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2015-1089

**ECONOMIC DEVELOPMENT AGREEMENT**

THIS AGREEMENT (the "Agreement") by and between the CITY OF HOUSTON, TEXAS, a Texas home-rule municipal corporation (the "City"), and HARRIS COUNTY IMPROVEMENT DISTRICT NO. 4 (ENERGY CORRIDOR MANAGEMENT DISTRICT), a municipal management district and a political subdivision of the State of Texas (the "District"), is entered into as of the date the City Controller countersigns hereto (the "Effective Date").

**RECITALS**

WHEREAS, the District is a special district created under Article XVI, Section 59 of the Texas Constitution, among other public purposes, to further the public purposes of developing and diversifying the economy of the state, eliminating unemployment and underemployment and developing or expanding transportation and commerce in the area of the District, including all of the land shown as included in the area depicted in **Exhibit A** attached hereto and incorporated herein (the "Energy Corridor 380 Area");

WHEREAS, to serve the Energy Corridor 380 Area, the District intends to construct certain public works and improvements, including the completion of Park Row, the construction of a major collector street (Central Park West Boulevard), and the construction of certain related water, sanitary sewer (including a lift station and force main), and drainage utilities, as further described in **Exhibit B** attached hereto and incorporated herein and as shown in the map included as **Exhibit C** attached hereto and incorporated herein (collectively, the "Public Improvements");

WHEREAS, the District intends to finance and develop the Public Improvements in accordance with the terms and conditions of the Agreement;

WHEREAS, the City has the authority to contract with the District for the development of the Public Improvements;

WHEREAS, the City recognizes that the Public Improvements will encourage the development of undeveloped or underdeveloped land in the City;

WHEREAS, the City recognizes the positive economic impact that the Public Improvements will bring to the City by enabling the timely development of real property and diversification of the economy, elimination of unemployment and underemployment through the creation and retention of new jobs, the attraction of new businesses, and the retention and growth of the ad valorem and personal property tax revenue generated by existing and future commercial development within the Energy Corridor 380 Area;

WHEREAS, the City recognizes that the Public Improvements will provide a public benefit to the City by extending existing City rights-of-way and improving existing public infrastructure components, which will directly result in improved mobility and stimulate economic development within the Energy Corridor 380 Area;

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City;

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the City agrees to make a grant to the District to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state;

WHEREAS, in consideration of the District's intent to construct the Public Improvements, the City desires to enter into this Agreement pursuant to Chapter 380 and other laws applicable to the development of the Public Improvements as an economic incentive for the District to construct the Public Improvements;

WHEREAS, the City has concluded and hereby finds that the construction of the Public Improvements pursuant to this Agreement promotes economic development in the City and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and the District;

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, the District has agreed to comply with certain conditions for receiving those benefits;

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and the District hereby agree as follows:

## **ARTICLE I GENERAL TERMS**

A. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

B. Definitions and Terms. The terms "Agreement," "Chapter 380," "City," "District," "Effective Date," "Energy Corridor 380 Area," and "Public Improvements" shall have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Base Personal Property Tax" shall mean the amount of personal property taxes levied and collected by the City attributable to the Energy Corridor 380 Area based on the total taxable appraised value of the personal property in the Energy Corridor 380 Area as of January 1, 2012.

"Base Property Tax" shall mean the amount of ad valorem taxes levied and collected by the City attributable to the Energy Corridor 380 Area based on

the total taxable appraised value of the property in the Energy Corridor 380 Area as of January 1, 2012.

"Bonds" shall mean the bonds, notes, loans or any other evidences of indebtedness issued or incurred by the District or the Corporation from time to time, secured by the Reimbursement Amount, for the purpose of paying the Public Improvements Cost, including any bonds, loans or other evidences of indebtedness issued or incurred to refund such bonds.

"Code" shall mean the City of Houston Code of Ordinances.

"Corporation" shall mean a local governmental corporation created pursuant to Chapter 431, Transportation Code, to aid, assist and act on behalf of the District.

"Energy Corridor 380 Fund" shall mean the special fund created by the District as described this Agreement.

"Force Majeure" shall have the meaning ascribed to it in Article VII, Section B of this Agreement.

"Maximum Reimbursement Amount" shall mean an amount that is equal to the lesser of (i) the Public Improvements Cost, or (ii) \$20,843,660.00.

"Parties" or "Party" shall mean the City and the District, the parties to this Agreement.

"Public Improvements Cost" shall mean all costs of acquisition, design, development, construction and financing of the Public Improvements paid by or on behalf of the District, including (i) the acquisition cost of any land that is part of the Public Improvements; (ii) all costs of design, engineering, materials, labor, construction, testing and inspection and other services arising in connection with the design and construction of the Public Improvements; (iii) all payments arising under any contracts entered into for the design or construction of the Public Improvements; (iv) all costs incurred in connection with obtaining governmental approvals, certificates and permits required in connection with the construction of the Public Improvements, including the legal, engineering, environmental, and other consultant fees and expenses related to the design and construction of the Public Improvements and the drafting and negotiation of the District's application to the City and this Agreement; and (v) financing costs, including legal fees and expenses, of Bonds or funds borrowed by or advanced to or on behalf of the District to pay for the Public Improvements Costs, including interest, debt service, a debt service reserve fund and reasonable and necessary costs of issuance.

"Reimbursement Amount" shall mean an amount equal to the Tax Revenues necessary to pay for the Public Improvements Cost minus any Water and Sewer Improvements Cost reimbursed pursuant to Article VI, Section B.

"Tax Revenues" shall mean 100% of the incremental increase in the collections of the City's ad valorem taxes attributable to the Energy Corridor 380 Area above the Base Property Tax and 100% of the incremental increase in the collections of the City's personal property taxes attributable to the Energy Corridor 380 Area above the Base Personal Property Tax during each year of the term of this Agreement and without regards to any future abatement or rebate (pursuant to an economic development agreement or otherwise) of any portion of such taxes granted by the City.

"Term" shall mean the term of this Agreement, which shall commence on the Effective Date and shall continue until the earlier of (i) December 31, 2038; or (ii) the date on which (a) all Bonds have been fully paid, defeased, or redeemed and (b) all Public Improvement Costs have been fully paid or reimbursed to landowners who have advanced funds to or on behalf of the District in accordance with a Financing Agreement.

"Water and Sewer Improvements" shall mean the water and sanitary sewer improvements, including a lift station and force main, associated with the Public Improvements, as further described in **Exhibit B** and as shown in the map included as **Exhibit C**.

"Water and Sewer Improvements Cost" shall mean all Public Improvements Cost of the Water and Sewer Improvements.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

## **ARTICLE II THE PUBLIC IMPROVEMENTS**

A. The Public Improvements. The District shall be responsible for the design and construction of the Public Improvements, which may be constructed in phases. The first phase shall consist of the construction of Park Row from the Interstate 10 West HOV/toll road ramp east to the western boundary of property owned by the United States of America ("USACE Land"), and shall include the construction of all water, sanitary sewer (including a 20-inch force main within the Park Row right-of-way), and drainage and paving to serve the un-served area between the HOV/toll road ramp and the USACE Land ("Phase I"). The second phase shall consist of the construction of Park Row from the western boundary of the USACE Land east to Eldridge Parkway ("Phase II"). The District shall commence construction of Phase II within six (6) months of the date that i) all local, state and federal permits necessary for the construction of Phase II have been obtained and ii) all necessary rights-of-way have been acquired and are available for Phase II.

B. Standards and Approvals. The District agrees that the plans and specifications for the Public Improvements shall be subject to the review and approval of all governmental entities with jurisdiction, including, without limitation, the City. The District agrees to comply with all applicable legal requirements from such jurisdictions. Before commencing construction of any Public Improvements, the District will submit to the City's Director of the Department of Public Works and Engineering, or his or her designee ("Director"), all plans and specifications for the construction of the Public Improvements and obtain the Director's approval of the plans and specifications. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, will conform to the City's specifications. All water service lines, sewer service lines, lift stations, sewage treatment facilities, road facilities, and appurtenances thereto, will comply with the City's standard plans and specifications as amended from time to time. Prior to construction of any Public Improvements, the District or its engineer will give written notice by registered or certified mail to the Director stating the date that construction will be commenced. Construction of the Public Improvements will be in accordance with the approved plans and specifications, and with the City's applicable standards and specifications, and, during the progress of the construction and installation of the Public Improvements, the Director may conduct periodic, on-the-ground inspections.

### **ARTICLE III REPRESENTATIONS**

A. Representations of the City. The City hereby represents to the District that as the date hereof:

The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery and performance of this Agreement by the City do not require the consent or approval of any person which has not been obtained.

B. Representations of the District. The District hereby represents to the City that as of the date hereof:

The District is a duly created and existing municipal management district and political subdivision of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The District has the power, authority and legal right under the laws of the State of Texas to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the District under any agreement or instrument to which the District is a party or by which the District or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the District, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery and performance of this Agreement by the District do not require the consent or approval of any person which has not been obtained.

The District has and the Corporation will have the authority to issue Bonds for the Public Improvements subject to the conditions of Section 3814.106(a)(1), Texas Special District Local Laws Code, and the provisions of Article V, Section B of this Agreement.

#### **ARTICLE IV DISTRICT OBLIGATIONS**

In consideration of the City's agreeing to pay the District the Reimbursement Amount in accordance with the terms, provisions and conditions of this Agreement, the District agrees to fulfill the following conditions in order to receive the Reimbursement Amount:

A. Energy Corridor 380 Fund. The District shall deposit the Reimbursement Amount into the Energy Corridor 380 Fund and use the monies in the Energy Corridor 380 Fund only for payment of Public Improvement Costs. Any monies received from investing and reinvesting the monies paid by the City to the District shall remain in this fund until used by the District for one of the purposes permitted by this Agreement and may be commingled with other monies of the District; provided, however, that these funds shall be accounted for separately. Monies in the Energy Corridor 380 Fund may

be invested and reinvested by the District only in investments authorized by the Public Funds Investment Act (Chapter 2256, Texas Government Code). Monies on deposit in the Energy Corridor 380 Fund will be secured by the depository bank in accordance with the provisions of the Public Funds Collateral Act (Chapter 2257, Texas Government Code).

B. Accounts and Records. The District will maintain records and accounts in which full, true, and proper entries will be made on all dealings, transactions, business, and matters that in any way affect or pertain to the allocation and application of the Reimbursement Amount. All records shall be maintained in accordance with Generally Accepted Accounting Principles and shall be clearly identified and readily accessible. The District shall provide free access to the records at all reasonable times to the City or its representatives and shall permit them to examine and audit the same and make copies thereof upon five (5) business days' prior written notice to the District. The District shall further allow the City and their representatives to make inspections of all work data, documents, proceedings, and activities related to this Agreement upon five (5) business days prior written notice to the District.

After the end of each of the District's fiscal years during the Term (beginning with the fiscal year or fraction thereof during which this Agreement is executed), the District will (i) have at its own expense an audit prepared by an independent certified public accountant for that fiscal year, and (ii) prepare an annual report containing information on the amount and source of revenue in the Energy Corridor 380 Fund, the amount and purposes of the expenditures from the Energy Corridor 380 Fund or from proceeds of Bonds, and the amount of principal and interest due on outstanding Bonds. The District shall furnish an annual report and a copy of the audit without cost to the City within one hundred thirty-five (135) days after the end of each of the District's fiscal years during the Term.

C. Public Improvements Funding. The District will secure the funds necessary to design and construct a phase of the Public Improvements prior to contracting for the design or construction of such phase of Public Improvements.

D. Ownership, Operation, and Maintenance of Public Improvements. As the acquisition and construction of each integral stage of the Public Improvements is completed and each integral stage of the Public Improvements becomes operational, the District shall convey all such Public Improvements to the City (including rights-of-way). As construction of each integral stage of the Public Improvements is completed, City representatives shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications, or any modifications thereof, and in accordance with all applicable laws, rules, and regulations, the City will accept the same in writing, whereupon such portion of the Public Improvements will belong to and be the absolute property of the City and will be operated and maintained by the City at its sole expense.

E. Acquisition of Property for Park Row. The District shall acquire all property necessary for the completion of the Park Row right-of-way, subject, however,

to the City's discretion to acquire property for the completion of the Park Row right-of-way on its own behalf if necessary to complete the Public Improvements. All property acquired by the District for Park Row right-of-way pursuant to this Section shall be acquired in the name of the City.

F. Competitive Bidding. Construction contracts for the Public Improvements shall be let on a competitive bidding basis as required by law applicable to the District. After preparation of final plans and specifications and their approvals as required by this Agreement, the District shall advertise for or solicit bids for construction as described in the final plans and specifications. The City's representatives shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts in accordance with the notice provision of Article VII of this Agreement. The City shall designate from time to time in writing the persons who shall be their designated representatives. In the event of the failure of the City to designate representatives, the Director of Public Works and Engineering shall be the City's representative. Failure of the City's representative to attend any pre-bid conference, bid opening or award of contract meeting shall not be cause to postpone or otherwise delay such meeting.

G. Performance Bonds. The District shall require each contractor constructing the Public Improvements to furnish a performance bond in an amount equal to the full cost of District's construction contract with that contractor, conditioned on the contractor's full and timely performance under the construction contract. The District and the City shall be dual obligees for each performance bond. The performance bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000.00, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$1,000,000.00 by a reinsurer listed on the U.S. Treasury list.

H. Utilization of Local Contractors and Suppliers. The District agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the Public Improvements, with a goal of at least 30% of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. A contractor or supplier shall be considered as local if it has maintained an office within the City for at least one year.

I. Participation of Disadvantaged Business Enterprises. The District is encouraged to review the City's Minority and Women Business Enterprise ("MWBE") program as set forth in Chapter 15, Article V of the City of Houston Code of Ordinances and the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"). In the construction of the Public Improvements, the District shall make good faith efforts to award the maximum number of subcontracts or supply agreements to entities that are certified by the City as MWBEs.



J. Maintenance of Records. The District shall be responsible for maintaining records of all costs incurred and payments made for the Public Improvements and records evidencing compliance with all of the District commitments required by this Article IV for ten (10) years from the final payment by the District of the Public Improvements Cost and shall make such records available to the City for examination at the City's reasonable request. The City shall have the right to review and audit such records upon five (5) business days' prior written notice to the District.

## **ARTICLE V DISTRICT FINANCING**

A. Financing Agreements. The parties agree that the District may enter into certain financing agreements ("Financing Agreements") with landowners within the District, upon such terms and conditions as the District shall determine to be necessary or desirable, whereby the landowners agree to pre-finance, pre-acquire, pre-purchase and/or pre-construct, in one or more phases, all or any portion of the Public Improvements, on behalf of the District.

B. Bonds; Conditions of Issuance. The District has and the Corporation will have the authority to issue, sell and deliver Bonds from time to time, secured by the Reimbursement Amount and the Energy Corridor 380 Fund, as deemed necessary and appropriate by the Board of Directors of the District or the Corporation, subject to the terms of this Agreement, in such forms and manner and as permitted or provided by federal law, the general laws of the State of Texas and the City of Houston's ordinance consenting to the creation of the District. The Bonds shall expressly provide that the District reserves the right to redeem the Bonds on any interest-payment date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of the Bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on the Bonds, taking into account any discount or premium as well as the interest rate borne by the Bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of the Bonds is given, and that bids for the Bonds will be received not more than forty-five (45) days after notice of sale of the Bonds is given. The District may pledge and assign all or part of the Reimbursement Amount and the Energy Corridor 380 Fund to the owners and holders of the Bonds and to other lenders of money to the District.

C. Consent to Loan and Bonds. The Parties acknowledge that the District (either on its own behalf or through the Corporation) intends to pledge and assign all of the Reimbursement Amount under this Agreement in connection with a loan made by the Houston Housing Finance Corporation (the "Loan") and in connection with Bonds issued in one or more series for the purposes of refunding the First Loan and paying any remaining Public Improvements Costs. The City hereby consents to the making of the Loan and approves the issuance of the Bonds. Upon repayment of the Loan, the City shall retain a portion of the Reimbursement Amount in a total amount not to exceed the actual cost of acquisition of property for right-of-way contributed by the City for the

Public Improvements, including any property acquired for the Park Row right-of way by the City pursuant to Article IV, Section E of this Agreement.

## **ARTICLE VI DUTIES AND RESPONSIBILITIES OF THE CITY**

A. Reimbursement Amount; Annual Payment. The City shall pay the Reimbursement Amount to the District beginning on June 1, 2014, and continuing on June 1 of each year of this Agreement until the earlier of (i) the expiration of the Term; or (ii) the date that the Maximum Reimbursement Amount has been disbursed ("Annual Payment"). Tax Revenues not received by the City by June 1 of a calendar year will be held by the City and included in the following year's Annual Payment. The City is unconditionally obligated to pay the Reimbursement Amount. Such payments are not subject to any reduction, whether offset or otherwise, subject only to the retainage described in Article V, Section C. The City shall not be obligated to make any payment to the District in an amount in excess of the Tax Revenues.

B. Maximum Reimbursement Amount. The Maximum Reimbursement Amount may be modified by mutual agreement of the Mayor, or the Mayor's designee, and the District if the City requests modifications or additions to the Public Improvements that will result in an increase in the Public Improvements Cost that exceeds, or is anticipated to exceed, the Maximum Reimbursement Amount. Except as otherwise provided in this section, the City shall not reimburse any Public Improvements Costs that exceed the Maximum Reimbursement Amount.

C. Enterprise Funds. Notwithstanding the provisions of Section A of this article, to the extent that such funds are available and have been appropriated for that purpose, the City shall reimburse the District for the Water and Sewer Improvements Cost from the City's Water and Sewer Enterprise Fund. The amount of such reimbursement of the Water and Sewer Improvements Cost will not be included in the Reimbursement Amount.

D. Obligations of City to be Absolute. The obligation of the City to make the payments set forth in this Agreement shall be absolute and unconditional during the term of this Agreement, and the City will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the failure of the District to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement except as provided in Article VIII. Nothing contained in this Article shall be construed to release the District from performance of any of the agreements on its part contained in this Agreement, and in the event the District shall fail to perform any such agreement on its part, the City may institute such action against the District as the City may deem necessary to compel performance so long as this action does not abrogate the obligations of the City to make the payments set forth in this Agreement to enable the District (or, if applicable, the Corporation) to pay the Bonds or to meet the obligations of its Financing Agreements.

**ARTICLE VII  
ADDRESS AND NOTICE**

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to the District at the following address:

Energy Corridor District  
14701 St. Mary's Lane, Suite 290  
Houston, Texas 77079  
Attention: General Manager

With a copy to:

Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attention: Attorney for the Energy Corridor District

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to the City at the following address:

Chief Development Officer  
Office of the Mayor  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

Or

Director, Public Works and Engineering Department  
City of Houston, Texas  
P.O. Box 1562  
Houston, Texas 77251-1562

With a copy to:

City Attorney  
City of Houston, Texas  
900 Bagby, 4<sup>th</sup> Floor  
City Hall Annex  
Houston, Texas 77002

**ARTICLE VIII  
DEFAULT AND REMEDY**

A. Payment Default. The City agrees that its failure to pay the District the Reimbursement Amount when due is an event of default (a "Payment Default") and that

the District shall be entitled to any and all of the remedies available in this Article or otherwise at law or equity.

B. General Events of Default. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

Before any failure of any party to perform its obligations under this Agreement, except a Payment Default, shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify the party alleged to have failed to perform of the alleged failure, in writing, and shall demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.

Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

In addition to any other right or remedy available to the Parties pursuant to this Agreement, in the event of a default or a breach by either Party under this Agreement which continues for 30 days after written notice to the Party alleged to have defaulted or breached and the failure of the Party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining Party's reasonable satisfaction, the complaining Party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regards to mandamus, specific performance or mandatory or permanent injunction to require the Party alleged to have defaulted or breached to perform.

## ARTICLE IX GENERAL PROVISIONS

A. Time of the Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

B. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the District and the City. No course of dealing on the part of the parties nor any failure or delay by the parties with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

C. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

D. Successors and Assigns. No party may assign its rights or obligations hereunder without the consent of the other parties, except that, upon written notice to the City in accordance with Article VII of this Agreement, the District may assign the Agreement or the payment of the Reimbursement Amount to the Corporation.

E. Exhibits, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

F. Applicable Law. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas or the United States District Court for the Southern District of Texas.

G. Entire Agreement. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

H. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

I. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

J. Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

[EXECUTION PAGES FOLLOW]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the District and the City effective as of the date first above written.

**CITY:**

CITY OF HOUSTON, a Texas home-rule municipal corporation

Annise D. Parker

Mayor Matthew D. Appel

Date: 12-18-12

**ATTEST/SEAL:**

Matthew D. Appel

City Secretary

Date: 12/18/12

**COUNTERSIGNED:**

Ronald C. Smith

City Controller Leland Polk

Date: 12-26-12

**APPROVED AS TO FORM:**

Matthew D. Appel

Assistant City Attorney  
LD No. 0341200366001

**DISTRICT:**

HARRIS COUNTY IMPROVEMENT DISTRICT NO. 4 (ENERGY CORRIDOR DISTRICT), a political subdivision of the State of Texas

By: Robert Halick

Name: Robert Halick

Title: Vice President

**ATTEST**

Steve West

Name: Steve West

Title: Secretary

Date: 12-4-12

**EXHIBIT A**

**ENERGY CORRIDOR 380 AREA**

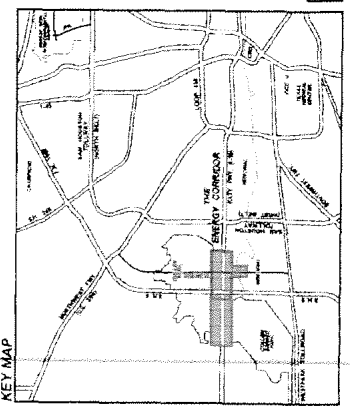
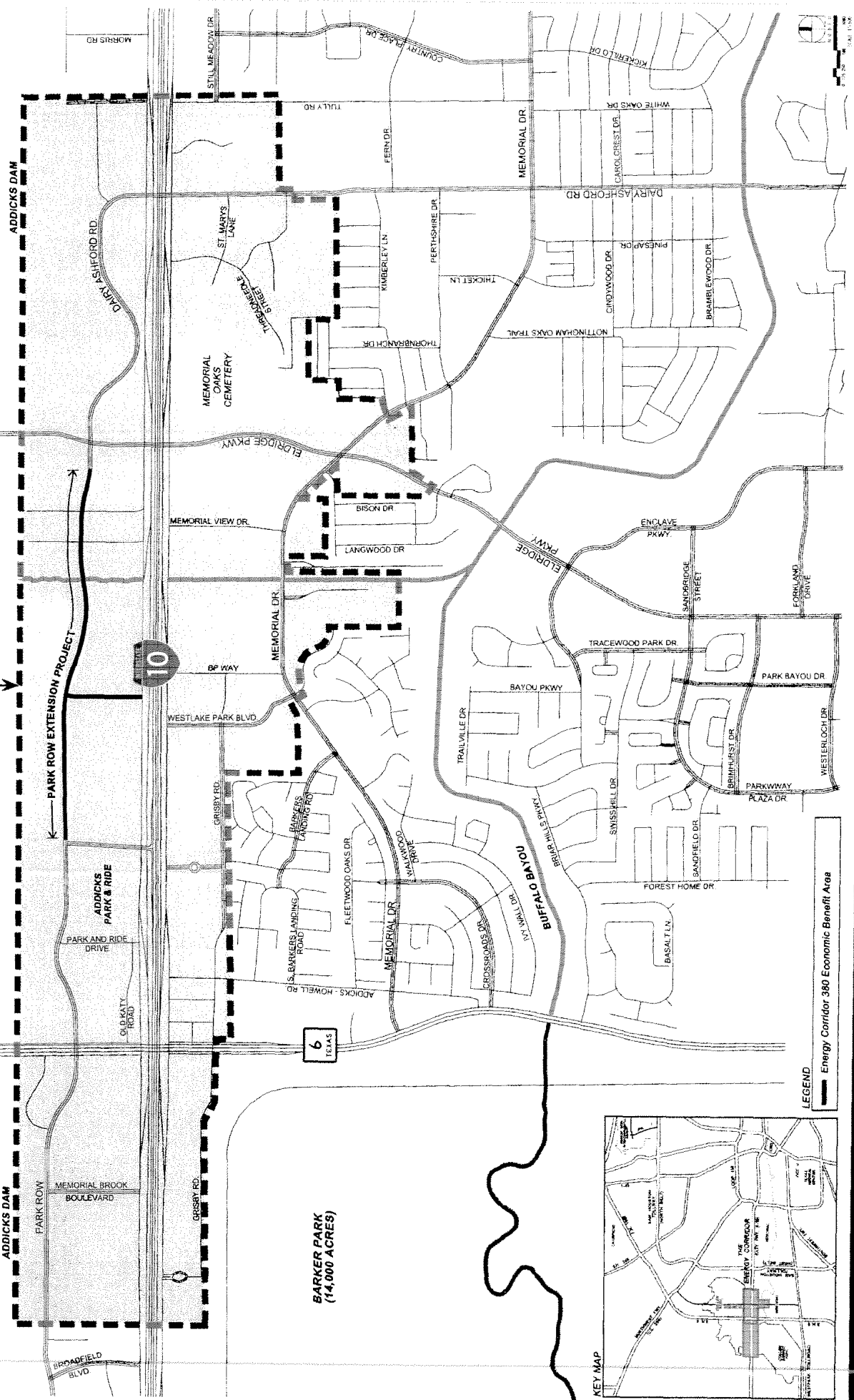


ADDICKS CULLEN PARK  
(14,000 ACRES)

# ENERGY CORRIDOR 380 AREA

ADDICKS CULLEN PARK  
(14,000 ACRES)

BARKER PARK  
(14,000 ACRES)



**LEGEND**  
 Energy Corridor 380 Economic Benefit Area

**EXHIBIT B**  
**PUBLIC IMPROVEMENTS**

## EXHIBIT B

### PARK ROW COMPLETION PROJECT DETAIL

Design and construction of certain public works and improvements in the Park Row Completion Project generally including:

1	A four lane, concrete curb & gutter major thoroughfare (Park Row) from its existing terminus near the northeast corner of the Addicks Park & Ride to its existing terminus approximately 300 feet west of Eldridge Parkway, including a bridge over Langham Creek and any requisite traffic control improvements;	\$	2,998,910
2	A four lane, concrete curb & gutter collector street (Central Park West Blvd.) from the north frontage road of Interstate 10 to Park Row, to be located approximately 1,640 feet west of Langham Creek;	\$	287,552
3	Gravity storms sewers along and serving Park Row and the collector;	\$	2,665,673
4	Sanitary sewer system infrastructure including: gravity sewers to serve the presently un-served area between the Addicks Park & Ride and Langham Creek, a 20-inch sanitary sewer force main from the lift station to the intersection of Park Row and Eldridge Parkway and a 30-inch trunk gravity sanitary sewer from the lift station west to the existing terminus of Park Row near the northeast corner of the Addicks Park & Ride;	\$	1,359,450
5	Water distribution lines to serve the presently un-served area between the Addicks Park & Ride and Langham Creek and a 24-inch trunk water transmission line from Eldridge Parkway to the existing line at the Addicks Park & Ride;	\$	1,601,385
6	A regional sanitary sewer lift station, to be located on a site currently owned by the City of Houston and the access driveway from Park Row to the site;	\$	1,661,355
7	A 10-inch sanitary sewer force main from the lift station site to a sanitary sewer manhole near the intersection of Park Row and State Highway 6;	\$	253,733
8	District acquisition of right-of-way for the Project (including right-of-way owned and to be acquired by the City);	\$	2,969,682
9	Street lights for both Park Row and the collector street, landscape improvements in the medians of the public streets and other miscellaneous project costs;	\$	674,044
10	Financing and other associated costs (including 380 creation) *	\$	6,371,877
			<hr/>
		\$	20,843,660

Note: The cost presented herein are engineer's estimates based on the project plans to date. The actual cost will be based on publicly bid construction contracts, which may vary from line item estimates presented in this Exhibit B.

\* Includes adjustment for contributions to the project from landowners.

**EXHIBIT C**

**MAP OF PUBLIC IMPROVEMENTS**

