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2012-0739

**MASTER ECONOMIC DEVELOPMENT AND PROGRAM ADMINISTRATION  
AGREEMENT  
BY AND BETWEEN THE  
CITY OF HOUSTON, TEXAS,  
AND THE  
HOUSTON DOWNTOWN MANAGEMENT DISTRICT**

**THE STATE OF TEXAS §**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**COUNTY OF HARRIS §**

THIS AGREEMENT (the "Agreement") is made by and between the City of Houston, Texas (the "City"), a municipal corporation and a home-rule city in the State of Texas, principally situated in Harris County, acting by and through its governing body, the City Council ("City Council"), and the Houston Downtown Management District (the "District"), a municipal management district and political subdivision of the State of Texas organized under Chapter 3801 of the Texas Special District Local Laws Code, acting by and through its Board of Directors ("District Board"). The District and the City are sometimes referred to in this Agreement collectively as "Parties" and individually as "Party."

**WITNESSETH:**

WHEREAS, the City and the District are authorized to enter into this Agreement by Section 380.001(b)(2) of the Texas Local Government Code, whereby the City may contract with a political subdivision of the State such as the District for the administration of a program to promote state or local economic development and to stimulate business and commercial activity in the City, and pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code ;

WHEREAS, by City Ordinance No. 2012-<sup>739</sup> the City approved a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") known as the Downtown Living Initiative Chapter 380 Program (the "Program") under which the City has the authority to use public funds for the public purposed of promoting local economic development and stimulating business and commercial activity; and

WHEREAS, the City desires to have the District administer the Program and the District desires to administer the Program as provided for herein 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.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants, agreements and benefits to the Parties herein named, it is agreed as follows:

**I.  
DEFINITIONS**

“Agreement” shall mean this Agreement and all attachments hereto between the City and the District.

“Appraisal District” shall mean the Harris County Appraisal District.

“Base Year Value” shall mean the total appraised value of all real property taxable by the City and located in the Target Area, as of January 1, 2012.

“District Board” is defined in the recitals hereto.

“Captured Appraised Value” shall mean the total appraised value of a Qualifying Project in the Target Area as of January 1 each year during the term of an Economic Development Agreement between the District and the Owner of a Qualifying Project less the Base Year Value.

“Chief Development Officer” or “CDO” shall mean the person in the Mayor’s Office designated as Chief Developer Officer of the City, or such other person that the Mayor may designate to undertake the responsibilities of the City under this Agreement.

“City” is defined in the recitals hereto.

“City Council” is defined in the recitals hereto.

“Combined Increment” shall mean an amount equal to the sum of (i) the Program Increment and (ii) seventy-five percent (75%) of the District Assessment.

“District Assessment” shall mean the amount of District assessment collected each year based on the Captured Appraised Value of a Qualified Project.

“Economic Development Agreement” shall mean an agreement between the District and a Developer/Builder relating to the development, construction, remodeling, or rehabilitation of a Qualifying Project in substantially the form set forth in Exhibit A attached hereto and incorporated herein.

“Guidelines” mean the guidelines approved by the District and the City, through the Chief Development Officer, with which a project must comply to be a Qualifying Project.

“Ordinance” shall mean City of Houston Ordinance No. 2012-\_\_\_\_\_, which established the Program.

“Owner” shall mean the owner of property within the Target Area who is developing or redeveloping, or proposes to develop or redevelop, a Qualifying Project and may include natural persons or private entities, but does not include a nonprofit or public entity. “Owner” may also mean the lessee of a ground lease with responsibility to pay ad valorem taxes on a Qualifying Project.

“Program” shall mean the Downtown Living Initiative Chapter 380 Program approved by the City Council pursuant to the Ordinance.

“Program Increments” shall mean an amount equal to seventy-five percent (75%) of the Project Increment on a Qualifying Project.

“Project Completion” shall mean the date a Qualifying Project receives a certificate of occupancy from the City for the Project.

“Project Increment” shall mean an amount equal to the ad valorem taxes collected each year by the City on the Captured Appraised Value of a Qualifying Project.

“Qualifying Project” or “Project” shall mean a project that meets the criteria of Section 3 of the Ordinance and the Guidelines, as determined by the District.

“Target Area” or “Area” shall mean the area shown on the map attached hereto and incorporated herein as Exhibit B.

## II. PROGRAM ADMINISTRATION

A. Administration Services. The Parties have agreed that the District will administer the Program on behalf of the City. To that end, the District will provide at its own expense the staff and administrative services that are necessary to manage the Program and management, financial and program monitoring systems for the administration of the Program.

B. Guidelines. The District will be responsible for developing the Guidelines, submitting them to the Chief Development Officer for approval, and upon approval, implementing the Guidelines. The District may amend the Guidelines from time to time, subject to the approval of the Chief Development Officer within ten (10) business days of receipt of same. It is the intention of the Parties that the Guidelines are to provide more specific details of acceptable physical development standards to achieve the program criteria specified in the Ordinance.

C. Reporting. The District shall promptly provide the City with any Economic Development Agreement entered into between the District and an Owner by sending a copy of the Agreement to the Chief Development Officer and the Chief Financial Officer of the City. The District shall annually provide a report to the City of the status of all Qualifying Projects and Economic Development Agreements, including a calculation of the Program Increment paid to each Owner pursuant to an Economic Development Agreement. The District shall provide any additional reports reasonably requested by the City concerning the administration of the Program, and shall promptly respond to any request for information needed for the preparation of the City’s annual budget.

D. Tax Assistance. Upon request by the City, the District shall assist the City with respect to the preparation of detailed property tax information relating to the Target Area. The District may analyze property uses in the Target Area, compare them to the records of the Appraisal District, and attempt to reconcile the tax rolls of the Appraisal District with the actual

land uses in the Target Area. The District may also work with the Appraisal District or other ad valorem tax consultant to make certain that tax values as shown on the tax rolls will, to the greatest extent possible, accurately reflect true market value of all property in the Target Area. The District may assist the City in securing a tax roll for the Target Area for the year 2012 and each year thereafter. In tax years beginning January 1, 2013, and thereafter the District may assist the City and the Appraisal District in having the Target Area tax rolls correctly reflect the total appraised value of real property in the Target Area for that year and showing separately the Base Year Value and the Captured Appraised Values.

### III. ECONOMIC INCENTIVES

A. Purpose of the Program. The purpose of the Program is to promote economic development and stimulate business and commercial activity in the Target Area by providing economic incentives in the form of reimbursement of Combined Increments for certain new multi-family residential developments within the Area. To qualify for incentives, a proposed multi-family residential development must meet the criteria set forth in the Ordinance and the Guidelines. A Qualifying Project will receive a reimbursement of up to \$15,000 per residential unit payable from its Combined Increment until the earlier of the date on which the total incentive has been paid or 15 years from Project Completion. The Program will be in effect until the earlier of June 30, 2016, or the date on which one or more Owners have entered into Economic Development Agreements that commit to build an aggregate of 2,500 multi-family residential units in Qualifying Projects in the Target Area. A Qualifying Project will not be entitled to or allowed any additional economic incentives or benefits by the City.

B. Economic Development Agreements. The District shall enter into an Economic Development Agreement in substantially the form of Exhibit A with the Owner of each Qualifying Project. All Economic Development Agreements shall be subject to the approval of the CDO, which approval shall be given if in his opinion the Economic Development Agreement is in substantially the form attached hereto and the Project meets the criteria of the Ordinance and the Guidelines. Changes in the form of the Economic Development Agreement may be allowed if the District and the CDO determine that the alteration is commercially reasonable under the particular circumstances, but no Economic Development Agreement may be modified to (i) increase the amount of total incentive or the 15-year reimbursement period established in Section A of this Article, or (ii) change the manner in which Combined Increment or Program Increment is calculated.

C. Annual Invoice. As soon as practicable after the City's receipt of tax payments from the Assessor/Collector each year, but no later than March 31, the District shall determine the amount of Program Increment for each Qualifying Project for which an Economic Development Agreement is in effect. The District shall promptly thereafter submit an itemized invoice to the City detailing the amount of Program Increment for each Qualifying Project, the total amount of Program Increments for all Qualifying Projects, and the basis on which the District made its determination.

D. Annual Payments to Qualifying Projects. Upon receipt of the annual payment from the City pursuant to Article IV, Section A, the District shall make prompt payments to each Qualifying Project of the Combined Increment.

**IV.  
DUTIES AND RESPONSIBILITIES OF THE CITY**

A. Annual Payment. Upon receipt of the annual invoice from the District pursuant to Article III, Section A each year, but not earlier than June 1, the City shall submit a payment to the District of the total amount of Program Increments for all Qualifying Projects.

B. Limitation of Source of Payment. The City shall have no financial obligation to the District or any Owner other than as provided in this Agreement. The obligation of the City under this Agreement is limited to the Program Increments that are collected by the City. This Agreement shall create no obligation on the City that is payable from taxes or other moneys of the City other than the Program Increments that are collected by the City. The obligation of the City to the Authority under this Agreement shall be subject to the rights of any of the holders of bonds, notes or other obligations that have been heretofore or are hereafter issued by the City that are payable from or secured by any source, including ad valorem taxes.

C. Obligations of City to be Absolute. The obligation of the City to make the payments set forth in this Agreement from Program Increments shall be absolute and unconditional, and until such time as this Agreement and the contractual obligations of the District incurred pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made, 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 XVII. 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 Owners of Qualifying Projects subject to an Economic Development Agreement.

**V.  
EQUAL EMPLOYMENT OPPORTUNITY**

The Authority agrees to comply fully with the provisions of the City's current Equal Employment Opportunity Ordinance, the provisions of which are set out in Exhibit C attached hereto and incorporated herein, as they may be amended from time to time.

**VI.  
PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of the City to stimulate the growth of minority and women-owned business by encouraging their full participation in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all City contracts and/or agreements.

The District agrees to use its best efforts to carry out this policy through award of contracts, subcontracts and aid to Disadvantaged Business enterprises to the extent consistent with the efficient performance of this Agreement.

Without limiting the generality of the foregoing, the District agrees that it will make Good Faith Efforts (as defined by the Director of Affirmative Action) to utilize Disadvantaged Businesses in the administration of the Program at the same rate as set forth in the City's Affirmative Action Program, as it may be in effect from time to time. While it is not a requirement of this Agreement that the District, in fact, meet or exceed these goals, it is a requirement that the District objectively demonstrate to the City that it has exerted Good Faith Efforts to meet these goals. To this end, the District shall maintain records showing (i) its subcontracts, supply agreements and support with and to Disadvantaged Business enterprises related to the administration of this Program, and (ii) specific efforts to identify and award subcontracts, supply agreements, and support with and to minority and women-owned business enterprises in the administration of this Program. The District shall submit annual reports of its Good Faith Efforts under this Article to the Director of Affirmative Action in such form and manner as the Director of Affirmative Action may prescribe.

**VII.  
PERSONAL LIABILITY OF PUBLIC OFFICIALS**

To the extent permitted by State law, no director of the District, nor any employee or agent of the District, and no employee of the City, nor any agent of the City, shall be personally responsible for any liability arising under or growing out of the Agreement, or operations of the District under the terms of this Agreement.

**VIII.  
INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that the District shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City; that except as herein provided, the District shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between the City and the District, its officers, agents, employees, contractors, and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City and the District. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant, or employee of the City.

**IX.  
INDEMNITY AND RELEASE**

A. THE DISTRICT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) THE DISTRICT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "DISTRICT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND DISTRICT'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER DISTRICT IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND DISTRICT'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER DISTRICT IS IMMUNE FROM LIABILITY OR NOT.

THE DISTRICT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE DISTRICT'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. THE DISTRICT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

THE DISTRICT SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

#### B. RELEASE

THE DISTRICT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

#### C. INDEMNIFICATION PROCEDURES

- (1) Notice of Claims. If the City or the District receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
  - (a) a description of the indemnification event in reasonable detail,
  - (b) the basis on which indemnification may be due, and
  - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that the District is prejudiced, suffers loss, or incurs expense because of the delay.

- (2) Defense of Claims

- (a) Assumption of Defense. The District may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. The District shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, the District must advise the City as to whether or not it will defend the claim. If the District does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If the District elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The District may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that the District does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

## X. INSURANCE

A. The District shall continuously and without interruption, maintain in effect certain insurance coverage, as further specified in the certificates of insurance ("Certificates") attached hereto and incorporated herein as Exhibit D, during the term of this Agreement. Each policy, except those for Workers Compensation, Employer's Liability, and Professional Liability, shall name the City (and its officers, agents, and employees) as Additional Insured on the original policy and all renewals or replacements.



B. Prior to execution of this Agreement, the District shall furnish the Chief Development Officer with an Affidavit from the District confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Chief Development Officer, the District shall furnish the City with certified copies of the District's actual insurance policies.

C. If the District does not maintain in effect the insurance coverage indicated in the Certificates, the Chief Development Officer, at his or her sole discretion, may:

- (1) Immediately suspend the District from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) Purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to the District under this Agreement.

D. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

E. If requested by the Chief Development Officer, the District shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to the District's operations under this Agreement.

F. The District shall require all subcontractors to carry insurance naming the City as Additional Insured and meeting all the same requirements contained in the Certificates except as to amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. The District shall provide copies of subcontractor insurance certificates to the Chief Development Officer.

## **XI. LAW TO BE OBSERVED**

The District at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders, and regulations of the federal, state, county, or city governments. The federal, state and local laws, ordinances, and regulations that affect those engaged or employed in the work, or the equipment used in the work, or that in any way affects the conduct of the work, shall be at all times in effect, and no pleas of misunderstanding shall be considered on account of ignorance thereof.

## **XII. INFORMATION**

The District shall, at such times and in such form as City may require, furnish periodic information concerning the status of the District, and the performance of its obligations under the Agreement, and such other statements, certificates and approvals relative to the District as may be requested by the City.

**XIII.  
ADDRESS AND NOTICE**

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

Houston Downtown Management District  
909 Fannin, Suite 1650  
Houston, Texas 77010  
Attn: Executive Director

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  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**XIV.  
APPLICABLE LAWS**

This Agreement is made subject to the Constitution and laws of the State of Texas and the Charter of the City.

**XV.  
CAPTIONS**

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, paragraph or part of this Agreement.

**XVI.  
SUCCESSORS AND ASSIGNS**

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other parties. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the City or of the District.

**XVII.  
TERM AND TERMINATION**

A. In General. This Agreement shall become effective on the date of countersignature of the City Controller and shall end one year following termination of the last Economic Development Agreement the District enters into pursuant to this Agreement.

B. Termination for Cause. A party may terminate its performance under this Agreement only upon default by the other party. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its duties under this Agreement as of the thirtieth (30th) day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (i) such termination shall be ineffective if within said 30-day period the defaulting party cures the default or (ii) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default. No termination of this Agreement will affect the obligation of the City to pay from Program Increments an amount that will permit the District to pay sums required to be paid pursuant to an Economic Development Agreement.

**XVIII.**  
**AMENDMENT OR MODIFICATIONS**

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District and the City in duplicate originals which shall be considered of equal force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF HOUSTON

Annise D. Parker  
Mayor Annise D. Parker Date 8-23-12

ATTEST/SEAL:

Wendell Russell 8/23/12  
City Secretary Date

COUNTERSIGNED:

APPROVED AS TO FORM:

Ronald C. Hunt Date 8-31-12  
City Controller Ronald C. Hunt  
EPORAH F. J. [Signature]  
Senior Assistant City Attorney  
L. D. File No. 0421200097001

APPROVED:

[Signature] 8/24/12  
Chief Development Officer Date

HOUSTON DOWNTOWN MANAGEMENT DISTRICT

[Signature]  
Executive Director

ATTEST:

Anita J. [Signature]  
Acst. Secretary, Board of Directors

**EXHIBIT A**

**FORM OF ECONOMIC DEVELOPMENT AGREEMENT**

**ECONOMIC DEVELOPMENT GRANT AGREEMENT  
BY AND BETWEEN THE  
HOUSTON DOWNTOWN MANAGEMENT DISTRICT  
AND  
(owner/developer)**

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**THE STATE OF TEXAS §  
COUNTY OF HARRIS §**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**THIS AGREEMENT** (the “Agreement”) is made by and between the Houston Downtown Management District (the “District”), a municipal management district and political subdivision of the State of Texas organized under Chapter 3801 of the Texas Special District Local Laws Code, acting by and through its Board of Directors (“District Board”) and \_\_\_\_\_ (owner/developer), (the “Owner”) a private corporation (or LLC, LLP, etc.), chartered in the state of \_\_\_\_\_. The District and the Owner are sometimes referred to in this Agreement collectively as “Parties” and individually as “Party.”

**WITNESSETH:**

**WHEREAS**, the District is authorized to enter into an agreement by Section 380.001(b)(2) of the Texas Local Government Code with the City of Houston, Texas (“City”) for the administration of a program to promote state or local economic development and to stimulate business and commercial activity in the City, and pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code ;

**WHEREAS**, by City Ordinance No. 2012-\_\_\_\_ the City approved a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code (“Chapter 380”) known as the Downtown Living Initiative Chapter 380 Program (the “Program”) under which the City and the District have the authority to use public

funds for the public purpose of promoting local economic development and stimulating business and commercial activity;

**WHEREAS**, by City Ordinance No. 2012-\_\_\_\_ the City approved an agreement with the District to administer the Program and executed a contract dated \_\_\_\_\_;

**WHEREAS**, in its administration of the Program as provided for herein the District desires 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**, the District has received a properly executed application from the Owner (**Exhibit 1**) to participate in the Program, and upon review of the application the District has determined that the \_\_\_\_\_ (name of project) \_\_\_\_\_, located on (plat description) (**plat attached as Exhibit 2**) meets the Program Guidelines (**Exhibit 3**) and therefore is a Qualifying Project advancing 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.

### **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants, agreements and benefits to the Parties herein named, it is agreed as follows:

#### **I.**

#### **DEFINITIONS**

"Agreement" shall mean this Agreement and all attachments hereto between the District and the Owner.

"Appraisal District" shall mean the Harris County Appraisal District.

"Assessment Increment" shall mean the amount of District assessment collected each year based on the Captured Appraised Value of a Qualifying Project.

“Base Year Value” shall mean the total appraised value of all real property taxable by the City and located in the Target Area, as of January 1, 2012.

“Captured Appraised Value” shall mean the total appraised value of a Qualifying Project in the Target Area as of January 1 each year during the term of an Economic Development Agreement between the District and the Owner of a Qualifying Project less the Base Year Value.

“Chief Development Officer” or “CDO” shall mean the person in the Mayor’s Office designated as Chief Developer Officer of the City, or such other person that the Mayor may designate to undertake the responsibilities of the City under this Agreement.

"City" is defined in the recitals hereto.

"City Council" shall mean the governing body of the City of Houston.

“District Board” is defined in the recitals hereto.

“District Authorization” shall mean the date upon which the District Board approves and authorizes this Agreement, as evidenced by the delivery of the completed form shown in Exhibit 4.

“Guidelines” mean the guidelines approved by the District and the City, through the Chief Development Officer, with which a project must comply to be a Qualifying Project.

“Ordinance” shall mean City of Houston Ordinance No. 2012-\_\_\_\_\_, which established the Program.

"Owner" is defined in recitals hereto.

“Program” shall mean the Downtown Living Initiative Chapter 380 Program approved by the City Council pursuant to the Ordinance and administered by the District.

“Program Tax Increments” shall mean seventy-five percent (75%) of the Tax Increment on a Qualifying Project.

“Program Assessment Increments” shall mean seventy-five percent (75%) of the Assessment Increment on a Qualifying Project

“Project Completion Date” shall mean the date a Qualifying Project receives a Certificate of Occupancy from the City for the Project.

“Qualifying Project” or “Project” shall mean a project that meets the criteria of Section 3 of the Ordinance and the Guidelines, as determined by the District.



“Target Area” or “Area” shall mean an area generally bounded by Runnells Street on the north, Chartres Street on the east, Pierce Street on the South, and Fannin Street on the west, as more particularly shown on the map attached hereto and incorporated herein as Exhibit B.

"Tax Increment" shall mean the amount of property taxes collected each year by the City on the Captured Appraised Value of a Qualifying Project.

## II.

### AMOUNT OF GRANT AND CONDITIONS

The Grant shall be funded by District as a reimbursement to the Owner of \$\_\_\_\_\_ (calculated by number of Project residential units X \$15,000 per unit) payable from its Program Tax Increment and its Program Assessment Increment until the earlier of the date on which the total incentive has been paid or 15 full tax years from Project Completion Date.

Availability of the Program Assessment Increments beyond tax year 2014 is conditioned on the District's adoption of future Service & Improvement Plans and Assessment Plans. The District will use good faith efforts to renew such plans through the term of this Agreement.

This Grant and all reimbursements funded pursuant to this Agreement are subject to Owner substantially satisfying all of the terms, conditions, and requirements set forth in Section II. A. and B. in the sole good faith judgment of the District. If any term, condition, or requirement is not substantially met, in the sole good faith judgment of District, Owner will forfeit that portion of the grant amount that corresponds to the amount of damage that reasonably relates to the particular failure to satisfy the particular term, condition or requirement in Section II. A and B.

A. District shall reimburse Owner provided the following terms, conditions and requirements are met:

1. Project operates as a multifamily residential mixed use development of Class A standard condition.

2. The Guidelines are continually to be substantially met for the term of the Agreement.

B. Additional terms, conditions and requirements of the grant include:

1. District reserves the right to terminate this Agreement and cancel the grant if:

a. The Owner has not submitted construction plans for the Project for permitting to the Public Works & Engineering Department of the City within 365 days of date of District authorization (**Exhibit 4**); or

b. The Project has not received a Certificate of Occupancy from the City within 1,095 days of District Authorization.

2. As a condition of the grant Owner will submit a copy of the final plans and specifications for the Project prior to commencement of construction. (**Exhibit 5**)

### III.

#### REIMBURSEMENT AND PROJECT REPORTING

Owner will provide notice to District of the specific date when construction on the Project has commenced (**Exhibit 6**). Owner will also provide notice to District of the Project Completion Date (**Exhibit 7**). Following end of the first tax year following the Project Completion Date and then annually, Owner is responsible for submitting notice to the District of City property taxes and District assessment paid for that tax year (**Exhibit 8**). The notice must include a certification that the Project continues to meet the terms and condition as set forth in Section II. Notice should be submitted to:

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Houston Downtown Management District  
909 Fannin, Suite 1650  
Houston, TX 77010

### IV.

#### TERM OF AGREEMENT

This Agreement shall become effective on the date of District Authorization and shall terminate on the earlier of eighteen (18) years thereafter or when the total incentive of \$\_\_\_\_\_ has been paid.

**V.**

**FUTURE GRANTS OR SUPPORT**

As a condition of this grant, Owner will not seek from the City, and the City will not provide, any additional grant funding, economic incentive or benefit for the Project.

**VI.**

**XIX. INDEMNIFICATION BY OWNER**

**OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE HOUSTON DOWNTOWN MANAGEMENT DISTRICT, THE CITY OF HOUSTON, AND CENTRAL HOUSTON, INC. AND EACH OF THEIR RESPECTIVE BOARDS, DIRECTORS, PARTNERS, OFFICERS, CONSULTANTS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, EXPENSES, FINES, AND JUDGMENTS (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS' FEES AND ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES"), WHETHER ARISING IN EQUITY, AT COMMON LAW, OR BY STATUTE, INCLUDING WITHOUT LIMITATION THE TEXAS DECEPTIVE TRADE PRACTICES ACT (AS AMENDED) OR SIMILAR STATUTE OF OTHER JURISDICTIONS, OR UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY WITHOUT REGARD TO FAULT) OR PROPERTY, OF EVERY KIND OR CHARACTER (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY (INCLUDING WITHOUT LIMITATION EMOTIONAL DISTRESS, AND ECONOMIC LOSS), ARISING IN FAVOR OF OR**

**BROUGHT BY ANY OF OWNER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR REPRESENTATIVES, OR BY ANY GOVERNMENTAL AGENCY OR ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RELATING TO OR ARISING OUT OF THE OWNER'S BUSINESS OR PROPOSED BUSINESS, OWNER TO COMPLY WITH THE AGREEMENT EVIDENCING THE GRANT, SHOULD THE GRANT BE AWARDED (THE "AGREEMENT"), OR OWNER'S ACTIONS OR INACTIONS UNDER THE AGREEMENT OR THIS APPLICATION, INCLUDING WITHOUT LIMITATION ANY FAILURE BY OWNER TO PAY TAXES OR FAILURE TO COMPLY WITH ANY APPLICABLE LAW, EXCEPT TO THE EXTENT ANY SUCH LOSSES ARE DUE TO ANY INDEMNITEES' SOLE NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.**

**THE FOREGOING INDEMNIFICATION OBLIGATION SHALL APPLY REGARDLESS OF THE AMOUNT OF INSURANCE COVERAGE HELD BY OWNER INCLUDING WITHOUT LIMITATION ANY SUCH COVERAGE UNDER ANY WORKER'S COMPENSATION ACT, DISABILITY ACT, OR OTHER ACT OR LAW WHICH WOULD LIMIT THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR OWNER AND SHALL NOT BE LIMITED BY ANY INSURANCE CARRIED OR PROVIDED BY OWNER IN ACCORDANCE WITH THIS AGREEMENT.**

**OWNER'S CONTRACTUAL OBLIGATIONS OF INDEMNIFICATION SHALL EXTEND TO AND COVER CLAIMS, DEMANDS AND CAUSES OF ACTION ALLEGING CONCURRENT ACTS OF NEGLIGENCE, FAULT OR OTHER ACT OR OMISSION BY OR ON THE PART OF DISTRICT, THE CITY, CENTRAL HOUSTON, INC. AND/OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES PROVIDED THAT IN THE EVENT THAT BOTH OWNER AND DISTRICT, THE CITY, AND/OR CENTRAL HOUSTON, INC.**

ARE ADJUDICATED AT FAULT WITH RESPECT TO DAMAGE OR INJURY SUSTAINED BY A CLAIMANT, OWNER SHALL INDEMNIFY DISTRICT, THE CITY, AND/OR CENTRAL HOUSTON, INC. ONLY FOR THAT PORTION OF THE DAMAGE OR INJURY ADJUDICATED TO HAVE BEEN CAUSED BY OWNER ACCORDINGLY, THE DISTRICT, THE CITY, AND/OR CENTRAL HOUSTON, INC. SHALL BEAR ALL COSTS AND DAMAGES FOR WHICH EACH OR ANY IF FOUND LEGALLY LIABLE. OWNER SHALL NOT INDEMNIFY THE DISTRICT, THE CITY, OR CENTRAL HOUSTON, INC. FOR SOLE NEGLIGENCE.

## VII.

### GRANTEE RELEASE

OWNER SHALL AND DOES HEREBY WAIVE ALL CAUSES OF ACTION IT HAS FOR, AND RELEASES AND FOREVER DISCHARGES THE INDEMNITIES FROM, LOSSES FOR INJURIES (INCLUDING DEATH) TO ANY PERSON OR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY SUSTAINED OR ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH OR ARISING OUT OF OR INCIDENTAL TO THE PROJECT OR AGREEMENT.

## VIII.

### INSURANCE REQUIREMENTS

Owner shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under the Agreement. **(To be attached as Exhibit 9)** All policies required under the Agreement except Worker's Compensation must name District, the City and Central Houston, Inc. ("CHI") as an additional insured. All policies of insurance must provide waiver of subrogation in favor of District, the City and CHI. All liability policies must be issued by a Company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key

Rating Guide, Property-Casualty United States. \_\_\_\_\_ shall maintain the following insurance coverage in the following amounts:

1. Commercial General Liability insurance including Contractual Liability insurance: \$2,000,000 per occurrence; \$4,000,000 aggregate
2. Employer's liability limits
  - (a) Accident \$500,000
  - (b) Disease \$500,000

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against District, the City and CHI and that it shall give not less than 15 days written notice to District and CHI before they may be canceled, materially changed, or non renewed. Within the 15 day period, Owner shall provide other suitable policies in lieu of those about to be canceled, materially changed, or not renewed so as to maintain in effect the required coverage. If Owner does not comply with this requirement, District, at its own sole discretion, may refuse to release funds pursuant to the Agreement until Owner does comply with this requirement and Owner agrees that such refusal shall not constitute a default pursuant to the Agreement.

As to District, the City and CHI all insurance requirements shall remain in force until 10 days after all grant funds have been released to Owner.

## **IX.**

### **TITLE TO DOCUMENTS AND WORKS**

All finished or unfinished documents and material prepared by Owner with funds provided by this Agreement shall be available for inspection by District.

**DISTRICT SHALL HAVE THE RIGHT TO REPRODUCE AND PUBLISH DESIGNS, PLANS AND IMAGES PRODUCED AS A PART OF THIS PROJECT, SO LONG AS SUCH REPRODUCTION AND/OR PUBLICATION IS FOR THE INTERNAL USE OF**

**HDMD ONLY, AND FOR NO OTHER PURPOSE WITHOUT THE EXPRESS, WRITTEN CONSENT OF OWNER.**

**X.**

**CHANGES AND MODIFICATIONS TO THIS AGREEMENT**

Any party to this Agreement may request changes or modifications to this Agreement. Changes and modifications that are mutually agreed upon among the parties shall be incorporated into a written amendment that specifically references this Agreement and shall be effective only after signature and delivery by all parties to this Agreement. Amendment shall require approval of the Chief Development Officer of the City.

**XI.**

**TERMINATION AND REMEDIES FOR THE BREACH OF THIS AGREEMENT**

District may terminate this Agreement upon an event of default which continues beyond the applicable notice or cure period, as further defined in this Article, by Owner. Upon the occurrence of any event of default by Owner, District shall have the right to terminate any or all of its duties and obligations under this Agreement as of the 30<sup>th</sup> day following the receipt by Owner of written notice describing such default and intended termination, provided: (i) such termination shall be ineffective if within the 30-day notice period, Owner cures the default; (ii) that if such performance requires work to be done, actions to be taken or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied within such 30-day period but can be done, taken or remedied within a 90-day period, no default shall be deemed to have occurred or to exist if, and so long as, Owner shall commence (or shall cause to be commenced) such work, action or other remedy within such 30-day notice period and shall diligently prosecute (or shall cause to be diligently prosecuted) the same to completion within the 90-day cure period; or (iii) such termination may be stayed, at the sole option of District, pending cure of the default. If District elects to stay the termination of this Agreement, the stay shall not, under any circumstances, constitute any acceptance or waiver by District nor shall it waive any right of future termination.

Owner shall be considered in default of this Agreement if it refuses or fails to comply with or perform any provision of this Agreement; makes any false representation or statement upon which District has relied to its material detriment; becomes either insolvent or the subject of a petition in bankruptcy, whether voluntary or (if not stayed or dismissed within 60 days of filing) involuntary, or becomes subject to any other proceeding under any bankruptcy, insolvency, or receivership law (which is not stayed or dismissed within 60 days of filing) or makes a general assignment for the benefit of creditors, and Owner shall immediately notify District in writing of any such event.

In the event that District terminates the Agreement due to misappropriation of funds or fiscal mismanagement, Owner shall return to District those funds which are found to have been misappropriated or fiscally mismanaged, that are funds distributed under this Agreement, which at the time of termination are in the possession of Owner.

In addition to all other statutory and common law remedies, District's remedies for the breach of this Agreement by Owner shall include, but are not limited to, forfeiture by Owner of any undistributed funds, the exclusion of the organization from receiving future District funding and District's taking ownership of any discrete improvements created by the Project.

## **XII.**

### **APPLICABLE LAWS AND REGULATIONS**

In performing its obligations under this Agreement, Owner at all times shall observe and comply with all applicable federal, state and local laws, ordinances, orders, and regulations. The federal, state and local laws, ordinances, and regulations which affect or are applicable to those engaged or employed in the performance of the Project or the equipment used in the performance of the Project or which in any way affect the conduct of the Project, shall be at all times in effect, and no pleas of misunderstanding will be considered on account of ignorance thereof. Owner shall likewise impose the same obligations contained in this section upon all of its contractors.



**XIII.**

**AMERICANS WITH DISABILITIES ACT**

Owner in carrying out this Project, must make a good faith effort to ensure it is in full compliance with the Americans With Disabilities Act of 1991, in addition to existing federal, state, and city non-discrimination laws.

**XIV.**

**EQUAL EMPLOYMENT OPPORTUNITY**

The Owner agrees to comply fully with the provisions of the City's current Equal Employment Opportunity Ordinance, the provisions of which are set out in Exhibit "10" or as they may be amended from time to time.

**XV.**

**RESERVATIONS OF RIGHTS**

Neither payment by District nor performance by Owner shall be construed as a waiver of either party's rights under this Agreement. Failure to require full and timely performance of any provision at any time shall not waive or reduce a party's right to insist thereafter upon complete and timely performance of any provision in this Agreement.

**XVI.**

**SEVERABILITY**

Should any portions of this Agreement be held to be invalid or wholly or partially unenforceable, such holding shall not invalidate or void the remainder of this Agreement. The portions held to be invalid or unenforceable shall be revised and reduced in scope so as to be valid and enforceable, or, if this is not possible, then the portions shall be deemed to have been wholly excluded with the same force and effect as if it had never been included herein.

## **XVII.**

### **ARBITRATION**

The parties, pursuant to the national policy favoring arbitration announced by Congress in the Federal Arbitration Act, 9 U.S.C. 2, hereby agree to resolve by arbitration any and all disputes or controversies arising out of this Agreement or the performance of the Project or the actions or inactions of the parties concerning the performance of the Project, including any disputes or controversies that may be based upon or arise out of disputes that either party may have with third parties, such as, disputes between Owner and its contractors. The parties further agree that, except to the extent specifically provided otherwise in this article, the arbitration shall be in accordance with the applicable rules of the American Arbitration Association then applying. The arbitration shall be held in Houston, Texas. Prior to testifying, whether directly in the presence of the arbitrators or through depositions, each witness will be sworn to tell the truth, subject to the perjury laws of the State of Texas. The arbitration will be conducted as a case would be presented to a trial court without a jury, that is, the arbitrators in their discretion may hear any type of evidence, including hearsay evidence, recognizing that deficiencies in the technical admissibility of the evidence (such as, documents are not properly authenticated or the testimony is hearsay) are to be taken into account in the weight to be afforded such evidence. In reaching their decision, the arbitrators shall apply the legal principles to which the parties have agreed herein, their common sense, the provisions of the Federal Arbitration Act, the provisions of the applicable rules of the American Arbitration Association then applying, and such other principles of law generally prevailing in commerce throughout the United States which are consistent with the provisions of this Agreement, particularly those general principles of law relating to the rights and obligations of contractors. The cost of the arbitration of disputes as provided in this Article shall be borne equally by both parties and the parties shall bear their own respective attorney's fees and costs incurred in arbitration. A party may apply to the United States District Court for the Southern District of Texas, Houston Division, to enforce any portion of this arbitration agreement (as provided in 8 U.S.C. 3) or to enter judgment upon the award (as provided in 8 U.S. C. 9). Each party agrees that this arbitration agreement and the decision and

the award of the arbitrators shall be treated as an absolute and final bar to any suit instituted in any federal, state or local court relating to such dispute or controversy.

It is agreed that during the time of the arbitration process, the parties shall meet and endeavor, subject to the principles and conditions stated in this Article and subject to the provisions of the Federal Arbitration Act, to formulate a written agreement governing as many of the other aspects of the arbitration proceeding as can be resolved or agreed upon. In particular, the parties shall endeavor to reach agreement as to the specific legal principles that the arbitrators shall apply to resolve the dispute and to stipulate to as many of the facts as possible. The parties shall also endeavor to frame as narrowly as possible the issues in the dispute or controversy which are to be submitted to the arbitrators for resolution. It is the intent of the parties that the narrowly framed issues shall be submitted in such a fashion that the arbitrators can answer the issues affirmatively or negatively or fill in blanks (such as with a monetary amount) without assigning reasons for the decision or award.

#### **XVIII.**

#### **CAPTIONS**

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles, and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, paragraph or part of this Agreement.

#### **XIX.**

#### **SUCCESSORS AND ASSIGNS**

This Agreement shall bind and benefit the respective parties and their legal successors, but shall not be assignable, in whole or in part, by Owner without first obtaining the written consent of District and the Chief Development Officer of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or director of District. Notwithstanding anything contained herein to the contrary, without the consent of District or the City, Owner may assign this Agreement to any construction lender ("Construction Lender") providing a

construction loan to Owner to pay the costs of constructing the Project, and Construction Lender shall be entitled to succeed to Owner's rights and obligations under this Agreement, if Construction Lender obtains title to the land described on Exhibit \_\_\_ ("Land") then owned by Owner by foreclosure or deed in lieu of foreclosure. Construction Lender may assign any rights so acquired to a purchaser of the Land then owned by Owner from Construction Lender following any such foreclosure or deed in lieu of foreclosure (a "Subsequent Owner"); provided, however, that such assignment by Construction Lender to a Subsequent Owner shall be subject to the District's consent, which consent shall not be unreasonably withheld or delayed. As a condition to the exercise by Construction Lender or any Subsequent Owner of Owner's rights under this Agreement, Construction Lender or Subsequent Owner, as applicable, must satisfy all of Owner's obligations under this Agreement (past, present and future) which are conditions to the exercise of any such rights.

## **XX.**

### **GOVERNING LAW**

This Agreement shall be construed, performed and enforced in accordance with the laws of the State of Texas without regard to otherwise applicable choice-of-law rules or principles. Each of Owner and District hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in such courts sitting in Harris County, Texas, and Owner hereby designates the Secretary of State for the State of Texas as an authorized agent to accept service of any and all process on behalf of Owner in the State of Texas and in connection with this Agreement. Notwithstanding the foregoing sentence, the parties agree that service of process for Owner shall first be attempted by serving its registered agent of record, and secondly by serving Owner as its duly authorized corporate representative. This Agreement is to be at least partially performed in Harris County, Texas.

## **XXI.**

### **CONTACT PERSONS**

Written communication among District and Owner will occur through the following individuals:

\_\_\_\_\_  
(Owner)

Name of Contacts:

Address:

Phone:

Alternate Phone:

Email:

Houston Downtown Management District:

Name of Contacts: Mr. Robert M. Eury  
Address: 909 Fannin, Suite 1650  
Houston, TX 77010  
Phone: 713-650-3022  
Fax: 713-650-1484  
Email: rmeury@downtowndistrict.org

**XXII.**

**RIGHTS OF LENDERS AND INTERESTED PARTIES**

Notice. The District is aware that financing for acquisition, development and/or construction of the Project may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders and equity partners of the Project (collectively, "Interested Parties"). In the event of default by Owner, the District shall provide a copy of the notice of such event of default at the same time notice is provided to the Owner, to any Interested Parties previously identified in writing to the District.

Estoppel. No more than once annually, the District shall, at any time upon reasonable request by the Owner, provide to any Interested Party a reasonable form of estoppel certificate or other document evidencing that this Agreement is in full force and effect, that no event of default by the Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default), the status of completion of the Project, the payment of the Grant and/or any other obligations set forth in this Agreement.

**XXIII.**

**AMENDMENT OR MODIFICATIONS**

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

**IN TESTIMONY OF WHICH** this instrument has been executed on behalf of the District and the City in duplicate originals which shall be considered of equal force and effect.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**HOUSTON DOWNTOWN MANAGEMENT DISTRICT**

\_\_\_\_\_  
Executive Director                      Date

**ATTEST:**

\_\_\_\_\_  
Secretary                                      Date

**APPROVED:**

\_\_\_\_\_  
Chief Development Officer      Date

**(OWNER):**

\_\_\_\_\_  
Title    Date

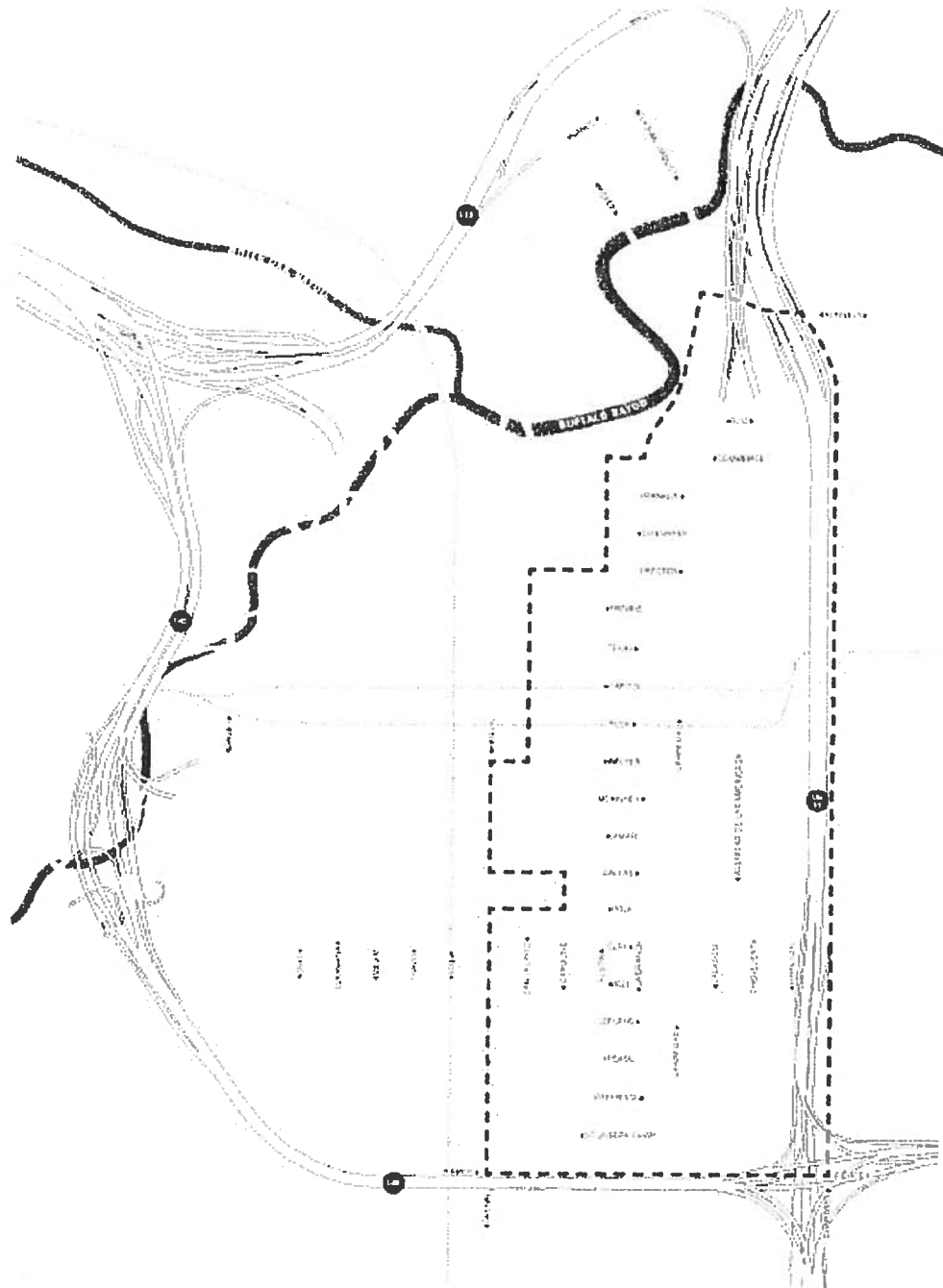
**LIST OF EXHIBITS:**

- Exhibit 1:** \_\_\_\_\_ Grant Application
- Exhibit 2:** Plat of Project site
- Exhibit 3:** Program Guidelines
- Exhibit 4:** Copy of HDMD Board Authorization, dated \_\_\_\_\_
- Exhibit 5:** Copy of the construction plans and specifications for the Project, as required in Article II.B.2.
- Exhibit 6:** Notification of construction start date, as required in Article III.
- Exhibit 7:** Notification of opening date of Project, as required in Article III.
- Exhibit 8:** Annual notice of taxes and assessment paid
- Exhibit 9:** Certificates of insurance, as required in Article VIII.
- Exhibit 10:** City Equal Employment Opportunity Requirements, as required in Article XIV.

**EXHIBIT B**

**MAP OF TARGET AREA**





**Downtown Living Initiative**  
**Chapter 380 Program Boundaries**

**EXHIBIT C**

**PROVISIONS OF CITY EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

## EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT D**

**DISTRICT INSURANCE CERTIFICATES**

Entity Name . . . . . Houston Downtown Management District  
 Entity ID . . . . . 6751  
 Contract Type / ID . . LIAB / 3 1-01-12 to 1-01-13

LIABILITY DECLARATIONS OF COVERAGE

GENERAL LIABILITY

Limits of Liability	: \$	2,000,000	Each Occurrence
Sudden Events Involving Pollution	: \$	2,000,000	Each Occurrence
	: \$	4,000,000	Annual Aggregate
Deductible	: \$	0	Each Occurrence
Annual Contribution	: \$	4,939	Effective : 1-01-12
Billable Contribution	: \$	4,939	Anniversary: 1-01-13

LAW ENFORCEMENT LIABILITY

\* \* \* \* Coverage Not Selected \* \* \* \*

ERRORS & OMISSIONS LIABILITY

Limits of Liability	: \$	1,000,000	Each Wrongful Act
	: \$	2,000,000	Annual Aggregate
Deductible	: \$	1,000	Deductible Each Wrongful Act
Annual Contribution	: \$	8,067	Effective : 1-01-12
Billable Contribution	: \$	8,067	Anniversary: 1-01-13

TOTAL CONTRIBUTION

Total Billable Contribution	: \$	13,006	Contract Effective : 1-01-12
			Contract Anniversary: 1-01-13

Coverage is continuous until cancelled. Contributions are subject to adjustment each year on the anniversary date based on updated exposure information and changes in rating.

LSTANKO Texas Municipal League Intergovernmental Risk Pool L201  
 11-18-11 13:11:53 3-11-04

Entity Name . . . . . Houston Downtown Management District  
Entity ID . . . . . 6751  
Contract Type / ID . . LIAB / 3 1-01-12 to 1-01-13

**AUTOMOBILE DECLARATIONS OF COVERAGE**

**AUTOMOBILE LIABILITY**

Limit of Liability : \$ 1,000,000 Each Occurrence  
Medical Payments Limit : \$ 25,000 Each Person  
Deductible : \$ 0 Each Occurrence  
Annual Contribution : \$ 1,679 Effective : 1-01-12  
Billable Contribution : \$ 1,679 Anniversary: 1-01-13

**AUTOMOBILE PHYSICAL DAMAGE**

\* \* \* \* Coverage Not Selected \* \* \* \*

**AUTOMOBILE CATASTROPHE**

\* \* \* \* Coverage Not Selected \* \* \* \*

**TOTAL CONTRIBUTION**

Total Billable Contribution : \$ 1,679 Contract Effective: 1-01-12  
Contract Anniversary: 1-01-13

Coverage is continuous until cancelled. Contributions are subject to adjustment each year on the anniversary date based on updated exposure information and changes in rating.

\* Automobile Physical Damage Each Occurrence Deductible does not apply to hail.

LSTANKO Texas Municipal League Intergovernmental Risk Pool L209  
11-18-11 13:11:58 6-08-06

**PROPERTY DECLARATIONS OF COVERAGE**  
**2011-2012 Fund Year**

**Member: Houston Downtown Management District**  
 Member ID: 6751



**Coverages Elected:**     Real and Personal Property     Crime  
                                   Boiler and Machinery                     Animal Mortality  
                                   Mobile Equipment

<i>Real and Personal Property</i>		Effective Date: 01/01/12	Anniversary Date: 01/01/13
Limit:	\$942,000	Deductible:	\$250
Coverage Basis:	Special Form	Flood and Earthquake	
Valuation Basis:	Replacement Cost	Deductible:	\$25,000
Transit Limit:	\$942,000		
Coverage Extensions:	As Scheduled	Named Storm Deductible Applies	
Fine Arts:	As Scheduled		
Flood and Earthquake:	Included	Annual Contribution:	\$4,219
		Pro Rata Due:	\$4,219
<i>Boiler and Machinery</i>		Effective Date: 01/01/12	Anniversary Date: 01/01/13
Per Accident Limit:	\$100,000	Deductible:	\$250
Valuation Basis:	Replacement Cost	Annual Contribution:	Included
		Pro Rata Due:	Included
<i>Mobile Equipment</i>		Effective Date: 01/01/12	Anniversary Date: 01/01/13
Limit:	\$87,000	Deductible:	\$250
Reporting Basis:	Scheduled	Named Storm Deductible Applies	
Valuation Basis:	Replacement Cost	Annual Contribution:	\$436
		Pro Rata Due:	\$436
<b>Total All Elected Property Coverages:</b>		Annual Contribution:	\$4,655
		Pro Rata Due:	\$4,655

Coverage is continuous until cancelled. Annual contributions are subject to adjustment each year on the anniversary date based on updated exposure information and changes in rating.

PO Box 149194 • Austin, Texas 78714-9194  
 (512) 491-2300 • (800) 537-6655

CP6751-2011-1  
 11/18/2011

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 Rev. 04/25/11