costs by a third party, whether from gifts, grants or other contributions or sources, shall not be deemed a deposit into the Fund by a party to this Agreement.

Section 2.10. Credit; Deductions. Notwithstanding the provisions of Section 2.8 above, the Periodic Deposits to be made by the District into the Fund shall be reduced by, and the District

shall receive credit against any such Period Deposits otherwise due for, any amounts resulting from any taxes, charges, fees, assessments, tolls or other payments in support of, or related to, the usage or costs of any program or project described in Section 43.0754(d) of the Act that are levied or imposed upon, assessed against or made applicable to all or any portion of the Territory, or the citizens, ratepayers, taxpayers or constituents of the District therein, after the Effective Date of this Agreement by, or on behalf, or for the benefit of the City or any other governmental entity, or any other agency or instrumentality acting for or on behalf of, or controlled or directed in substantial part by, the City or any such governmental entity, which overlaps, in whole or in part, the Expanded District or has substantial control, approval, direction or authority over such levies, impositions or assessments. The applicability, amount, extent and particular means of affording such deductions or credits to the District shall be determined by mutual agreement between the Fund Representatives or, failing such mutual agreement, through binding arbitration, as hereinafter provided in this Agreement.

Section 2.11. Treatment of Fund Assets. The parties acknowledge and agree that all amounts on deposit in, or to the credit of, the Fund are restricted and reserved solely for use as provided in this Agreement and that pursuant to Section 43.0754(n) of the Act, none of such amounts, nor any investment income or interest earnings thereon, shall be deemed to be revenues or income to the District or to the City for any purpose, including any law or municipal charter provision relating to revenue or property tax caps or limitations.

ARTICLE III: REGIONAL PARTICIPATION PROJECTS

Section 3.1. Eligible Projects. Eligible Projects for purposes of this Agreement shall mean and include any program or project described in Section 43.0754(d) of the Act and such other similar projects or programs as may now or hereafter be permitted by law and mutually agreed upon in writing by the Fund Representatives.

Section 3.2. Priorities. From time to time, the parties, acting through their respective Fund Representatives, shall endeavor in good faith to identify and establish a priority or ranking of Eligible Projects for consideration for funding pursuant to this Agreement. In so doing, priority shall be given to Eligible Projects which optimize benefits to each of the parties in proportion to the relative contributions of each party to the costs of such Eligible Project, and for which alternative means of funding are least likely to otherwise be or become available in the foreseeable future. If the Fund Representatives are unable to

agree upon the ranking and priority of Eligible Projects, then the priority and ranking proposed by the Fund Representative of the City shall be deemed to have been adopted, subject to the right of any other Fund Representative to institute arbitration proceedings to determine whether such priority and ranking conforms to the requirements for priorities and mutual benefits established herein.

Section 3.3. Selected Projects. Based upon such identification, prioritization and ranking of Eligible Projects, and the sufficiency of funds on hand in the Regional Participation Fund, after taking into account any Matching Deposits, and any alternative or additional sources of funding from gifts, grants or contributions or payments by others, the Fund Representatives shall endeavor in good faith to periodically select one or more Eligible Projects (the "Selected Projects") for funding and implementation pursuant to this Agreement. If the Fund Representatives are unable to agree upon the selection of Eligible Projects, then the selection proposed by the Fund Representative of the City shall be deemed to have been adopted, subject to the right of any other Fund Representative to institute arbitration proceedings to determine whether such selection conforms to the requirements for priorities and mutual benefits established herein.

Section 3.4. Project Reconsideration. If, for any reason, a Selected Project is not implemented through the incurrence of substantial binding obligations by the Project Manager for the expenditure of the lesser of \$100,000 or ten percent (10%) of the estimated Project Costs of a Selected Project within eighteen (18) months after selection, the Project Manager shall provide the Fund Representatives with a report detailing the reasons for such delay and the anticipated constraints upon and time requirements for successful implementation of such Selected Project. Upon receipt and review of such report, the Project Representative for any party may request that such Selected Project be suspended and that the selection and continued implementation of such Selected Project be reconsidered. If implementation of such Selected Project in the foreseeable future is not reasonably expected, and if suspension and reconsideration of such Selected Project has been requested by any Fund Representative, implementation shall be suspended by the Project Manager as soon as practicable pending such reconsideration.

Section 3.5. Initial Selected Project. Notwithstanding the foregoing provisions of this Article III and the requirements of Section 2.5 hereof, the parties agree that the initial Selected Project shall be the continuation of operations of the current City Fire Station No. 4 situated within the Territory and that the entirety of the Initial Deposit, together with any interest earnings on or investment profits from such Initial Deposit, shall

be utilized to support the City's actual costs of operation and maintenance of such Selected Project, as and when such costs are actually incurred by the City up to and including, but not after, the date that is three (3) years after the date of such Initial Deposit into the Fund, and without the necessity for Matching Deposits by the City into the Fund in respect of such Selected Project. The parties have determined and hereby acknowledge that the continuing operations and maintenance of such Selected Project by the City pending construction and commencement of operations of alternative firefighting facilities by the City and by The Woodlands Fire Department is essential for protecting public safety and sustaining economic growth and development within the Territory and adjoining portions of the City and the City's ETJ.

SECTION IV: PROJECT MANAGEMENT

Section 4.1. Project Manager. Unless otherwise agreed in writing between the Fund Representatives, the City shall be deemed to be the manager (the "Project Manager") for the implementation of all Selected Projects. In so doing, the City shall not be deemed to be acting in its capacity as Fund Administrator. The City shall be primarily responsible for initiating and implementing Selected Projects in the order and priority determined pursuant to this Agreement. As such, the City, after consultation with the Fund Representatives, shall undertake in the name of the City the planning, preliminary design, detailed design, site acquisition, permit and approval acquisition, solicitation of bids or proposals, evaluation of bids or proposals, contracting, supervision, inspection, administration, bonding, acceptance, operations, maintenance, upkeep and payment out of funds on hand and available in the Fund for each Selected Project.

Section 4.2. Consultation; Approvals. The Project Manager may consult with the Fund Representatives periodically during the course of implementation of each Selected Project and shall provide such consultation at the conclusion of each major phase of the work, including preliminary design, final design, Project Cost estimation, awarding of construction contracts and substantial completion. So long as the estimated Project Costs do not exceed at any such major phase, by more than twenty percent (20%), the estimated Project Costs at the time of selection of the Selected Projects, and so long as the amounts on hand and available in the Fund are sufficient for such Selected Project, no further approvals of the Fund Representatives shall be required for implementation of such Selected Project. Otherwise, implementation of such Selected Project shall be subject to written approval by the Fund Representatives, which approval may be given or withheld in the sole discretion of each Fund Representative.

Section 4.3. Bids and Proposals. Bids or proposals for each Selected Project shall be taken by the Project Manager before the award of any construction contract for a Selected Project. Such bids or proposals may be solicited, advertised, negotiated and awarded by any lawful means or procedures now or hereafter applicable to the City.

Section 4.4. Material Changes. Any change in the scope or purpose of a Selected Project, or any change, addition, deletion or modification to a Selected Project, whether prior to or after award of a contract, which, after giving effect to all prior changes, causes the estimated Project Costs to be increased or decreased by more than twenty percent (20%) of the estimated cost at the time of contract award, may be made only with the written approval of the Fund Representatives, which approval may be given or withheld in the sole discretion of each Fund Representative. Otherwise, the Project Manager may implement any such change without further approval of the Fund Representatives.

Section 4.5. Relationship. Subject to its rights and authority herein to cause payment of Project Costs to be made from amounts on hand and available in the Fund by requisition to the Fund Administrator, and subject to the limited approval rights of the Fund Representatives provided herein, the Project Manager shall act in its own name and capacity in respect of any contract, commitment or obligation incurred or undertaken in the implementation of a Selected Project and shall be deemed to be an independent contractor not subject to the day-to-day supervision and direction of any other party, and no joint venture or partnership shall be created, implied or inferred with respect to any Selected Project. Any such contract, commitment or obligation shall be the sole responsibility of the Project Manager and shall not be deemed a contract, commitment or obligation of any other party, any Fund Representative, the Fund Administrator or the Fund, and no recourse shall be available to the Fund by any contractor, subcontractor, vendor, supplier, artisan, materialman or other person, except the Project Manager, for payment of any Project Costs or for any claim for non-payment, fees, damages or expenses related to a Selected Project. The Project Manager shall take such steps and proceedings as may be necessary, including securing bonds or sureties or instituting and prosecuting litigation, where necessary, to protect and defend the Fund from any such third party claims or liens.

Section 4.6. Standard of Performance. Subject to the availability of funds therefor, the receipt of all necessary permits and approvals and compliance with all applicable laws, rules and regulations, the City agrees to use reasonable diligence

and care in the implementation, administration, supervision, completion and payment for each Selected Project.

ARTICLE V: DEFERRAL OF ANNEXATION; CONSENTS; RELEASES

Section 5.1. Annexation Deferral. Pursuant to the express authority set forth in Section 43.0754(c) of the Act, the City covenants and agrees that, so long as the District continues to perform its obligations under this Agreement, the City will not take any action or proceedings to annex the District or the Territory, in whole or in part, for full, limited or other purposes, or to include or to continue to include the District or the Territory in a plan of annexation of the City, for a term of fifty (50) years from the Effective Date.

Section 5.2. Consent to District Expansion. Subject to the remaining provisions hereof, and to the extent that all or any portion of the District or the Territory may now or hereafter be included within the ETJ of the City, and to the extent, if any, that such consent may now or hereafter be required by law, the City hereby consents to the addition of the Territory to the boundaries of the District and ratifies, confirms, adopts and approves any such addition by the District of all or any portion of the Territory by the District in anticipation of this Agreement.

Section 5.3. Consent to Elections. Subject to the remaining provisions hereof, and to the extent that all or any portion of the District or the Territory may now or hereafter be included within the ETJ of the City, the City hereby consents and agrees to the calling and holding of one or more elections within and for the District, at any time on or after May 29, 2014, for the purposes of incorporation of the Expanded District as a municipality, the adoption of a home rule charter and/or the adoption by the Expanded District of an alternate form of local government pursuant to Texas law. Pursuant to Section 43.0754(m)(3) of the Act, such consent shall be valid and effective by operation of law, and without further action by the City, from and after the Effective Date of this Section, so long as the District remains in compliance with its obligations under this Agreement.

Section 5.4. Release from ETJ. Subject to the remaining provisions hereof, and to the extent that all or any portion of the Expanded District may now or hereafter be included within the ETJ of the City, the City agrees to and does hereby release the Territory from the ETJ of the City, but effective only upon and at the time of the earlier of:

- (1) the incorporation of the Expanded District as a municipality,

(2) the adoption by the Expanded District of an alternate form of local government under Texas law, or

(3) upon and to the extent specified by request of the District by resolution, order or other similar written instrument for such release.

Pursuant to Section 43.0754(m)(3) of the Act, such release shall be valid and effective by operation of law, and without further action by the City, from and after the Effective Date of this Section, so long as the District remains in compliance with its obligations under this Agreement.

Section 5.5. Limitations on District Annexation. Pursuant to the express authority of Section 7-a(e) of the District Act, the District covenants and agrees for a period of fifty (50) years from the Effective Date hereof that the District shall not take any action or proceeding to annex or include within its boundaries or any plan of annexation by the District any lands or territories which at the time are situated within the corporate limits or the ETJ of the City, other than the Territory, or Alternate Parcel 8 under circumstances described in Section 5.6 hereof, without the express written consent of the City given by ordinance or resolution.

Section 5.6. Alternate Parcel 8. The District and the City recognize that circumstances may arise under which the City may, in the exercise of its power and authority to annex territory within its ETJ, deem it necessary and proper, in order to maintain the contiguity of the City's corporate boundaries, to annex all or part of the portion of the Territory designated as Parcel 8 in Exhibit "A" hereto. In such event, and upon written request from the City, the District agrees to take all necessary actions to detach and exclude from its boundaries the portion of such Parcel 8 to be annexed by the City, but only at such time as Alternate Parcel 8 described in Exhibit "B" hereto has been finally annexed to and included within the boundaries of the District. In such regard, the City agrees that any such written request by the City shall be accompanied by an appropriate written consent of the City, given by ordinance or resolution, to the annexation or inclusion within the boundaries of the District of Alternate Parcel 8 and the release of the City's ETJ with respect to such Alternate Parcel 8 upon the addition of same to the boundaries of the District. The District agrees to use all reasonable diligence and speed to accomplish any such partial exclusion of Parcel 8 and addition of Alternate Parcel 8 in conformity with applicable law and without risk to the continuous contiguity of the District's boundaries, so as to facilitate and expedite the City's annexation objectives.

ARTICLE VI: DISPUTE RESOLUTION; REMEDIES

Section 6.1. Arbitration. Any controversy, dispute or claim arising under or relating to Sections 2.10, 3.2 or 3.3 of this Agreement, as expressly provided therein, shall be settled by arbitration in accordance with the Commercial Rules of Arbitration of the American Arbitration Association; provided, however, that three (3) arbitrators shall be selected by the parties, one (1) by each party within five (5) days of submission by either party of a controversy for arbitration, who shall, in turn, within five (5) days of their appointment select a third arbitrator. Failure of either party or both parties to timely select the required arbitrators shall result in their appointment, without selection from a panel, in accordance with the Commercial Rules of Arbitration of the American Arbitration Association. Failure of the two arbitrators to timely select a third arbitrator shall be resolved by selection from a panel of arbitrators in accordance with the Commercial Rules of Arbitration of the American Arbitration Association, with the party instituting arbitration striking first from the panel. The arbitrators to whom any controversy which is subject to arbitration under the terms of this Agreement shall be submitted, in accordance with the provisions hereof, shall have jurisdiction and authority to determine the relevant facts and to interpret and apply the applicable provisions of this Agreement in accordance with the laws of the State of Texas. Such application or interpretation of the provisions of this Agreement must conform to the spirit and letter of this Agreement. No arbitrators shall have the jurisdiction or authority to add to, take from, nullify or modify any of the terms of this Agreement, either directly or indirectly, under the guise of interpretation. The arbitrators shall be bound by the evidence submitted to them in the hearing and may not go beyond the terms of this Agreement in rendering their award. It is further understood and agreed that the power of the arbitrators shall be strictly limited to determining the relevant facts and the meaning and interpretation of the explicit terms of this Agreement, as herein expressly set forth, and that no arbitrators shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. This provision for arbitration is made pursuant to and in accordance with Chapter 171, Texas Civil Practice and Remedies Code, as amended, and subject to the limitations described in Section 6.2 below, any award shall be subject to judicial review, as therein provided. Within their power as herein limited and upon the concurrence of any two (2) of the three (3) arbitrators, the arbitrators may enter an award based upon any remedy available to the parties pursuant to this Agreement. Judgment upon the award may be entered in any court having jurisdiction thereof. All

arbitration proceedings hereunder, and all judicial proceedings to enforce any of the provisions hereof, shall take place in Harris County, Texas. Any expenses incurred by either party in connection with any such arbitration proceedings shall be adjudged equitably among the parties by the decision of the arbitrators. The arbitrators may, within their discretion, enter an award requiring the provision of deposits or security by either party in order to insure continued compliance with the terms of this Agreement.

Section 6.2. Finality of Award; Appeal. An award made by the arbitrators shall be final, conclusive and binding on the parties, except that judicial review may be sought by any party based solely on any claim by a party that the award of the arbitrators exceeds their power and authority herein, provides for a remedy not available to the parties under the terms of this Agreement or requires a party to take any action not authorized or permitted by the Act or other law.

Section 6.3. Resolution of Other Disputes; Venue. Except for matters to be resolved by arbitration, as provided in Section 6.1 hereof, any other controversy, dispute or claim arising out of or related to this Agreement or any claimed breach of this Agreement, may be resolved by any judicial or administrative means available at law or in equity; provided, however, that the venue for any judicial proceedings under Texas law shall be in Montgomery County, Texas.

Section 6.4. Remedies. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies, other than termination of this Agreement, existing at law or in equity, including specific performance and mandamus, may be availed of by either party and shall be cumulative.

Section 6.5. Application of Act. Notwithstanding any defect, ambiguity, discrepancy, invalidity or unenforceability of any provision of this Agreement, the parties acknowledge and confirm their mutual intent and purpose that this Agreement be governed by and be subject to the scope, terms and provisions of the Act, as in force and effect on the Effective Date hereof.

ARTICLE VII: GENERAL PROVISIONS

Section 7.1. Effective Dates. The provisions of Sections 5.1, 5.2, 5.5 and 7.10 of this Agreement shall be in full force and effect from and after the due authorization, execution and delivery of this Agreement by the parties. Otherwise, the effectiveness of the remaining provisions of this Agreement shall be subject to and conditioned upon passage by a majority vote of

both propositions to be submitted to the qualified voters of the Expanded District at the election required pursuant to Sections 7-a and 9(g) of the District Act.

Section 7.2. Recordation. A copy of this Agreement, accompanied by a certificate from either the City Secretary of the City or the Secretary of the Board of Directors of the District to the effect that such copy is a true and correct copy of the original of this Agreement, shall be recorded in the Deed Records of Montgomery County, Texas, and Harris County, Texas.

Section 7.3. Amendments. Any amendment, supplement or addition to this Agreement shall be made only in compliance with the provisions of Section 43.0754(e) of the Act.

Section 7.4. Joinder. Other persons may join or become a party to this Agreement only with the consent of both the City and the District, which consent may be given or withheld by either the City or the District in its sole discretion, and only upon compliance with the provisions of Section 43.0754(e) of the Act.

Section 7.5. Exclusion. A party, any land or territory, or any owner of land or territory may be excluded or removed from this Agreement and/or the operation of this Agreement only with the written consent of both the City and the District, which consent may be given or withheld by either the City or the District in its sole discretion, and only upon compliance with the provisions of Section 43.0754(h) of the Act.

Section 7.6. Effect. Except as otherwise provided herein, this Agreement shall be binding upon each party hereto, and upon each owner and future owner of land that is subject to the operation of this Agreement, during the annexation deferral period established in this Agreement.

Section 7.7. Assignability. Except as the principal powers, authority, duties and rights of a party hereunder may be transferred or assigned by operation of law, this Agreement may not be assigned by any party hereto.

Section 7.8. Unconditional Deposits. All deposits and sums to be made under this Agreement shall be made without set-off, counterclaim, abatement, suspension or diminution, except as otherwise expressly provided herein. If either party disputes any amount to be deposited or paid hereunder, such party shall nonetheless promptly make such deposits or payments as required, and if it is subsequently determined by agreement or dispute resolution that such deposit or payment should have been less,

such party will then receive a proper credit for or a refund of any such excessive deposit or payment.

Section 7.9. Approvals and Consents. With the exception of consents or approvals which may be given or withheld in the sole discretion of a party or Fund Representative, as expressly provided herein, whenever this Agreement requires or permits approvals or consents to be given, such approvals or consents shall not be unreasonably withheld. Such approvals or consents by a party must be given in writing and shall be effective without regard to whether given before or after the time required herein, and no such approvals or consents shall be required as a condition to any action by the Fund Administrator or by the Project Manager unless expressly required by this Agreement.

Section 7.10. Term and Termination. This Agreement shall be and remain in full force and effect from and after the Effective Date for an unlimited term; provided, however, that if, after expiration of the annexation deferral period specified in Section 5 of this Agreement, the City shall annex or impose or continue the imposition by the City of any generally applicable tax or any assessment, fee or charge described in Section 2.10 of this Agreement, then the District may terminate this Agreement upon thirty (30) days' written notice to the City.

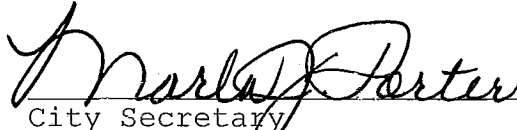
IN WITNESS WHEREOF, the parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original, as of the latest date of signature set forth below.

CITY OF CONROE, TEXAS



Mayor

ATTEST/SEAL:

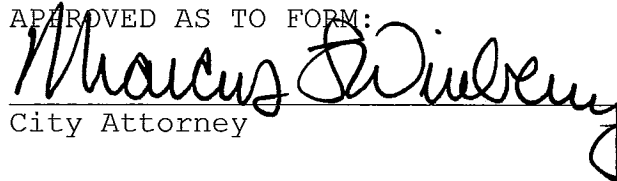


City Secretary

DATE COUNTERSIGNED:

8/23/07

APPROVED AS TO FORM:



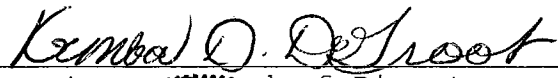
City Attorney

TOWN CENTER IMPROVEMENT DISTRICT
OF MONTGOMERY COUNTY, TEXAS,
a political subdivision of the
State of Texas



Chairman, Board of Directors

ATTEST:


Secretary of Directors

(SEAL

DATE:



EXHIBIT "A"

DESCRIPTION OF THE TERRITORY

A parcel of land consisting of 8 tracts situated in Montgomery County, Texas, described as follows (all references to "C.F." mean "Montgomery County Clerk's File"; all references to "M.C.R.P.R." mean the "Real Property Records of Montgomery County, Texas" or "Official Public Records of Real Property of Montgomery County, Texas", as applicable; and all references to "M.C.D.R." mean the "Montgomery County Deed Records":

TRACT 1

226.5804 acres described in an instrument recorded under C.F. No. 9659395, M.C.R.P.R.

TRACT 2

631.9333 acres described in an instrument recorded under C.F. No. 9659395, M.C.R.P.R.

TRACT 3

Being a tract of land bounded on the north by the North line of the James McCambridge Survey, Abstract No. 390; bounded on the east by Tract 1, as described in an instrument recorded in Vol. 1032 Pg. 584, M.C.D.R.; bounded on the south by the South line of the James McCambridge Survey, Abstract No. 390; and bounded on the west by Tract 2, as described in an instrument recorded in Vol. 1032 Pg. 584, M.C.D.R.

TRACT 4

4.227 acres described in an instrument recorded under C.F. No. 2005-024777, M.C.R.P.R.

TRACT 5

1.957 acres described in an instrument recorded under C.F. No. 2005-024776, M.C.R.P.R.

TRACT 6

2.111 acres described in an instrument recorded under C.F. No. 2005-024778, M.C.R.P.R.

TRACT 7

2.059 acres described in an instrument recorded under C.F. No. 2005-024779, M.C.R.P.R.

TRACT 8

BEGINNING at a point in the west right-of-way of Interstate Highway 45 and 1-foot north of the south line of the George Taylor Survey, Abstract Number 555, and the north line of the William McDermott Survey, Abstract Number 389;

THENCE, in an easterly direction, 1-foot north of and parallel to the south line of said George Taylor Survey and the north line of said William McDermott Survey passing the west line of the Montgomery County School Lands Survey, Abstract Number 350 and continuing to a point in the west right-of-way of the Missouri Pacific Railroad, as described in an instrument recorded at Volume 4, Page 242, M.C.D.R.;

THENCE, in a northwesterly direction, along the west right-of-way of said Missouri Pacific Railroad over and across said Montgomery County School Lands Survey passing the south line of the Richard Vince Survey, Abstract Number 583, passing the east line of said George Taylor Survey to a point in the north line of said George Taylor Survey and the south line of the James McCambridge Survey, Abstract Number 390;

THENCE, in an easterly direction, along the north line of said George Taylor Survey and the south line of said James McCambridge Survey to a point 1-foot east of the west right-of-way of said Missouri Pacific Railroad;

THENCE, in a southeasterly direction, 1-foot east of and parallel to the west right-of-way line of said Missouri Pacific Railroad to a point in the easterly extension of the southerly line of said George Taylor Survey;

THENCE, in an westerly direction, passing the west right-of-way of said Missouri Pacific Railroad, passing the southeast corner of said George Taylor Survey and the northeast corner of said William McDermott Survey, and continuing along the common line of said George Taylor Survey and said William McDermott Survey to the west right-of-way line of said Interstate Highway 45;

THENCE, in a northwesterly direction, along the west right-of-way of said Interstate Highway 45 to the POINT OF BEGINNING.

EXHIBIT "B"

ALTERNATE PARCEL 8

METES AND BOUNDS DESCRIPTION 13.04 ACRES OUT OF THE GEORGE TAYLOR SURVEY, A-555 MONTGOMERY COUNTY, TEXAS

Being a 13.04-acre tract of land situated in Montgomery County, Texas in the George Taylor Survey, A-555, and being more particularly described by metes and bounds as follows with all control referred to the 1927 Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at the northeast corner of the herein described tract located in the east right-of-way line of Interstate Highway No. 45 at its intersection with the north line of the George Taylor Survey, A-555, common to the south line of the James McCambridge Survey, A-390, same being the south line of the City of Conroe, Texas corporate limits. Said POINT OF BEGINNING having a Texas State Plane Coordinate Value of X= 3,119,369.45, Y= 881,722.52 and being South 87 degrees 35 minutes 52 seconds West, 2,030.76 feet from the southeast corner of the James McCambridge Survey, A-555, common to the northeast corner of the George Taylor Survey, A-555, located in the west line of the Richard Vince Survey, A-583;

THENCE along the east right-of-way line of said Interstate Highway No. 45 as follows:

South 07 degrees 20 minutes 59 seconds East, 177.06 feet to a point of curvature;

Along a curve to the right having a central angle of 00 degrees 58 minutes 32 seconds, an arc distance of 131.04 feet, a radius of 7,697.03 feet, and a chord which bears South 06 degrees 51 minutes 43 seconds East, 131.04 feet to the end of said curve being non-tangent at this point;

South 06 degrees 18 minutes 31 seconds East, 318.90 feet to a point for corner;

South 07 degrees 26 minutes 16 seconds East, 304.72 feet to a point for corner;

South 07 degrees 05 minutes 18 seconds East, 271.29 feet to a point for corner;

South 07 degrees 05 minutes 18 seconds East, 170.70 feet to a point of curvature;

AND along a curve to the left having a central angle of 86 degrees 33 minutes 56 seconds, an arc distance of 151.09 feet, a radius of 100.00 feet, and a chord which bears South 50 degrees 22 minutes 16 seconds East, 137.12 feet to a point for corner in the north right-of-way line of State Highway No. 242;

THENCE severing said Interstate Highway No. 45, South 85 degrees 05 minutes 26 seconds West, 615.40 feet to a point for corner in its west right-of-way line common to the north right-of-way line of said State Highway No. 242;

THENCE along the west right-of-way line of said Interstate Highway No. 45 as follows:

Along a curve to the left having a central angle of 91 degrees 19 minutes 42 seconds, an arc distance of 159.40 feet, a radius of 100.00 feet, and a chord which bears North 42 degrees 25 minutes 02 seconds East, 143.05 feet to the end of said curve being non-tangent at this point;

North 03 degrees 10 minutes 12 seconds West, 147.31 feet to a point for corner;

North 03 degrees 25 minutes 21 seconds West, 388.38 feet to a point for corner;

North 03 degrees 15 minutes 12 seconds West, 56.75 feet to a point for corner;

AND North 06 degrees 23 minutes 00 seconds West, 796.06 feet to a point for corner in the north line of said George Taylor Survey, A-555, common to the south line of said James McCambridge Survey, A-390, same being the south line of said City of Conroe, Texas corporate limits;

THENCE along said common line, North 87 degrees 35 minutes 52 seconds East, 367.09 feet to the POINT OF BEGINNING containing 13.04 acres of land.

August 8, 2007

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