

THE STATE OF TEXAS §
COUNTIES OF HARRIS AND MONTGOMERY §

specified time period; and effect a termination of certain obligations under the Amended Agreement (hereinafter defined) and authorized by Section 43.0754(c). Now, therefore,

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises, benefits, covenants, undertakings described in the Agreement, as amended by the First Amendment and the Second Amendment (collectively, the "Amended Agreement"), and the additional payments and consideration provided in this Third Amendment, the Township and the City contract and agree as follows:

Section 1: Article II of the Agreement is amended to include the following Section 2.12.:

Section 2.12. Disposition of Fund Assets; Unrestricted Use Upon Transfer; Settlement Structure. Upon the parties determination that there are no Selected Projects currently in the process of implementation and there are no Eligible Projects that require implementation for the foreseeable future, the parties may mutually agree for the allocation and disposition of amounts then on deposit in the Fund, as well as an amount approximating estimated future Periodic Deposits to be made over a period not to exceed 10 years (collectively, the "Disbursed Amounts"). Any agreement between the parties as to the allocation and distribution of the Disbursed Amounts shall, at a minimum, include: (i) the total amount of the Disbursed Amounts, stated as a sum certain; (ii) the allocation of the Disbursed Amounts to be paid to each party, stated as a sum certain or as a percentage; (iii) the period of time over which the Disbursed Amounts are to be paid out and the manner of payment (lump sum or installments), (iv) the date or dates on which the funds are to be transferred, and (v) the lump sum or installment amounts to be paid on each applicable date. Upon the transfer of the Disbursed Amounts to either or both of the parties in accordance with the procedures of this Section 2.12, such Disbursed Amounts may be applied by the party to which they were disbursed without restriction or limitation as to use, notwithstanding anything to the contrary provided in this Agreement. Upon the mutual agreement of the parties for the allocation and disposition of the Disbursed Amounts, Articles II, III, and IV and Sections 7.8 and 7.11 of this Agreement shall terminate and be of no further force and effect, and all obligations of each of the parties thereunder shall be null and void, except the obligations stated in this Section 2.12 relative to the payment of the Disbursed Amounts until such time the Disbursed Amounts have been fully paid.

Section 2: Section 5.1 of the Agreement is amended and restated to read as follows:

Section 5.1. Annexation Deferral and ETJ Matters. 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 Township continues to perform its obligations under this Agreement, as amended, the City will not take any action or proceedings to annex the Township or the Territory, in whole or in part, for full, limited or other purposes, for the term of this Agreement.

Section 3: Article VI of the Agreement is amended to include the following Section 6.6.

Section 6.6. Additional Provisions Related to Exercise of Legal Remedies.

(a) Good-Faith Conference. Prior to instituting legal proceedings under this Article VI, the parties shall first confer and negotiate in good faith for 15 days after written notice of any dispute arising under this Agreement.

(b) Forum and Exclusive Remedy. For the purpose of clarity and avoidance of doubt, the parties agree that: (i) any dispute relating to non-payment under Section 2.12 of this Agreement shall be governed by the provisions of Section 6.3 hereof (including venue for judicial proceedings lying in Harris County, Texas), and (ii) the arbitration provisions of Section 6.1 of this Agreement shall not apply to such dispute.

Section 4: The City and the Township hereby determine, acknowledge and agree that there are no Selected Projects currently in the process of implementation and there are no Eligible Projects that require implementation for the foreseeable future. Accordingly, in accordance with the provisions of Section 2.12 of the Agreement (as added by this Third Amendment), the City and the Township hereby agree to the allocation and disposition of the Disbursed Amounts in accordance with the terms and conditions of Exhibit "1" attached hereto. The City and the Township further agree that the approval of this Third Amendment by the governing body of both parties constitutes a definitive mutual agreement for the allocation and disposition of the Disbursed Amounts, and that Articles II, III, and IV and Sections 7.8 and 7.11 of this Agreement are expressly terminated and of no further force and effect from and after the date of this Third Amendment, and all obligations of each of the parties under such terminated Articles and Sections shall be null and void, except the obligations stated in Section 2.12 relative to the payment of the Disbursed Amounts until such time the Disbursed Amounts have been fully paid. Notwithstanding anything to the contrary in the Amended Agreement, all Disbursed Amounts described in Exhibit "1" may be applied by the City without restriction or limitation as to use, and no further use restrictions shall apply to the Fund under the Amended Agreement upon or after each transfer of the Disbursed Amounts. The parties agree that the payment obligations, credits, schedule, and conditions in Exhibit "1" constitute the sole and exclusive mechanism for allocation and disposition of the Fund and supersede any contrary provisions of the Amended Agreement.

Section 5: Except as amended by the terms of this Third Amendment, the remaining terms and provisions of the Amended Agreement shall continue in full force and effect for the term and upon the conditions specified therein.

Section 6: Mutual Releases. Effective upon the City's receipt of the Final Payment (as defined in Exhibit "1"), each party releases and forever discharges the other and their respective officers, directors, employees, and agents from any and all claims, demands, and causes of action, known or unknown, arising from or related to Articles II, III, and IV and Sections 7.8 and 7.11 of the Amended Agreement (as further amended by this Third Amendment).

IN WITNESS WHEREOF, the parties have executed this Third Amendment in multiple counterparts, each of which shall be deemed to be an original, as of the latest date of signature set forth below. Each person signing this Third Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Third Amendment. Each Party represents and warrants to the other that the execution and delivery of this Third Amendment and the performance of such Party's obligations hereunder have been duly authorized and that the

Third Amendment is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Third Amendment electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THE WOODLANDS TOWNSHIP,
a political subdivision of the State of Texas

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

Date:

CITY OF HOUSTON, TEXAS

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED

City Controller

DATE COUNTERSIGNED:

APPROVED:

Chief Strategy and Operations Officer

APPROVED AS TO FORM:

Senior Assistant City Attorney

EXHIBIT "1"

Terms and Conditions for Disbursement of Fund Assets

A. Disbursed Amounts

Regional Participation Fund Balance (as of 3/31/26):	\$20,159,891
Agreed amount of future Periodic Deposits:	<u>\$29,840,109</u>

Total Disbursed Amounts: \$50,000,000

B. Allocation of the Disbursed Amounts

City of Houston:	100%
Woodlands Township:	0%

C. Schedule of Payment of the Disbursed Amounts

The Disbursed Amounts shall be paid by the Township to the City in 4 annual installments, beginning on December 31, 2026, according to the following schedule:

<u>Date of Payment</u>	<u>Amount</u>
By 12/31/2026	\$22,626,797
By 12/31/2027	\$ 9,000,000
By 12/31/2028	\$ 9,000,000
By 12/31/2029	\$ <u>9,373,203</u> (the "Final Payment")

Total Disbursed Amounts: \$50,000,000

Notwithstanding any contrary provision in the Agreement, all amounts on deposit in the Regional Participation Fund, including interest and earnings, are free of use restrictions and may be applied by the City without limitation upon and after transfer.

07-1169

"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 applicable effective date for such Article or Section pursuant to Section 7.1 hereof.

"Eligible Projects" means any one or more of the programs or projects described on Exhibit "B" attached hereto or in Section 3.1 of this Agreement.

"ETJ" means the extraterritorial jurisdiction of the City, as established and adjusted from time to time in conformity with this Agreement and in the manner provided by Chapter 42, Texas Local Government Code.

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

"Fund Administrator" means the City Representative, unless the parties otherwise agree in writing.

"Representative" means the representative selected by a party as the representative of that party for purposes 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.

"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 an Eligible Project, including, without limitation, the costs of real estate, easements, rights-of-way, consulting services and expenses, construction, design, acquisition, site preparation, equipment, furnishings, fixtures, operations, maintenance and administration, termination and includes the demonstrable costs of management, planning, engineering, administrative, supervisory, legal or oversight costs of City or its Representative. Judgments against the Fund Administrator or a Party relating to a Project is a Project Cost.

"Project Manager" means the party or person designated by the Fund Administrator 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 3.2 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 on behalf of the parties by the Fund Administrator and shall be administered by the Fund Administrator and used solely for funding Project Costs, and any reasonable Fund administration costs and expenses or costs of arbitration under Section 6.1 hereof, and shall be 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 "Representative"). The party or person with the responsibility and authority for the administration of the Fund (the "Fund Administrator") shall be the City Representative, unless otherwise agreed in writing by the parties. 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 deposited into the Fund. If any moneys are so invested, the Fund Administrator shall have the right, without liability for any resulting loss, 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 fees and expenses relating to the administration of the Fund, as provided herein. Other than disbursements for Fund administration expenses, disbursements from the Fund for Project Costs shall be subject to the provisions of Sections 2.9 and 7.12 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. Disbursements for Fund administration expenses shall be paid out upon receipt of a requisition from the City for payment of such costs.

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 \$16,000,000. Failure to make the Initial Deposit as scheduled shall be cause for immediate termination of this Agreement by the City upon written notice to the District, or the City may elect, upon written notice to the District, to suspend the consent of the City pursuant to sections 5.3 and 5.4 hereof until

payment in full of such Initial Deposit, together with interest on any unpaid portion thereof at the highest rate allowed by law, is made to the City. The District agrees to issue and sell its bonds in a sufficient principal amount to make the Initial Deposit as scheduled.

Section 2.8. Periodic Deposits. In addition to the Initial Deposit, and except as otherwise provided in Section 2.10 below, 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 Expanded District of a sales and use tax at the rate of 1/16th of 1% (1/16%). Such amount shall be payable from any available sources of funds of the District. The District agrees not to reduce the District's sales and use tax within the Expanded District to a rate less than 1/16th of 1% (1/16%), over and above such rate as may be required to pay any other bonds or debt obligations of the District payable in whole or in part from sales and use taxes of the District, for so as long as this Agreement shall remain in effect. 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 by the Comptroller 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. The District may, at its option, make additional deposits to the fund in order to accelerate or expand Selected Projects.

At the City's option and without further authorization by the parties to this agreement, the City may elect to issue its bonds or other debt obligations and pledge the future Periodic Deposits to the payment of principal and interest and fiduciary fees on the bonds or other obligations; provided that the proceeds of any bonds of the City secured in such manner, after the payment of expenses of issuance and establishing any required debt service reserve funds, shall be deposited into the Fund and used as other moneys in the Fund are to be used.

In addition, subject to the provisions of Section 2.10(a) below, and at the City's option and request by the Fund Administrator to the District, and without further authorization by the parties to this Agreement, the District agrees to issue its bonds or other debt obligations and to deposit the net proceeds of the bond or other debt obligation issuance into the Fund at the

closing of the issuance as an advance payment of not less than thirty (30) years of estimated Periodic Deposits. The City's option to request the issuance of bonds or debt obligations for such purposes shall expire on May 29, 2014.

As authorized by Section 43.0754(i) of the Act, the District hereby commits and pledges from its unencumbered sales and use tax revenues (separate and apart from, and over and above any amounts held or hereafter pledged to the payment of the District's bonds pursuant to Section 12A(c)(1) of the District Act) an amount equal to the net sales and use tax collections received by the District resulting from the imposition within the Expanded District of a sales and use tax at a rate of $1/16^{\text{th}}$ of 1% ($1/16\%$) to make the Periodic Deposits due or to become due hereunder, and hereby pledges such amount to the payment of any bonds or other debt obligations issued by the City pursuant to this Section 2.8. Such pledge shall be prior and superior to all liens on and pledges of such revenues except for any pledge of such revenues to the District's bonds outstanding as of the Effective Date of this Agreement.

Section 2.9. City Funding Requirements. The parties agree that disbursements may be made from the Fund for payment of costs permitted hereunder without the necessity for proportionate or matching deposits into the Fund by the City; provided, however, that not less frequently than every three (3) years, beginning with the District's Initial Deposit into the Fund, the City, at the cost and expense of the Fund, shall provide an accounting to the District demonstrating that the amounts expended by the City from monies deposited by the City into the Fund or from non-fund monies of the City for Project Costs permitted hereunder in connection with Eligible Projects located entirely within the City limits, from the date of the District's Initial Deposit through the end of such accounting period, were at least equal to the amounts disbursed from funds to the credit of the District in the Fund for such purposes during the same period.

Section 2.10. Credits; Deductions. Notwithstanding the provisions of Section 2.8 above, and in addition to the option of suspension of performance provided to the District in Section 7.12 below, the Periodic Deposits to be made by the District into the Fund shall be adjusted as follows:

- (a) To the extent that the District issues bonds or debt obligations at the request of the City to make an advance payment into the Fund pursuant to Section 2.8 above, the District shall be relieved of making such Periodic Deposits into the Fund in each and all of the complete annual periods during which such bonds or debt obligations remain outstanding
- (i) to the full extent of any actual debt service payments

made on such bonds or debt obligations, and (ii) to the additional extent of twenty-five percent (25%) of the difference, if any, between such actual debt service payments made by the District and the actual net sales and use tax collections of the District which, but for the issuance of such bonds or debt obligations of the District at the request of the City pursuant to Section 2.8 hereof, would otherwise have been due as Periodic Deposits hereunder during such annual period, with the remaining seventy-five percent (75%) of such differential, if any, being payable by the District to the Fund as adjusted Periodic Deposits hereunder; and provided further, that nothing herein shall be deemed or construed to limit the District's authority and discretion to defease, refund, advance refund, redeem, purchase in the open market, or otherwise prepay or make firm banking arrangements for prepayment of such bonds or debt obligations, without impairment of the District's relief from making such Periodic Deposits, so long as, without the written consent of the City, the final maturity date of such bonds or debt obligations is not extended; and provided finally, that for purposes of this Agreement, the term "annual period" shall mean any complete, annual period during the scheduled term of such bonds or debt obligations of the District which begins on the month and day on which such bonds or debt obligations are initially dated; and

(b) 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 Periodic Deposits otherwise due for any amounts resulting from any taxes, charges, fees, assessments, tolls or other payments in support of 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 Expanded District, or the citizens, ratepayers, taxpayers or constituents of the District therein, after the Effective Date of this Agreement by, or on behalf of, the City or any other governmental entity or agency or instrumentality created by and acting for or on behalf of, the City. The applicability, amount, extent and particular means of affording such deductions or credits to the District shall be determined by mutual agreement between the Representatives or, failing such mutual agreement, through the dispute resolution provisions of this Agreement. Nothing in this paragraph 2.10(b) shall be deemed or construed to entitle the District to credits against or deductions from its obligation to make Periodic Deposits for any payments, fees, rates or charges paid to the City or another governmental entity or agency or instrumentality created by and acting for and on behalf of the City for, or on account of, any goods or services rendered or

provided by the City or any such governmental entity or agency or instrumentality pursuant to any other contract, agreement, open account or similar arrangement.

In the event that any other governmental entity, agency or instrumentality not created by and acting for or on behalf of the City is established over all or a portion of the Expanded District and undertakes or proposes to levy or impose upon, or assess against, or make applicable to all or any portion of the Expanded District taxes, charges, fees, assessments, tolls or other payments in support of the usage or costs of any program or project described in Section 43.0754(d) of the Act, the parties agree to exclude from selection pursuant to Section 3.2 hereof any Project, and not to commence any Selected Project for which funds have not been expended, which is proposed to be implemented by such other governmental entity, agency or instrumentality.

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 Representatives. All of the Projects listed in Exhibit "B" attached hereto are Eligible Projects.

Section 3.2. Selected Projects. Except as otherwise provided in Section 2.10(b) above, and after giving consideration to the sufficiency of funds on hand in the Regional Participation Fund, and the likelihood that any alternative or additional sources of funding may be or may become available in the foreseeable future from gifts, grants or contributions or payments by others, the 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, with priority given to the Projects listed on Exhibit "B". If the Representatives are unable to agree upon the selection of Eligible Projects, then the selection proposed by the Representative of the City shall be

deemed to have been adopted, subject to the right of any other Representative to invoke the dispute resolution procedures of this Agreement to determine whether such selection complies with Section 43.0754(d) of the Act. The Projects selected by the City Representative shall be conclusive unless the arbitrators determine that the City has abused its discretion by selecting a Project not included on Exhibit "B" or in Section 43.0754(d) of the Act.

Section 3.3. Project Reconsideration. If, for any reason, binding obligations in the amount of the lesser of \$100,000 or 10% of the estimated Project Costs of a Selected Project (other than a Project listed on Exhibit "B") have not been made or incurred within eighteen (18) months after the selection of the non-Exhibit "B" Selected Project, the Project Manager, upon request of a party, shall provide the 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 Representative, implementation shall be suspended by the Project Manager as soon as practicable pending such reconsideration. Within 30 days of suspension of implementation of a non-Exhibit "B" Selected Project, the Representatives shall apply the procedures set out in Section 3.1 and 3.2 to determine whether the Project will be reinstated as a Selected Project and with what priority.

Section 3.4. No Appropriation of City Funds. Pursuant to Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated no funds to pay any moneys owed under this Agreement. Unless and until the executive and legislative officers of the City, in their discretion, appropriate funds for this Agreement, the City shall have no obligation to pay any money under this Agreement.

SECTION IV: PROJECT MANAGEMENT

Section 4.1. Project Manager. Unless otherwise agreed in writing between the 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 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 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, as applicable to the method of procurement, 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 thirty percent (30%), the engineer's estimated Project Costs at the time of award of the Selected Project, and so long as the amounts on hand and available in the Fund are sufficient for such Selected Project, no further approvals of the Representatives shall be required for implementation of such Selected Project. Otherwise, the funding of the Selected Project from amounts allocated to the District will not exceed the original allocation, plus the 30% increase, except with written approval by the Representatives, which approval may be given or withheld in the sole discretion of each Representative. The Project Manager may terminate the Project if approval is not given, with the costs of termination to be divided in proportion to the original allocated cost.

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. Changes in the scope or purpose of a Selected Project and any change, addition, deletion or modification to a Selected Project, prior to or after award of a contract, which, after giving effect to all prior changes, causes the estimated Project Costs to be increased by more than twenty-five percent (25%) of the estimated cost at the time of contract award in the aggregate, may be made only with the written approval of the Representatives, which approval will not be unreasonably withheld, and only if sufficient funds are on hand and available in the Fund to pay for such changes. Otherwise, the Project Manager may implement any such change without further approval of the 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 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 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, for a term of fifty (50) years from the Effective Date; provided, however, that subject to the remaining provisions of this Article V, the City may include the District or the Territory in a plan of annexation of the City during such term.

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 all or any portion of the Expanded District as a municipality or adoption by all or any portion of 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 hereof, 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 from the ETJ of the City the portion of the Expanded District to be incorporated as a municipality, or over which an alternate form of local government under Texas law is to be adopted, but effective only on or after May 29, 2014, and simultaneously upon and at the time of:

(a) the earlier of either

(1) the incorporation of all or any portion of the Expanded District as a municipality, or

(2) the adoption by all or any portion of the Expanded District of an alternate form of local government under Texas law; and

(b) the assumption by the new municipality or alternate form of government of the obligations of the District under the terms of this Agreement, which shall not result in a novation or a release of the District from its obligations under this Agreement;

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 time or times specified above in this Section 5.4, so long as the District remains in compliance with its obligations under this Agreement.

Incorporation of all or part of the Expanded District shall not decrease any remaining ETJ of the City.

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 (which may be located within the City's ETJ, but not the City's corporate limits), without the express written consent of the City given by ordinance or resolution.

ARTICLE VI: DISPUTE RESOLUTION; REMEDIES

Section 6.1. Arbitration. Any controversy, dispute or claim arising solely out of or relating solely to Sections 2.7 through 2.10 hereof, both inclusive, or any controversy, dispute or claim as to whether the City abused its discretion in exercising its responsibilities under Section 3.2 of this Agreement, as such abuse of discretion is described in that section, 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 to the City Representative and the District Representative 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. Arbitrators shall have experience in matters relating to municipal government and special district operations. 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 but shall have no authority to impose a financial obligation upon the City. 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. The costs of the arbitrators shall be payable from the Fund. Each party shall bear its own expenses, other than the costs of the arbitrators, which shall be paid from the Fund. All other disputes not identified in this Section 6.1 shall be resolved by judicial proceedings.

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 Harris County, Texas.

Section 6.4. Remedies. All remedies 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 Section 5.2 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 called for November 6, 2007, consistent with Sections 7-a and 9(g) of the District Act, and shall become effective on the date of the official canvass of the returns of such election. This Agreement shall be terminated by operation of law if the propositions described in this section 7.1 fail or are deemed to have failed.

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 by the District under this Agreement shall be made without set-off, counterclaim, abatement, suspension or diminution, except as otherwise expressly provided herein. If the District disputes any amount to be deposited or paid hereunder, it shall nonetheless promptly make such deposits or payments as required, and if it is subsequently determined by agreement, arbitration or litigation that such deposit or payment should have been less, the District will then receive a proper credit for or a refund of any such excessive deposit or payment. The District may not withdraw any money it deposits into the Fund without the prior written consent of the Fund Administrator.

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 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. This Agreement shall be and remain in full force and effect from and after the Effective Date for an unlimited term, not to exceed the maximum term allowed by law, but no less than ninety-nine (99) years from the Effective Date of Section 5.2 hereof.

Section 7.11. Termination. The parties may terminate this Agreement by mutual consent of their governing bodies. If, after expiration of the annexation deferral period specified in Section 5.1 of this Agreement, the City shall annex all or any portion of the Expanded District, then the District may terminate this Agreement upon thirty (30) days' written notice to the City.

Section 7.12. Suspension of Performance. Notwithstanding any part or provision of the Agreement to the contrary, including Section 7.13 below, if the City fails to comply with its funding

obligations pursuant to Section 2.9 hereof, after a final determination thereof, the District shall have the option, without undertaking to terminate this Agreement, to suspend performance of its obligations in Section 2.8 to make Periodic Deposits into the Fund for so long as and until the City complies with its obligations under Section 2.9. Upon compliance by the City with its funding obligations pursuant to Section 2.9, and if this Agreement shall not have been terminated by the District pursuant to Section 7.13, the District shall resume making Periodic Deposits into the Fund, including suspended Periodic Deposits.

Section 7.13. Termination for Default. As hereinafter provided, either party may, in addition to all other available remedies, terminate this Agreement upon the failure of the other party to timely cure a default hereunder. A default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the Representative of the injured party shall deliver a written notice to the defaulting party describing the default, the proposed period for curing such default and the proposed date of termination. Such cure period shall afford to the defaulting party a reasonable time period under the circumstances to cure such default, but under no circumstances less than thirty (30) days. In the case of a monetary default hereunder, a cure period of thirty (30) days following receipt of such notice shall be deemed to be reasonable. The injured party may, at its sole option, extend the cure period or the date of termination, or both, by written notice to the defaulting party. If the defaulting party, prior to the proposed termination date (i) cures the default to the reasonable satisfaction of the injured party, or (ii) initiates the applicable dispute resolution procedures hereunder, whether arbitration or judicial proceedings to seek a determination of whether and to what extent a claimed default has occurred and is continuing, whether cure of a claimed default has been accomplished, or whether additional time should be afforded to the defaulting party to cure such default, then such proposed termination date shall be suspended until conclusion of such dispute resolution proceedings. Otherwise, the injured party may terminate this Agreement on or after the proposed termination date by action authorized by the governing body of the injured party.

Section 7.14. Application of Regional Development Agreement. The existing Regional Development Agreement between the City and the several municipal utility districts situated in The Woodlands, dated as of October 8, 1999, shall not be affected by this Agreement, and nothing herein shall be deemed or construed as an amendment, modification, replacement, repeal or termination of such agreement.

Section 7.15. Notices. Whenever notice is required or authorized to be given pursuant to this Agreement, notice shall be given by certified mail, return receipt requested, to the following officer(s) of the parties at their then current official address(es):

To the City, to:

Mayor, City of Houston
City Secretary, City of Houston
City Attorney, City of Houston

To the District, to:

Chairman, Board of Directors, Town Center
Improvement District
President, Town Center Improvement District

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.

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



Chairman, Board of Directors

ATTEST:


Secretary, Board of Directors

(SEAL)

Date:



CITY OF HOUSTON, TEXAS

Bill White

Mayor

Donna Scott

ATTEST/SEAL:

Cynthia Russell

City Secretary

COUNTERSIGNED

Annise D. Parker

City Controller *Markellene D. Appel*

DATE COUNTERSIGNED:

11-9-07

APPROVED AS TO FORM:

Susan O. Taylor

Deputy City Attorney

EXHIBIT "A"

DESCRIPTION OF THE TERRITORY

(Containing Two Parcels of Land: Houston/Montgomery County Parcel
and Houston/Harris County Parcel)