

# DRAFT FOR BOARD APPROVAL

## COMMUNITY BENEFITS AGREEMENT (EAST RIVER IN THE HISTORIC FIFTH WARD)

THIS COMMUNITY BENEFITS AGREEMENT ("Agreement"), is made and entered into effective as of \_\_\_\_\_, 2020 (the "Effective Date"), by and among KBRN, LP, a Texas limited partnership ("KBRN"), EAST RIVER PROPERTY OWNERS ASSOCIATION, INC., a Texas not-for-profit corporation (the "Association"), and together with KBRN, the "Developer Parties"), the City of Houston, Texas, a home-rule city organized under the laws of the State of Texas (the "City"), and FIFTH WARD REDEVELOPMENT AUTHORITY, a not for profit local government corporation organized and existing under the laws of the State of Texas (the "Authority"), (individually referred to as "Party" and collectively as "Parties").

### RECITALS

WHEREAS, the City created Reinvestment Zone Number Eighteen, City of Houston, Texas (the "Zone") pursuant to Chapter 311, Texas Tax Code (the "Act") pursuant to a preliminary Reinvestment Zone Financing Plan for the Zone; and

WHEREAS, KBRN is the master developer of a proposed 150-acre, more or less, mixed-use community development project referred to as East River in the Historic Fifth Ward (the "Development") located within the boundaries of the Zone, a conceptual plan of which is attached hereto as Exhibit A; and

WHEREAS, the City authorized the creation of the Authority to aid, assist, and act on behalf of the City and the Zone in the implementation of the Zone's Project Plan and Financing Plan; and

WHEREAS, the City, the Zone, and the Authority each approved an agreement (the "Tri-Party Agreement"), whereby the Authority agrees to provide for the management and administration of the Zone and the implementation of the Project and Financing Plan; and

WHEREAS, the property owned by KBRN and comprising the proposed Development was annexed into the Zone by the City for the purpose of the use of the tax increment created by the Development in the Zone to assist in the financing of Public Improvements (defined herein); and

WHEREAS, the Association has been created for the purposes of providing consistent, long term operational maintenance and management of certain non-public aspects of the Development; and

WHEREAS, KBRN and Harris County Improvement District No. 23, a municipal management district and political subdivision of the State of Texas (the "District"), entered into that certain Development Financing Agreement dated as of March 31, 2017

(the “Development Financing Agreement”), whereby the District has agreed to provide for the design, construction, and financing of the water, sanitary sewer, drainage, roads, park and recreational facilities, parking facilities, navigation facilities and any public infrastructure to serve the site of the Development provided KBRN advances the funds necessary to do so until the District is able to reimburse KBRN from the issuance of bonds in accordance with the Development Financing Agreement;

WHEREAS, concurrently with the execution of this Agreement, the Authority has entered into that certain Interlocal Development Agreement (the “Interlocal Development Agreement”) with the District, which agreement sets forth the terms and conditions by which the Authority agrees to provide an agreed portion of tax increment revenue funds as security for certain bonds issued by the District pursuant to the Development Financing Agreement to aid the District in financing for the design, construction and installation of certain public improvements within the Development (the “Public Improvements”); and

WHEREAS, the financing of the public improvements under the terms of the Interlocal Development Agreement and the Development Financing Agreement are key and critical elements to KBRN’s ability to implement the Development; and

WHEREAS, the provision of community benefits to the Fifth Ward Area (as defined herein) under the terms of this Agreement is a key and critical element to the Zone’s financing of the Public Improvements; and

WHEREAS, the Authority, acting on behalf of the Zone and the City pursuant to the Tri-Party Agreement, together with the Developer Parties, have determined that it is in their best interests to enter into this Agreement for the purpose set forth herein; and

WHEREAS, the City of Houston (acting through the office of the Chief Economic Development Officer) will verify the Parties’ compliance with the terms of this Agreement as part of its annual budget approval process for the Zone and funding for the Public Improvements; and

WHEREAS, the Developer Parties acknowledge and agree that they will be materially benefitted by the provision of financing of the Public Improvements from the Authority pursuant to the Interlocal Development Agreement, and further acknowledge that this Agreement and the benefits committed to herein are a material inducement to the Authority entering into the Interlocal Development Agreement and providing the related financing and that the Authority would not have done so absent this Agreement; and

WHEREAS, the Authority acknowledges and agrees that the Zone will be materially benefitted by the Developer Parties carrying out the benefits committed to herein, and further acknowledges that the provision of partial financing of the Public

Improvements from the Authority is a material inducement to the Developer Parties entering into this Agreement and that the Developer Parties would not have done so absent the Interlocal Agreement;

NOW THEREFORE, and in consideration of the mutual promises and obligations herein described, and as a condition precedent to the Authority's agreeing to the obligations under the Interlocal Development Agreement, the Authority, KBRN and the Association hereby agree to the terms of this Agreement.

## **ARTICLE I DEFINITIONS**

A. Defined Terms. For purposes of this Agreement, capitalized terms shall have the meanings assigned thereto within the body of this Agreement.

B. Interpretation.

1. Words such as "hereunder," "hereto," "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of this Agreement and not to any particular article, section, subsection, paragraph or clause hereof.

2. Any reference to "days" shall mean calendar days unless otherwise expressly specified.

3. The Parties have participated in the drafting of this Agreement and any ambiguity contained in this Agreement shall not be construed against any Party solely by virtue of the fact that such Party may be considered a drafter of this Agreement or any particular part hereof.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

A. Representations of the Authority. The Authority hereby represents to Developer Parties that as of the date hereof:

1. The Authority hereby represents it is a non-profit governmental corporation organized and existing under the laws of the State of Texas duly authorized, created and existing in good standing 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.

2. The Authority has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof:

(i) has been duly authorized, (ii) to the best of its knowledge, will not violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound or affected.

3. This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms.

B. Representations of the Developer Parties. The Developer Parties, as specified below, hereby represent to the Authority that as of the date hereof:

1. KBRN hereby represents KBRN is a Texas limited partnership duly authorized, created and existing in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

2. The Association hereby represents the Association is a Texas non-profit corporation duly authorized, created and existing in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

3. The Developer Parties each have the power, authority and legal right to enter into and perform its respective obligations set forth in this Agreement, and the execution, delivery and performance hereof (i) has been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to either Developer Party or any provisions of either Developer Party's respective formation documents, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of either Development Party under any agreement or instrument to which a Developer Party is a party or by which either Developer Party or their assets may be bound or affected.

4. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer Parties, enforceable in accordance with its terms.

### ARTICLE III COMMUNITY BENEFITS AGREEMENT

A. Purpose. The purpose of this Agreement is to provide for a coordinated effort between the Developer Parties and the Authority to mitigate community displacement by maximizing the benefits of the Development to the residents and businesses outside of the Development and within the Fifth Ward, which includes the Zone, all as graphically depicted on Exhibit B attached hereto (for purposes of this

Agreement, the “Fifth Ward Area”). This Agreement serves to provide a framework for ensuring the creation of the Public Improvements, which are financed in part by the Zone’s funds, also creates opportunities to residents and businesses of the Fifth Ward Area, including, but not limited to, publicly accessible park space, open space, recreational facilities, employment opportunities, affordable housing, and addresses issues relating to traffic, parking and public safety.

B. Creation of Community Advisory Council & Community Engagement.

1. To ensure transparency and accountability with respect to the creation of the Development and the benefits to be recognized by the Fifth Ward Area businesses and residents, and to provide recommendations in administering the Community Benefits set forth herein, an advisory committee (the “Community Advisory Council”) of no less than seven (7) and no more than nine (9) members shall be established, which shall be comprised of the following:

- a. One (1) representative of the Association;
- b. One (1) representative of KBRN;
- c. At least one (1) representative of the Authority/Zone;
- d. At least one (1) representative of a local community chamber of commerce operating in the Fifth Ward Area and who is also either (i) a resident of the Fifth Ward Area; or (ii) owns a business which has its principal office in the Fifth Ward Area;
- e. At least two (2) representatives from different nonprofit organizations that have each been in operation for at least ten (10) years and engaged in community development or real estate development in the Fifth Ward Area; and
- f. At least one (1) individual whose primary residence has been in the Fifth Ward Area for at least five (5) of the last ten (10) years or who is the majority owner of a business with its principal office located in the Fifth Ward Area for at least five (5) of the last ten (10) years.

Any additional members of the Community Advisory Council shall be comprised of individuals that meet the qualifications of items (c) through (f) above. Nominations to the Community Advisory Council for positions described in items (c) through (f) above shall be approved by the Authority’s Board of Directors. The chairperson of the Community Advisory Council shall be the Chairperson of the Authority or an individual designated by the Authority. In the event of a tie vote among the members of the Community Advisory Council, the tie-breaker vote shall belong to the chairperson of the Community Advisory Council. The Community Advisory Council shall not be a public body or classified as any other entity that would subject it to the requirements of open meetings and records or the requirements of the Texas Public Information Act, the Freedom of

Information Act or any other similar laws, ordinances or regulations related to the ability of the public to access and/or disclosure of information related to this Agreement, meetings pursuant to this Agreement and/or any other information related hereto. Further, each member of the Community Advisory Council shall acknowledge that certain information shared by the Developer Parties may be confidential and upon request by the Developer Parties agree not to disclose such confidential information without the express permission of the Developer Parties in its sole and reasonable discretion. The Community Advisory Council shall be established within ninety (90) days of the Effective Date of this Agreement and shall meet with KBRN at least once every six months, for so long as the Authority is obligated to provide any tax increment under the Interlocal Development Agreement, to discuss relevant issues, including, but not limited to, current status of planning, construction and operation of the Development, any material changes to the Development since the last meeting, and the Community Benefits (as defined herein). The first semi-annual meeting shall occur within six (6) months following the establishment of the Community Advisory Council and shall continue to occur approximately every six (6) months thereafter until the earlier of (i) the Development is completed in its entirety; or (ii) the expiration of the Term of this Agreement. In between the semi-annual meetings, KBRN shall use reasonable efforts to provide the Community Advisory Council with updates via email or mail or other digital and/or electronic means reasonably satisfactory to the Community Advisory Council.

2. The Developer Parties shall make reasonable efforts to provide the Community Advisory Council with access to free advertising space in the Development to meet the reasonable, good faith requests, where financially feasible, of the Community Advisory Council. Such space may include electronic signage, advertising on the website of the Association, and other public communications. This advertising space shall be used to notify the community of meetings, events and other items of information related to the Community Benefits, the Fifth Ward Area or other information as reasonably suggested by the Community Advisory Council. No political advertising, commentary or other publication of an offensive or controversial nature shall be permitted and the Association shall have the right to determine such nature in its reasonable discretion. Any such advertising shall be submitted in writing to the Association for approval (such approval not to be unreasonably withheld, conditioned or delayed) prior to posting. If the Association does not respond to any such submission within five (5) business days of a submission, then such submission shall be deemed approved by the Association for posting.

3. The Developer Parties shall hold an annual community stakeholder meeting in the Fifth Ward Area each year throughout the Term of this Agreement to apprise attendees of status of Development, opportunities for residents and

businesses in the Fifth Ward Area, and to solicit feedback. Such meetings shall be publicized at least one week in advance and shall be communicated online at the websites of the Association and Development and in writing at the Development, and through the Community Advisory Council. In the event such meetings are held outside the Development, the Authority shall provide a reasonable venue and cover all requisite reasonable cost for the venue.

C. Development Plan. The Development Plan, comprised of an overall conceptual site master plan and projected estimated timeline of development for each section, attached hereto as **Exhibit A**, is current as of the Effective Date. The Parties acknowledge that the Development Plan is conceptual and subject to change and revisions until finalized. The Authority, through its administrator (the "Administrator"), shall be kept apprised of Development timelines and any material changes thereto, any material revisions to the Development Plan, site plans for each phase once conceptualized, and any other updates related to the Development that could have a material impact on the surrounding community. KBRN shall provide these updates no less than once every six (6) months until the earlier of (i) the Development is completed in its entirety or (ii) the expiration of the Term of this Agreement, which updates may be provided to the Administrator in a reasonable manner, but which are not required to be duplicative of or in addition to the updates provided to the Community Advisory Council in the event the Administrator is present at those such meetings or as otherwise provided in accordance with the terms of this Agreement.

D. Reporting Requirements. The Developer Parties shall provide the community benefits described on **Exhibit C** attached hereto (the "Community Benefits") for the Term of this Agreement and, in any event, for so long as the Zone is providing any tax increment funds in connection with the Development. The Developer Parties, either collectively or individually, will provide an annual report to the Community Advisory Council and the Authority on the prior calendar year's activities related to each of the Community Benefits described herein. Said report will contain the information outlined on **Exhibit D** attached hereto, along with supporting documentation, which shall assess and evaluate the efforts taken and outcomes achieved for each Community Benefit (the "Annual Report"). The Annual Report shall be completed and submitted to the Community Advisory Council and the Authority no later than March 31st of the year following the subject year of the report for review by their respective boards. A copy of the Annual Report will also be simultaneously delivered to the Office of the Mayor of the City of Houston (to the attention of the Chief Development Officer).

E. Biennial Review. At least once every two years, the Parties shall review the progress of the prior years and other relevant information, which may include the Annual Reports, to assess the efforts of the Developer Parties in carrying out the terms of this Agreement, review progress and outcomes, discuss challenges and explore potential for new opportunities, and the Parties shall determine if it is in their respective reasonable best interests and the reasonable best interests of the Fifth Ward Area residents and

businesses to revise any of the Community Benefits or any other portions of this Agreement. Any revisions to the Community Benefits or amendments to this Agreement will require the written consent of the parties hereto, such consent not to be unreasonably withheld, delayed or conditioned.

F. Good Faith Efforts. The Parties hereto acknowledge that all efforts undertaken to comply with this Agreement shall be carried out in good faith and with fair dealings and with the intention of serving the greater good of the Fifth Ward Area, an area that will be directly impacted by the proposed Development. It is the intention of the Parties that the residents and businesses of the Fifth Ward Area shall have the opportunity to benefit from the expected growth and development in their community that the Development is anticipated to generate.

#### **ARTICLE IV DEFAULT**

A. Events of Default – Developer Parties. The following shall constitute an Event of Default by the Developer Parties:

1. a Developer Party becomes insolvent, files a petition for protection under the U.S. Bankruptcy Code (or similar applicable law) or a petition is filed against a Developer Party under such laws and is not dismissed within sixty (60) days after the date of such filing, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due;
2. failure to perform any monetary agreement set forth herein to be performed, following the expiration of any applicable notice, grace and cure periods, it being understood that in the event no cure periods are expressly set forth herein, the Authority shall, within thirty (30) days of the discovery of such failure, deliver a notice to the Developer Parties which shall provide a thirty-day (30-day) cure period.
3. failure to perform any non-monetary covenant or condition of this Agreement on the part of a Developer Party, following the expiration of any applicable notice, grace and cure periods, it being understood that in the event no cure periods are expressly set forth herein, the Authority shall, within thirty (30) days of the discovery of such failure, deliver a notice to the Developer Parties which shall provide a sixty-day (60-day) cure period, or such longer time as may be reasonably required to cure such failure provided a Developer Party has commenced and is in good faith diligently pursuing such cure within such sixty (60) day period.

B. Event of Default – Authority. The following shall constitute an Event of Default by the Authority: a failure to perform any covenant or condition of this Agreement on the part of the Authority, following the expiration of any applicable notice, grace and cure periods, it being understood that in the event no cure periods are expressly set forth herein, the Developer Parties shall, within thirty (30) days of the discovery of such failure, deliver a notice to the Authority which shall provide a sixty-day (60-day) cure period, or such longer time as may be required to cure such failure provided the Authority has commenced and is in good faith diligently pursuing such cure.

## **ARTICLE V REMEDIES**

A. Enforceability. The Parties understand and agree this Agreement is lawful, enforceable and binding on all Parties and each of their permitted respective successors and assigns, and agree to waive any potential challenges to the enforceability of this Agreement, and agree not to affirmatively or by way of defense seek to invalidate or otherwise avoid the application of the terms of this Agreement in any judicial action, or other proceeding such as arbitration or mediation.

B. Specific Performance. In its creation of the Authority, the City authorized the Authority to aid, assist and act on behalf of the City in the performance of the City's governmental functions with respect to promoting, developing, encouraging and maintaining housing, employment, commerce and economic development of the Fifth Ward and neighboring areas. In securing the covenants and agreements of the Developer Parties in this Agreement, the Authority is and shall be acting in such capacity. The terms and provisions of this Agreement are unique matters particular to such duties as applicable to the local community affected, and as such cannot be replaced by substitute performance. It is essential to the preservation and betterment of the local community that the Developer Parties perform and discharge their obligations hereunder and failure to do so would constitute irreparable harm not adequately compensable by money damages or other remedies at law. Therefore, the Parties agree that the Parties hereto shall be entitled to specific performance or other equitable relief for any breach of the agreements set forth in this Agreement, and the Parties consent to the entry of temporary or permanent injunctive relief to enjoin any actual or threatened breach of such covenants.

C. Right to Cure. Under the terms and conditions of the Interlocal Development Agreement, the results of the Annual Report could result in the issuance of Bonds (as such term is defined in the Interlocal Development Agreement) from being issued under certain circumstances as set forth in Section V.D. In an effort to provide the Parties with a consistent annual expectation of this possibility being realized in sufficient time to be cured or waived prior to a Bond issuance that might otherwise be prevented, notwithstanding anything else herein, the Parties hereto agree to follow the procedure set forth in this Section V.C. with respect to each Annual Report:

1. The Community Advisory Council shall review the Annual Report within thirty (30) days of delivery and if the Community Advisory Council determines an event relating to the Developer Parties' provision of Community Benefits has occurred and is continuing that with notice or passage of time, or both, would constitute an Event of Default, then within five (5) days of such determination the Authority shall deliver a written notice of potential Event of Default to the defaulting Party(ies) in accordance with the notice provisions of this Agreement, such notice to specify the nature of the alleged default, the manner in which the alleged default may be satisfactorily cured and provide the defaulting Party(ies) time to cure the alleged default in accordance with this Agreement.

2. The Developer Party(ies) shall have the time allotted in the notice to cure the potential Event of Default and if the same has not been cured or waived by the Authority within the specified timeframe, then a "CBA Event of Default" shall be deemed to have taken place and the Authority shall send a notice of CBA Event of Default to the Developer Parties, with a copy sent simultaneously to the City and to the District (at the notice address for the District as set forth in the Interlocal Development Agreement).

D. Condition of Bond Issuance. Notwithstanding anything in this Agreement, except for the first series of Bonds (as such term is defined in the Interlocal Development Agreement) issued by the District, no additional Bonds may be issued, the proceeds of which are to reimburse Developer or its affiliates, if the District has received notice that a CBA Event of Default has occurred and that CBA Event of Default has not been cured or waived at least thirty (30) days prior to the date of the sale of such Bonds, as described in Section V.C.2. above.

E. Compliance Report. If an alleged default is related to the Developer Parties providing the Community Benefits in accordance herewith, the Authority shall have the right, but not the obligation, in its sole discretion, to cause a consultant firm of recognized national standing to audit and/or inspect that portion of the Developer Parties' books and records pertaining only to the alleged default and provide a compliance report with respect to the alleged default (the "Compliance Report"); provided (i) the Compliance Report commences within 30 (thirty) days after the alleging Party delivers a notice of alleged default in accordance with the notice provisions of this Agreement and thereafter proceeds reasonably promptly to conclusion, (ii) the Compliance Report does not unreasonably interfere with the conduct of the Developer Parties' business, (iii) both the Authority and the consulting firm conducting the Compliance Report execute a confidentiality agreement for the benefit of the Developer Parties, in a form reasonably requested by the Developer Parties, prior to the commencement of the Compliance Report (all Parties understanding that all or portions of the report may be subject to the Public Information Act), (iv) the Compliance Report is not conducted for a contingent fee, and (v) the Compliance Report is promptly delivered to the Parties. This paragraph shall not be construed to limit or abate the Authority's right to comply with all other

obligations set forth in this Agreement. If the Compliance Report discloses that a default will occur if the same has not been cured or commenced to have been cured in accordance with this Agreement, then Developer Parties shall reimburse the actual, out-of-pocket reasonable costs of the Compliance Report within 30 days after completion of the Compliance Report. For purposes of clarification, the Compliance Report is optional at the sole discretion of the Authority and is not required to either evidence or disprove any CB Event of Default or any other default under this Agreement and does not necessarily have any bearing on the condition to Bond issuance set forth in Section V.D.

F. Mediation. To the extent there is any disagreement regarding the performance of obligations of the Parties under this Agreement, including circumstances when a notice of an Event of Default has been given, the applicable aggrieved Parties shall first attempt to resolve such disagreements by meeting and negotiating in good faith. If the Parties are unable to resolve any such disagreement(s) by meeting, any party to the dispute may request mediation of the dispute, in which case the other party or parties to the dispute agree, such mediation shall occur within thirty (30) calendar days unless that time is extended by the agreement of the parties to the dispute. Each party shall bear any of its own fees and costs, if any, and a proportional share of the reasonable costs of a mediator.

G. Legal Remedies. Any Party alleging the occurrence of any Event of Default may, in its sole discretion, after the expiration of all applicable notice, grace and cure periods and after participating in at least one meeting and mediation if requested and set forth above, elect to waive the default or opt to pursue court action; provided, however, where the alleged default may result in irreparable injury, any party, in its sole discretion, may immediately pursue court action, including immediately filing an action in an appropriate court in Harris County, Texas ("Court") to require specific performance of an express obligation of the breaching party under this Agreement, in accordance with Section IV.B. above. Any Party to this Agreement may file an action in the Court seeking to specifically enforce any term of this Agreement that allegedly has been breached. The Court shall have the power to order equitable/injunctive relieve, on a temporary or permanent basis, requiring the Parties to comply with the terms of this Agreement.

H. Consequential Damages. No Party shall be entitled to indirect, special or consequential damages for an Event of Default.

## **ARTICLE VI ADDRESS AND NOTICE**

A. Except as otherwise provided in this Agreement, any notice or approval required or permitted to be given under this Agreement shall be in writing and shall be considered to have been given upon the earlier of (i) receipt, (ii) three (3) business days after deposit in the United States mail, registered or certified mail, postage prepaid,

return receipt requested, or (iii) day of delivery by hand, and addressed as set forth below:

If to the Authority: Fifth Ward Redevelopment Authority  
4300 Lyons Avenue, Suite 300  
Houston, Texas 77020  
Attention: Administrator  
713.674.0175

With a copy to: Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, Texas 77046  
Attention: Andrea Steel  
713.653.7334

If to the Association: East River Property Owners Association, Inc.  
800 Town & Country Blvd., Suite 200  
Houston, Texas 77024  
713.629-5200  
Attention: East River POA Manager

With a copy to: Jackson Walker, LLP  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
713.752.4300  
Attention: Mr. Alfred Meyerson and Ms. Carey Hain

If to KBRN: KBRN, LP  
800 Town & Country Blvd., Suite 200  
Houston, Texas 77024  
713.629-5200  
Attention: East River Investment Manager

With a copy to: Jackson Walker, LLP  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
713.752.4300  
Attention: Mr. Alfred Meyerson and Ms. Carey Hain

Each Party shall have the right to change the place or person or persons to which notices, requests, demands, and communications hereunder shall be sent or delivered by delivering a notice to the other Parties.

## ARTICLE VII GENERAL PROVISIONS

A. 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 all Parties. 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 Agreement.

B. Rights Cumulative. The rights and remedies conferred upon any Party hereby are in addition to any rights or remedies to which any Party may be entitled at law or in equity.

C. Severability. In the event that any of the terms, provisions or conditions contained in this Agreement is held invalid or unenforceable in any respect, such unenforceability will 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 and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided each party shall have substantially received the benefit of the Agreement accruing to it.

D. Successors and Assigns; Consent to Assignment. No Party may assign its rights or obligations hereunder without the consent of the other Parties; provided, however, such consent shall not be unreasonably conditioned or withheld. This Agreement shall bind and inure to the benefit of the assigns and successor in interest of each Party; as applicable, each Party will notify its assign and successors in interest of the existence of this Agreement. Any reference in this Agreement to a Party shall be deemed to include any assigns and successors-in-interest of that Party, with respect to the rights and/or responsibilities relevant to this Agreement, to the extent permitted by law.

E. Titles of Articles, Sections and Subsections. 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.

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, without regard to any conflicts of laws provisions, and venue shall like solely in Houston, Texas.

G. Entire Agreement. This Agreement represents the full 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. 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.

I. No Partnership, Joint Venture or Agency. Nothing contained herein or done pursuant hereto shall be deemed to create, as among the parties, any partnership, joint venture or agency relationship.

J. Term and Termination. This Agreement is effective as of the Effective Date and will expire on the earlier of: (i) the end of the authorized term of the Authority (currently December 31, 2049); or (ii) the date of completion of the Development, unless terminated earlier by mutual consent of the Parties, it being understood that unless terminated early by the Parties as provided in this section, it is the intent of the Parties for this Agreement to remain in effect for so long as the TIRZ is providing tax increment under the Interlocal Development Agreement (such term of this Agreement referred to herein as the "Term").

[Signature Page Follows]

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

**ASSOCIATION:**

East River Property Owners Association, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AUTHORITY:**

Fifth Ward Redevelopment Authority

By: \_\_\_\_\_  
Rev. Harvey Clemons, Jr.  
Chair, Board of Directors

**KBRN, LP:**

BY: KBRN GP, LLC, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_  
Name: Andrew F. Icken  
Title: Chief Development Officer, Office of the Mayor

**EXHIBIT A**

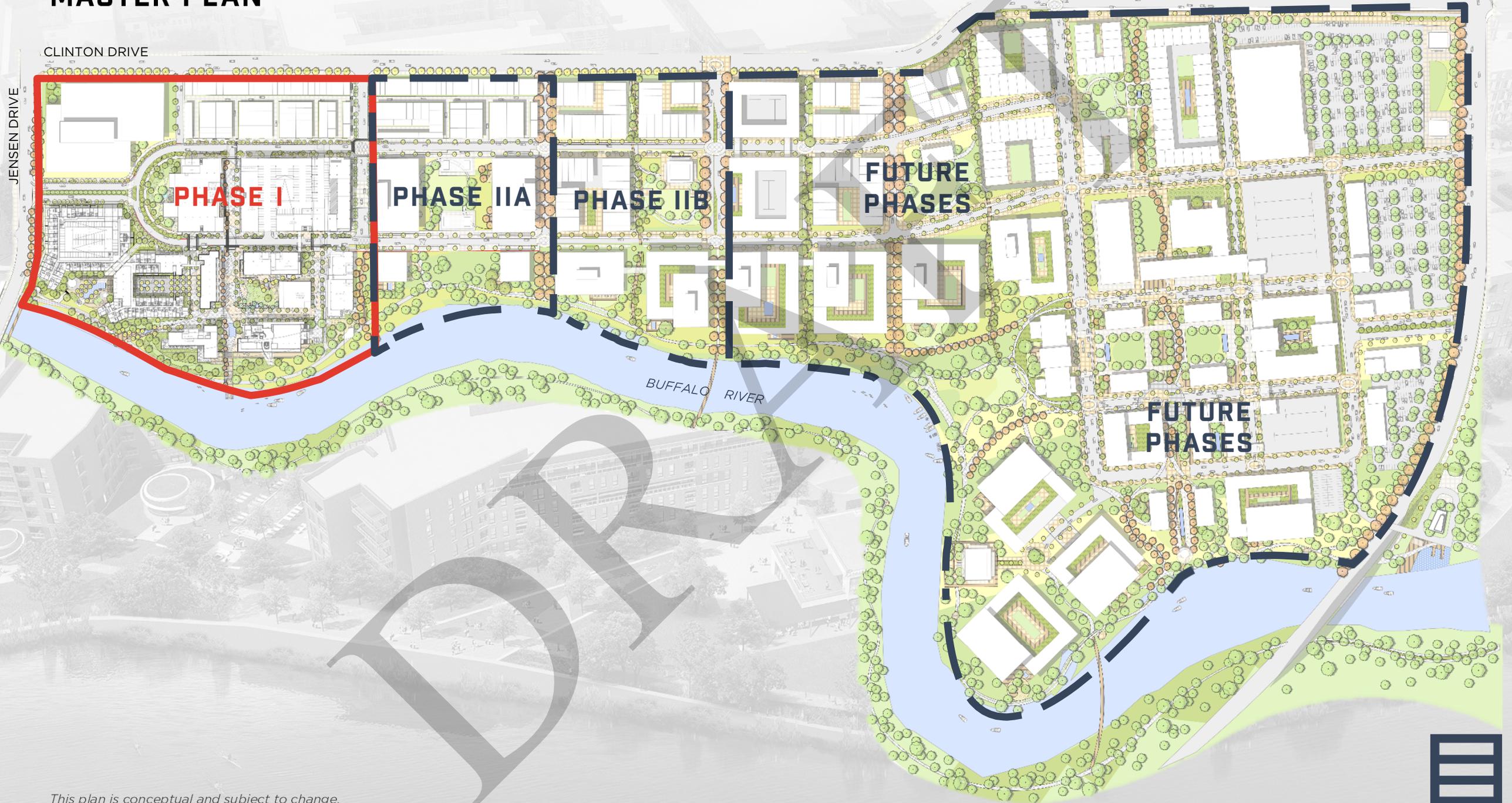
**DEVELOPMENT CONCEPTUAL MASTER PLAN**

**[See Attached]**

**DRAFT**

# Community Benefits Agreement - Exhibit A

## MASTER PLAN



*This plan is conceptual and subject to change.*



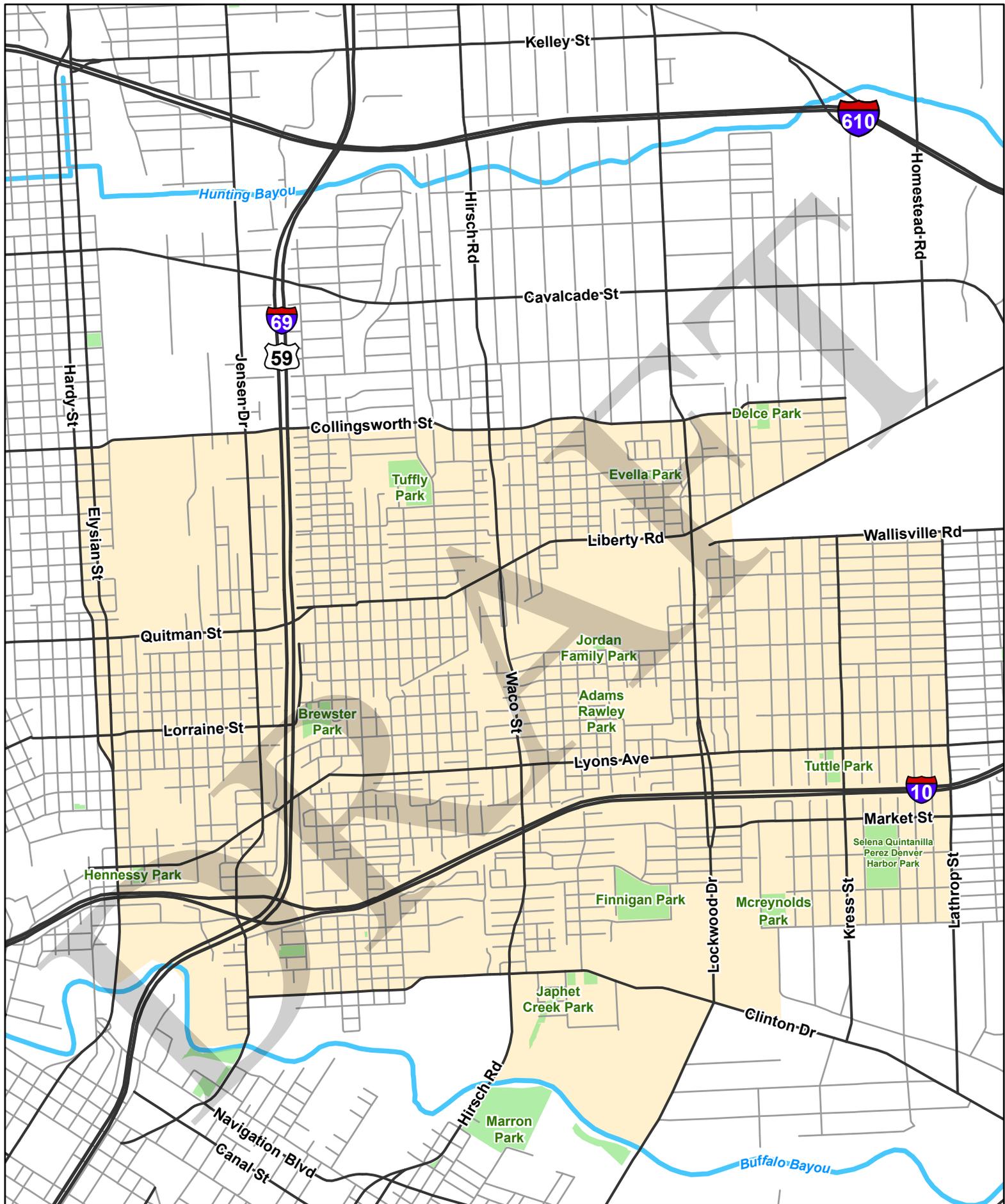
EAST RIVER

**EXHIBIT B**

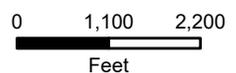
**MAP OF THE FIFTH WARD AREA**

**[See Attached]**

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## Community Benefits Agreement Fifth Ward Area Beneficiaries



## EXHIBIT C

### COMMUNITY BENEFITS

A. Job Opportunities for Fifth Ward Area Residents and Businesses. The purpose of this section is to facilitate the opportunities for career education/training and Targeted Job Applicant employment to help address issues of poverty and economic distress in the Fifth Ward Area and provide an opportunity for qualified local residents to be included in the economic stimulus the Development will bring to the Fifth Ward Area. This Section includes the establishment of (i) a mechanism whereby low income resident in the Fifth Ward Area can receive job training and education in precise knowledge and skills requested by Employers, and (ii) a non-exclusive system for referral of Targeted Job Applicants to Employers as potential jobs become available in the Development. For the purposes of this Section, the following terms have the following definitions:

*“Employer”* shall mean any company, corporation, venture, partnership or other entity with one or more employees that conducts operations at the Development, or provides any services within or for the Development. Employers may include, where appropriate and applicable, Developer Parties, lessees, sub-lessees, business owners, landowners, tenants and contractors at the Development.

*“Local Business”* shall mean a business that has its principal office located in the Fifth Ward Area, or is majority owned by an individual resident of the Fifth Ward Area, provided that if such principal office or resident is located in the Development, then a prior principal address or residence was located in the Fifth Ward Area outside of the Development.

*“Previously Incarcerated Individual”* shall mean any rehabilitated individual who has completed all sentencing requirements associated with the previous commission of crimes and who is meeting all applicable conditions of probation or parole, but excluding those individuals convicted of violent crimes, sexual offenses or crimes against minors.

*“Targeted Job Applicants”* Underemployed, Unemployed, and individuals from the Targeted Population. Any such Applicant must meet the requisite qualifications for the position being offered to or sought by the Applicant.

*“Targeted Population”* shall mean residents of the Fifth Ward Area who meet any one or more of the following qualifications: (a) recipients of public assistance, (b) Previously Incarcerated Individuals, (c) disabled, (d) veterans, (e) youths (age seventeen (17) and younger), (f) seniors (age sixty (60) and older), and (g)

individuals whose household income is at or below 80% AMI of the Houston MSA, adjusted for household size.

*“Underemployed”* shall mean an individual at least eighteen (18) years old who is currently employed at a job paying less than minimum wage and/or regularly scheduled to work less than thirty-two (32) hours per week and/or do not receive paid time off and healthcare benefits through their current employment.

*“Unemployed”* shall mean an individual at least eighteen (18) years old who is unemployed, not on temporary lay-off status, and is ready, able and willing to work.

1. *Career Education and Training Facilitation.* This program is intended to facilitate a job readiness/training program for low income resident in the Fifth Ward Area through providing free space at the Development for short-term training and/or orientations to organizations designated by the Community Advisory Council. As part of their biannual report to the Community Advisory Council, Developer Parties shall provide anticipated needs for any specific skill sets and notification of any other potential business and career opportunities within the Development or in connection with its implementation. The Community Advisory Council shall use its network to coordinate the pairings of education and training providers with potential applicants and trainees. The goal of this Community Benefit is to create a pool of new job-ready applicants in place when jobs in the Development become available. Financing for this Community Benefit may be made available from the Community Investment Funds (as defined herein) at the discretion of the Community Advisory Council.

2. *Local Hiring of Targeted Job Applicants.*

(i) For construction-related jobs, including service and/or supply jobs, engaged directly by the Developer Parties or their affiliates (i.e., hiring for such jobs is at the direction of or controlled by the Developer Parties) and related to the Development, each such employer shall, to the extent financially feasible using commercially reasonable efforts, employ at least fifteen percent (15%) of its employees from Targeted Job Applicants and/or Local Businesses. In the event any position described herein has not been filled after a period of thirty (30) days from posting of job opening the Developer Parties may be free to fill the position with non-Targeted Job Applicant or non-Local Businesses regardless if the fifteen percent (15%) threshold has been met. As turnover occurs, the Developer Parties shall make a continuous effort to reach and maintain the fifteen percent (15%) goal.

(ii) For construction-related jobs, including service and/or supply jobs, engaged indirectly by the Developer Parties or their affiliates (i.e., hiring for such jobs is not at the direction of or controlled by the Developer Parties) and related to the Development, each Developer Party shall require in its contracts with such parties, that such contractor shall, to the extent financially feasible, make good faith attempts to employ at least fifteen percent (15%) of their employees from Targeted Job Applicants and/or Local Businesses. Such contracts shall further provide that in the event any position described herein has not been filled after a period of thirty (30) days from posting of job opening, the service and/or supply contractor may be free to fill the position with non-Targeted Job Applicant or non-Local Businesses regardless if the fifteen percent (15%) threshold has been met. Such contracts shall further provide that as turnover occurs, such service and/or supply contractors shall make commercially reasonable continuous effort to reach and maintain the fifteen percent (15%) goal

3. *Outreach.* The Association will maintain a current website, updated no less than monthly, accessible to businesses and individuals in the Fifth Ward Area (the "Association Website") that provides:

(i) notice of concept store retail space at the Development available for rent at a discounted rate by Local Businesses as further described in Section 4(i) below;

(ii) notice of 'pop-up' retail opportunities sponsored by KBRN or the Association for retailers and other Local Businesses as further described in Section 4(ii) below;

(iii) notice of the Association's maintenance and service contracting opportunities in the Development;

(iv) a page for businesses and Employers in the Development to post service and/or supply contracts to be awarded, job openings, internships and other such employment opportunities; and

(v) a page for businesses in the Development to post sales or other advertising or marketing campaigns.

The Developer Parties will use commercially reasonable efforts to make all businesses and Employers in the Development aware of the ways of making business and employment opportunities available to the Targeted Population and Local Businesses in the Fifth Ward Area as described in this Section A.3.

4. *Retail Opportunities for Local Businesses.* The purpose of this section is to promote local business development from the area surrounding the

Development within the Fifth Ward Area with a goal to provide economic opportunities that are not currently readily accessible to local business owners in the Fifth Ward Area. The following programs and incentives for local businesses will be, to the greatest extent financially feasible using commercially reasonable efforts, provided by the Developer Parties:

(i) Retail - KBRN, to the extent financially feasible using commercially reasonable efforts, shall set aside at least three (3) retail spaces at the Development for Local Business retailers which shall be made available to such Local Business retailers at a discount off market rental rates being charged in the Development. When retail space becomes available, KBRN shall notify the Community Advisory Council of such availability and post such availability on the Association Website and use reasonable efforts to otherwise make such opportunities known to Local Business. KBRN shall offer such available space to a Local Business at a discounted rate of at least 10% lower than market rental rates being leased by KBRN in the Development, unless KBRN has a good faith reason for selecting another tenant or if charging this discounted rate is financially infeasible. Any such Local Business shall be required to meet any standard underwriting requirements as may be imposed by Developer Parties' and their lender(s). In the event KBRN is unable to identify and secure by means of an executed "Letter of Intent" a qualified Local Business within sixty (60) days of the posting of the space availability, it shall be free to offer such space to non-Local Businesses. As turn-over occurs, the Developer Parties shall make a commercially reasonable continuous effort to reach and maintain the three (3) retail space goal.

(ii) 'Pop-Up' Retail - In the event 'pop-up' retail opportunities are offered by a Developer Party, such Developer Party will post such opportunities on the Association Website and use reasonable efforts to otherwise make such opportunities known to Local Business. The rental rates to such Local Businesses shall be rented at a discounted rate that is at least 10% lower than market rental rates being leased by KBRN in the Development to non-Local Businesses and vendors, unless such discounted rate is financially infeasible. Any such Local Business shall be required to meet any standard underwriting requirements as may be imposed by Developer Parties' and their lender(s). In the event KBRN is unable to identify and secure a qualified Local Business within thirty (30) days of the posting of the space availability, it shall be free to offer such space to non-Local Businesses.

B. Supportive Retail and Grocery.

1. *Retail and Services.* KBRN shall, to the extent financially feasible using commercially reasonable efforts, develop the Development such that at least 20% of retail and service establishments are affordable to persons from the Fifth Ward Area such that the pricing of such products or services is diverse and the same or similar to those offered outside of the Development but within the Fifth Ward Service Area, if KBRN is able to do so in a manner that is financially feasible.

2. *Grocery Store.* KBRN will use diligent and, to the extent financially feasible using commercially reasonable efforts, to attract within the Development by December 31, 2030, a full-service grocery store which shall provide a range of healthy and affordable food and a full-service pharmacy for residents of the Fifth Ward Area, if KBRN is able to do so in a manner that in its sole and reasonable discretion is financially feasible.

3. *Bank.* In order to support adequate access to banking services, home loans and small business loans for residents and businesses of the Fifth Ward Area, KBRN shall use commercially reasonable efforts to secure at least one lease to an FDIC-insured banking institution (which may be a Community Development Financial Institution), if KBRN is able to do so in a manner that in its sole and reasonable discretion is financially feasible.

4. *Child Care Program and Facility.* The Developer Parties agree to consider plans for an on-site location for a child-care center licensed by the Texas Department of Family and Protective Services and located in the Development and, if such plan is deemed financially desirable, use commercially reasonable effort to enter into a lease agreement with a childcare provider for use of that location as a child-care center. This child-care center shall offer affordable, accessible and quality childcare for both on-site employees and the residents of the Fifth Ward Area. The Developer Parties shall use commercially reasonable efforts to ensure the childcare provider will reserve a minimum of ten percent (10%) of the spaces for families earning at or below 80% AMI and for a discounted price, if KBRN is able to do so in a manner that in its sole and reasonable discretion is financially feasible.

5. *Incentivized Businesses.* KBRN shall use commercially reasonable efforts, to the extent financially feasible, to secure the types of establishments as recommended by the Community Advisory Council to lease space at the Development, such as a barber shop, athletic shoe store, or other concepts as may be reasonably suggested.

C. Participation of Disadvantaged Business Enterprises. The Association shall 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 maintenance of the common areas owned and maintained by the Association, the Association shall use commercially reasonable efforts to award at least thirty percent (30%) of the service and/or supply contracts to entities that are certified by the City as MWBEs.

D. Affordable Housing. Lack of affordable housing is one of the largest challenges faced by low-income communities when economic development expands and rapid growth of previously undesirable areas begins to take shape. The Developer Parties are committed to working with the City, the Authority, Community Advisory Council and other community stakeholders to be responsible about development and the potential negative impacts the Development may have on the surrounding community, being careful to minimize and offset such impacts to the extent financially feasible, in part through providing affordable/workforce housing opportunities within the Development and through the Development's creation of increment for use by the Authority and/or the City for their own affordable/workforce housing opportunities.

1. KBRN agrees that it will provide for the development of at least one (1) multi-family rental housing community within the Development (all such housing being referred to as "MFR Housing"). The first MFR Housing developed by KBRN or its affiliates shall include an affordable housing set-aside component of ten percent (10%) of all units for a period of at least ten (10) years from the date of issuance of a Certificate of Occupancy (the "Affordable Units"). Five percent (5%) of the Affordable Units shall be rented to tenants with an income level not exceeding 80% of the area median income ("AMI"), adjusted for family size, and the remaining five percent (5%) shall be rented to tenants with an income level not exceeding 120% of the AMI, adjusted for family size. Rents and income restrictions for the Affordable Units shall be determined based on the requirements of the funding sources, as applicable, but in no event shall such rents exceed 30% of the applicable AMI adjusted for family size.

2. The affordability requirements set forth in Section D.1. shall be memorialized in restrictive covenants to be recorded in the public records for each multi-family rental housing development with Affordable Units committed.

3. Further, KBRN agrees that if KBRN or an affiliate shall endeavor to develop additional MFR Housing within the Development, KBRN will use commercially reasonable efforts, to the extent financially feasible, to include an affordable housing component as described in Section D.1. above. KBRN further agrees that if any tract(s) of land within the Development are conveyed to a non-affiliate party for the purpose of multi-family rental housing development, such non-affiliate party will be made aware in writing of the affordable housing component described in Section D.1. above and asked to incorporate the same such component, to the extent financially feasible.

4. The Parties agree that KBRN or its affiliates shall have no obligation to provide more than 200 units of affordable units within the Development and shall have the right to substitute units as required between its MFR Housing within the Development as is commercially reasonable and financially feasible.

5. Affordable Units shall be built to the same standards and on the same general schedule as the market-rate units. Except as otherwise specified herein, the phasing, timing, development and construction of the Affordable Units shall be determined by KBRN (or its affiliate, if applicable) in its sole but reasonable discretion.

6. The owner of any rental housing in the Development shall not discriminate on the basis of race, color, national origin, religion, sex, familial status, or disability in the lease, use or occupancy of such rental housing or in connection with the employment or application for employment of persons for the operation and management of the rental housing and shall not deny admission to any person exclusively on the basis of such person receiving rental assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

E. Connectivity. Public access to the Development shall be connected to and incorporated with the already established public access infrastructure in the immediate vicinity. Subject to closures for repairs, maintenance, as required by applicable laws, or any other closures necessitated by the Developer Parties (as determined in their sole and reasonable discretion) (collectively, the "Permitted Closures"), the local community surrounding the Development shall have unobstructed access to the Development and Buffalo Bayou such that the Development, to the extent financially feasible using commercially reasonable efforts, is designed in a manner that facilitates mobility, interaction, inclusivity and connectedness with the local community in which it is being built.

1. *Continuity of Access*. Subject to the Permitted Closures, the Development shall be designed to ensure an uninterrupted street grid, and also provide for reconstructing missing, defective and inadequate sidewalks; widening existing sidewalks (including ramps) to improve the pedestrian experience and ensure ADA compliance; striping, widening, and otherwise improving bicycle facilities at entry points of the Development and, at the expense of the Authority, extending immediately adjacent to the Development, out to approximately 3 blocks. At a minimum, the following streets shall retain and maintain continuity through the Development from their entry points outside the Development: Clinton Drive, Jensen Street, Gregg Street and Waco/Hirsch Street.

2. *Building & Grounds Aesthetics/Signage.* To support and promote connectivity, walkability, revitalization and beautification that maintain the culture of the Fifth Ward Area, the Developer Parties shall use commercially reasonable efforts to (i) display local artwork, designers, and appropriate signage; (ii) ensure landscaping, streetscaping, street lighting, bus stop shelters, gateway improvements and other community identifiers are interweaved within the Development; and (iii) use signage throughout the Development that reflects the Development's acknowledgment of its residency as a proud member of the historic Fifth Ward.

3. *Incorporated Infrastructure.* The Developer Parties shall use commercially reasonable efforts, to the extent financially feasible, to cause the design and construction of trail systems, shade structures, athletic facilities, wayfinding systems, and other improvements that increase the quality and promote the accessibility of recreational facilities and natural assets of the Fifth Ward Area.

F. Community Amenities. The Developer Parties shall use commercially reasonable efforts to make public facilities within the Development accessible to residents and businesses of the Fifth Ward Area. Possible projects may include parks, a library, a community health and wellness center, a recreational complex, and other centers of public activity. This goal serves to create key activity centers with an enhanced pedestrian environment and an emphasis on parking, lighting, street trees, landscaping, wide sidewalks, public art and adequate pedestrian amenities. Additionally, no less than four (4) times per year, the Association shall, with the recommendation of the Community Advisory Council, use commercially reasonable efforts, to the extent financially feasible, dedicate appropriate space and facilities for designated Fifth Ward Area community service and nonprofit organizations to hold events and programming free of charge. Any expenses for carrying out such events that extend beyond those for the event space and facilities (which shall be provided free of charge) may be funded by the Community Investment Fund (as defined herein) at the commercially reasonable discretion of the Community Advisory Council.

G. Resident Discounts. The Developer Parties shall use commercially reasonable efforts, to the extent financially feasible, to implement, operate and maintain discounts and incentives at participating retail and professional services establishments through a "Shop Local East River in the Historic Fifth Ward" program made available to residents of the Fifth Ward Area. Such "Shop Local" program may provide opportunities to incentivize shopping within the Development by offering special discounts or other promotions available to participants who opt-in.

H. Community Investment.

1. *Community Investment Fund.* KBRN will make a \$1,000,000.00 contribution for community programming and facilities as set forth in this provision (the "Community Investment Fund"). Funding of the Community Investment Fund contribution shall be capitalized by KBRN at \$200,000.00 per year for five (5) years.

a. The Community Investment Fund shall be maintained in a separate bank account established at an FDIC-insured bank under the joint authority of KBRN and the Authority, and shall be made available for use by nonprofit organizations located in or serving the Fifth Ward Area as determined by the Community Advisory Council to support initiatives and other programming activities within the Development which may, but are not required to, include career education and training, art and cultural or other programming, or facilities as desired, such as acquisition and rehabilitation of historic structures and landmarks for the purposes of preservation and restoration, infrastructure improvements, additions of and enhancements to fire, police, library, community health and wellness, technology and cultural facilities, nonprofit organization programming, and any other uses as may be determined by the Community Advisory Council.

b. The first annual installment of the Community Investment Fund shall be made within ninety (90) days following the completion of construction of primary municipal infrastructure (water, sewer, drainage and paving) in Section One of the Development, but in any event no later than December 31, 2021, and annually thereafter on the anniversary date of such initial payment. The funds shall be designated to nonprofit organizations located in or serving the Fifth Ward Area as determined by the Community Advisory Council, to be selected based on the changing needs of the Fifth Ward Area.

c. Within one hundred eighty (180) days of the execution of this Agreement, KBRN together with the Community Advisory Council will establish a policy for distributing grant funds from the Community Investment Fund, which may include a list of criteria nonprofit organizations must meet to be eligible to receive benefit of such funds. KBRN and the Community Advisory Council shall maintain a list of eligible nonprofit organizations, which may be amended at any time (but shall be updated no less than annually), which can be beneficiaries of the Community Investment Fund.

2. *Long-Term Community Investment & Recurring Financial Support.* The Association will make an annual payment based on the square footage of assessable, platted, net reserves included in recorded subdivision plats in the Development multiplied times \$0.01 per net square foot (the "Long-Term Recurring Investment"). Payments of the Long-Term Recurring Investment shall be deposited and maintained in the same bank account as the Community Investment Fund and shall be distributed as determined by the Community Advisory Council in the same manner as the Community Investment Fund described above. The initial Long-Term Recurring Investment payment, representing approximately 1/3 of the total estimated amount to be paid under this section, shall be an up-front lump-sum of \$375,000, to be made not later than December 31, 2021. The Developer Parties are thereafter entitled to retain future annual amounts due until the amount of \$375,000 has been reached, after which time the subsequent annual payments shall be paid into the Community Investment Fund. For purposes of the calculation the net square footage shall not include parks, bayou trail reserves, public or private streets and land area occupied by any parking area or garage. The funds provided under this section are anticipated to grow over time as the Development adds new phases.

3. *Audit of Community Investment Fund.* The Developer Parties shall have the right to conduct an annual audit of the Community Investment Fund at its sole cost and expense. The audit shall be provided to each of the Parties hereto, each member of the Community Advisory Council, the City and posted on the Associations' website.

**EXHIBIT D**  
**ANNUAL REPORT INFORMATION**

The following is an outline of the information to be provided by the Developer Parties in the Annual Report described in section Article III D of this Agreement. Such report shall include, but not necessarily be limited to:

1. A summary of the improvements made in the Development in the previous year.
2. With respect to Job Opportunities in the Development:
  - a. Career Education and Training Facilitation:
    - i. Describe instances free space provided at the Development for short-term training and/or orientations to organizations designated by the Community Advisory Council.
    - ii. List of dates and amounts of disbursements of the Community Investment Fund for these purposes.
  - b. Local Hiring of Targeted Job Applicants:
    - i. Construction and Service/Supply Jobs controlled by Developer Parties or their affiliates:
      1. List Total Number of jobs created.
      2. List Number of jobs filled by Targeted Applicants.
      3. If 15% target has not been met, provide an explanation describing efforts taken and challenges encountered, and reasonable evidence of endeavors to resolve such challenges.
    - ii. Construction and Service/Supply Job Contracted to Entities Not Controlled by Developer Parties or their affiliates:
      1. List Total Number of Contracts.
      2. Attach supporting documentation showing contracts with such entities that include the requisite provisions.
      3. If any contracts between a Developer Party and unrelated entity that will make service/supply job hires does not include the requisite provision, provide explanation, challenges encountered and reasonable evidence of endeavors to resolve such challenges.
  - c. Outreach:
    - i. List postings made under each of the following categories and dates of postings: (1) discounted retail space offerings, (2) "pop up" retail opportunities, (3) Association's maintenance and service contracting opportunities, and (4) other known business' and Employer's service/supply contracts being awarded/job openings/internships, etc.
    - ii. Attach reasonable supporting documentation or description of efforts taken to ensure businesses and Employers in the Development are aware of the opportunities to make postings, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
  - d. Retail Opportunities for Local Businesses:

- i. List instances and dates new concept retail space has been made available to Local Businesses at a discount of at least 10% lower than market rents and list at least three (3) retail spaces being leased at this discounted rate, if applicable.
  - ii. If target of three (3) discounted retail spaces has not been met, provide an explanation describing efforts taken, any challenges encountered, and reasonable evidence of endeavors to resolve such challenges.
  - iii. List instances and dates “pop-up” retail opportunities have been made available to Local Businesses at a discount of at least 10% lower than market rents and list at least one (1) contracted with through these opportunities.
  - iv. If target of one (1) discounted “pop-up” space has not been met, provide an explanation describing efforts taken, any challenges encountered, and reasonable evidence of endeavors to resolve such challenges.
  - v. List the local businesses that have relocated to the Development or opened a location in the Development.
3. With respect to Supportive Retail and Grocery:
- a. Retail Services:
    - i. List all retail and service establishments in the Development and the number of which are deemed part of the twenty percent (20%) diverse and affordable goal.
    - ii. If twenty percent (20%) goal has not been met, provide an explanation describing efforts taken, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
  - b. Grocery Store:
    - i. Is there a full-service grocery store located within the Development?
    - ii. If not, provide an explanation describing efforts taken, any challenges encountered, and reasonable evidence of endeavors to resolve such challenges.
  - c. Bank:
    - i. Is there an FDIC-insured banking institution located within the Development?
    - ii. If not, provide an explanation describing efforts taken, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
  - d. Child Care Program and Facility:
    - i. Is there an on-site location for a licensed child-care center in the Development?
    - ii. If not, provide an explanation describing efforts taken, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
    - iii. If so, provide confirmation at least ten percent (10%) of the slots are reserved for families earning at or below 80% AMI and being offered at a discount. If this target has not been met, provide an explanation describing efforts taken, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.

- e. Incentivized Businesses:
  - i. List types of businesses recommended by the Community Advisory Council to be leased to in the Development, describe efforts taken to secure such, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
4. Participation of Disadvantaged Business Enterprises:
  - a. List total number of service/supply contracts for maintenance of common areas maintained by the Association.
  - b. Provide confirmation that thirty percent (30%) of such contracts are with MWBE's certified by the City. If this target has not been met, provide an explanation describing efforts taken, any challenges encountered and reasonable evidence of endeavors to resolve such challenges.
5. Affordable Housing
  - a. Describe any tracts of land within the Development that have been or will be developed for purposes of multifamily rental housing.
  - b. Provide confirmation that the affordability requirements set forth in the Agreement have been or will be met.
6. Connectivity:
  - a. Provide proposed development plans reflecting continuity of access as described in the Agreement and photos of construction work once completed.
  - b. Provide a list of projects in the Development incorporating local artwork, designers, appropriate signage, and interweaved community identifiers described in the Agreement and photographs showing examples.
  - c. Describe proposed trail systems, shade structures, athletic facilities, wayfinding systems and other recreational facilities and natural assets and photographs showing examples.
7. Community Amenities:
  - a. List all public facilities in the Development accessible to Local Businesses and residents of the Fifth Ward Area.
  - b. List dates and descriptions of at least four (4) times in the past year space and/or facilities have been designated to Fifth Ward Area community service and nonprofit organizations free of charge to hold events/programming.
  - c. If this target has not been met, provide an explanation describing efforts taken, any challenges encountered, and reasonable evidence of endeavors to resolve such challenges.
8. Resident Discounts: describe the "Shop Local" program and any data available with respect to participation and success.
9. Community Investment:
  - a. Provide confirmation of receipt of the funding commitments by the Developer Parties to the Community Investment Fund.
  - b. Provide a summary of the programming activities that have been underwritten (either entirely or in part) by the Community Investment Fund.
  - c. Provide the year-end account balance of the Community Investment Fund.

# DRAFT FOR BOARD APPROVAL

## INTERLOCAL DEVELOPMENT AGREEMENT BETWEEN HARRIS COUNTY IMPROVEMENT DISTRICT NO. 23 AND FIFTH WARD REDEVELOPMENT AUTHORITY

THIS DEVELOPMENT AGREEMENT ("Agreement"), dated effective as of \_\_\_\_\_, 2020, (the "Effective Date"), is made in Harris County, Texas, by and between HARRIS COUNTY IMPROVEMENT DISTRICT NO. 23, a municipal management district and political subdivision of the State of Texas (the "District"), and FIFTH WARD REDEVELOPMENT AUTHORITY, a not for profit local government corporation organized and existing under the laws of the State of Texas (the "Authority"), (individually referred to a "Party" and collectively as "Parties").

### RECITALS

WHEREAS, by Ordinance No. 1999-766, adopted on July 21, 1999, the City of Houston, Texas (the "City"), created Reinvestment Zone Number Eighteen, City of Houston, Texas (the "Zone") pursuant to Chapter 311, Texas Tax Code (the "Act") pursuant to a preliminary Reinvestment Zone Financing Plan for the Zone; and

WHEREAS, the Board of Directors of the Zone adopted a Project Plan and Reinvestment Zone Financing Plan for the Zone, and by Ordinance No. 1999-795, adopted on July 28, 1999, the City approved the Project Plan and Financing Plan, which was amended by the Amended Project Plan and Reinvestment Zone Plan for the Zone adopted and approved by the City by Ordinance No. 2008-766, adopted on September 3, 2008; the Second Amended Project Plan and Reinvestment Zone Plan for the Zone adopted and approved by the City by Ordinance No. 2015-1207, adopted on December 2, 2015; and the Third Amended Project Plan and Reinvestment Zone Plan for the Zone adopted and approved by the City by Ordinance No. 2019-992, adopted on December 4, 2019, (collectively, the "Project and Financing Plan"); and

WHEREAS, by Resolution No. 2001-23, adopted on May 9, 2001, the City authorized the creation of the Authority to aid, assist, and act on behalf of the City and the Zone in the implementation of the Project Plan and Financing Plan; and

WHEREAS, the City, the Zone, and the Authority each approved an agreement (the "Tri-Party Agreement"), approved by Ordinance No. 2007-849 adopted on July 18, 2007, whereby the Authority agrees to provide for the management and administration of the Zone and the implementation of the Project and Financing Plan; and

WHEREAS, the Tri-Party Agreement authorizes the Authority to enter into a development agreement with a third-party relating to the development, construction, remodeling or rehabilitation of a project or projects included in the Project and Financing Plan, subject to approval by the City's Chief Development Officer; and

WHEREAS, the Authority has determined that it is in its best interests to enter into this Agreement with the District in connection with the financing, acquisition, design and construction of certain public improvements more particularly described on the attached Exhibit A (the "Public Improvement") located within the boundaries of the District, which improvements are included in the Project and Financing Plan; and

WHEREAS, the Authority has determined that the Public Improvements Costs are eligible under the Act; and

WHEREAS, the District has entered into that certain Development Financing Agreement dated as of March 31, 2017 (the "Development Financing Agreement"), with KBRN, LP, a Texas limited partnership ("KBRN"), whereby the District has agreed to reimburse KBRN for funds advanced to finance the Public Improvements;

WHEREAS, concurrently with the execution of this Agreement, the Authority has entered into that certain Community Benefits Agreement (the "Community Benefits Agreement") with the City, KBRN and East River Property Owners Association, an nonprofit corporation (the "Association"), whereby KBRN and the Association agree to provide for a coordinated effort with the City and the Authority to maximize certain community benefits (the "Community Benefits") of the Development to the residents of the Fifth Ward area; and

WHEREAS, the District and the Authority now wish to enter into this Agreement for the purpose of, among other things, reimbursing the District for funds paid by or on behalf of the District for the purpose of financing, acquiring, designing, developing and constructing the Public Improvements;

NOW THEREFORE, and in consideration of the mutual promises, covenants, benefits, and obligations herein described, the District and the Authority hereby agree to the terms and conditions of this Agreement.

## **ARTICLE I GENERAL TERMS**

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

B. Definitions and Terms. Terms not defined herein have the meanings assigned to them under the Tri-Party Agreement. The terms "Act," "Agreement," "Authority," "City," "Effective Date," "Public Improvements," and "Tri-Party Agreement" have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

1. "Annual Authority Payment" means a sum of money payable by the Authority annually to the District equal to 85% of the Project Tax Increment, as limited from time to time pursuant the Maximum Reimbursement Amount.

2. "Annual Project Captured Appraised Value" shall mean the total appraised value of all real property taxable by the City and located in the Project Area as of January 1 of any year less the total appraised value of all real property taxable by the City and located in the Project Area as of January 1, 2020.

3. "Bonds" means the bonds, notes, loans or any other evidences of indebtedness issued or incurred by the District from time to time, secured by the Annual Authority Payment, for the purpose of paying or reimbursing a developer for the Public Improvements Cost, including any bonds, notes loans or other evidences of indebtedness issued or incurred to refund such bonds.

4. "Cumulative Project Appraised Value" the total investment in the Project Area in both public and private improvements, which amount shall be deemed to be from time to time the cumulative appraised value of the Project Area, less the total appraised value of all real property taxable by the City and located in the Project Area as of January 1, 2020, each as certified by the Harris County Appraisal District.

5. "Financing Costs" means fees and expenses relating to 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.

6. "Maximum Reimbursement Amount" means the lesser of i) Public Improvement Costs or ii) initially \$25,000,000, which amount will increase by an additional \$25,000,000 for each \$500,000,000 increase in the Cumulative Project Appraised Value, up to a maximum aggregate amount of 85% of each annual Project Tax Increment through the end of the Term. For purposes of clarity, the Authority shall not be obligated to pay any portion of the Annual Authority Payment in excess of each successive \$25,000,000 "benchmark ceiling" until the corresponding \$500,000,000 increase in Cumulative Project Appraised Value has been reached; provided, however, upon achieving the corresponding \$500,000,000 increase in Cumulative Project Appraised Value, the Authority shall pay to the District any previously withheld portion of the Annual Authority Payment.

7. "Project Area" means the boundaries of the District.

8. "Project and Financing Plan" means the Project Plan and Financing Plan adopted by the City, the Zone and the Authority, as may be amended from time to time, subject to the limitations of this Agreement.

9. "Project Tax Increment" means the amount of ad valorem property taxes collected each year by the City (and no other taxing authority) on the Annual Project Captured Appraised Value and deposited by the City into the Authority's Tax Increment Fund, other than a proportionate share of the funds required to be used to pay City Administrative Fees, City Affordable Housing Set-Aside payments, City Municipal Services Fees, and any other administrative fees that are applicable to the Project Area.

10. "Project Revenue Fund" the fund established by the District into which the Authority Annual Payments are deposited together with any interest collected on those deposits.

11. "Public Improvements Costs" means 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.

12. "Term" means the period of time commencing with the Effective Date and terminating upon the earlier of the date on which i) the Maximum Reimbursement Amount has been paid to the District, or ii) December 31, 2049, whichever is earlier.

## ARTICLE II REPRESENTATIONS

A. Representations of the Authority. The Authority hereby represents to the District that as of the Effective Date:

1. The Authority is a duly created and existing local government corporation created pursuant to Chapter 431 of the Texas Transportation Code and

is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

2. The Authority 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 Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound or affected.

3. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Authority, 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.

4. The execution, delivery and performance of this Agreement by the Authority 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 Authority that as of the date hereof:

1. 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.

2. 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.

3. 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.

4. 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.

### **ARTICLE III DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS**

A. Design. All facilities to be constructed as a part of the Public Improvements will be designed by a licensed and registered professional engineer or landscape architect retained by the District (the "Engineer"). The design of the Public Improvements will be subject to the review and approval of all governmental entities with jurisdiction, including, without limitation, Harris County and the City of Houston. Subject to the terms of this Agreement, the phasing, timing, development and construction of the Public Improvements shall be determined by the District in its sole discretion. Upon request, the District will provide to the Authority copies of approved plans Public Improvements.

B. Site Acquisition. The Public Improvements must be constructed in public rights-of-way or property otherwise dedicated or conveyed to the City or the District.

C. Construction.

1. 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, the District must advertise for or solicit bids for construction as described in the final plans and specifications. The Authority's representatives shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts. Failure of the Authority'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.

2. Construction. The construction contracts for the Public Improvements will be awarded in the name of the District. The District is responsible for the inspection, supervision and management of the Public Improvements construction. The Public Improvements must be constructed, and all equipment, materials and supplies required in connection therewith acquired, in the name of the District. The District is responsible for obtaining all necessary permits and approvals; provided that the Authority agrees to assist the District in

obtaining the permits and approvals necessary to design, construct and install the Public Improvements as needed.

3. Engineer. The Engineer will serve as project engineer for the Public Improvements and is required to provide the appropriate level of inspection and observation during the construction of the Public Improvements and to recommend final acceptance of the Public Improvements when appropriate.

D. Utilization of Local Contractors and Suppliers. The District agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction and maintenance 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 Zone for at least one year.

E. 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 contracts or supply agreements to entities that are certified by the City as MWBEs.

#### **ARTICLE IV FUNDING AND FINANCING PUBLIC IMPROVEMENTS**

A. Agreement to Fund. In consideration of the Authority's reimbursement obligation contained herein, the District agrees to fully fund all payments required for contracts entered into in connection with the Public Improvements and manage the construction of the Public Improvements.

B. Project Revenue Fund. The District shall deposit the Annual Authority Payment into the Project Revenue Fund and use the monies in the Project Revenue Fund only for payment of Public Improvement Costs. Any monies received from investing and reinvesting the monies paid by the Authority 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.

C. 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 Project Revenue Fund. 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 Authority 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 Authority 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.

D. Annual Audit. After the end of each of the District's fiscal years during the Term of this Agreement (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 Project Revenue Fund, the amount and purposes of the expenditures from the Project Revenue 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 Authority within one hundred thirty-five (135) days after the end of each of the District's fiscal years during the Term. To the extent the audit conducted by the District does not include an analysis of all Project Revenue Fund expenditures for compliance with both the approved Project and Financing Plan and this Agreement, then the Authority shall have the right to conduct such an audit at its own expense.

E. 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.

A. Bonds; Conditions of Issuance. The District has the authority to issue, sell and deliver Bonds from time to time, secured by the Annual Authority Payment and the Project Revenue Fund, as deemed necessary and appropriate by the Board of Directors of the District, 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 District may pledge and assign all or part of the Annual Authority Payment and the Project Revenue Fund to the owners and holders of the Bonds and to other lenders of money to the District. Notwithstanding anything in this Agreement, except for the first series of Bonds issued by the District, no additional Bonds may be issued, the proceeds of which are to reimburse the Developer or its affiliates, if the District has received notice that a CBA Event of Default has occurred and that CBA Event of Default has not been cured or waived at least thirty (30) days prior to the date of the sale of such Bonds, all as further defined and described in the Community Benefits Agreement.

**ARTICLE V**  
**DUTIES AND RESPONSIBILITY OF THE AUTHORITY**

A. Annual Payment. The Authority shall pay the Annual Authority Payment to the District beginning in calendar year 2021, and continuing for each year of this Agreement during the Term. The Annual Authority Payment shall be due and payable to the District within 30 calendar days of the Authority's receipt of the Project Tax Increment payment from the City each year. Project Tax Increment revenues not received by the Authority in any particular calendar year after payment to the District will be held by the Authority and included in the following year's Annual Authority Payment. The Authority is unconditionally obligated to pay the Annual Authority Payment as set forth herein. Such payments are not subject to any reduction, whether offset or otherwise. The Authority shall not be obligated to make any payment to the District in an amount in excess of the Maximum Reimbursement Amount (such maximum being as to each \$25,000,000 benchmark limitation as well as the aggregate amount).

B. Obligations of Authority to be Absolute. The obligation of the Authority to make the payments set forth in this Agreement shall be absolute and unconditional during the term of this Agreement, and, except as provided herein, the Authority 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. 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 Authority may institute such action against the District as the Authority may deem necessary to compel performance so long as this action does not abrogate the obligations of the Authority to make the payments set forth in this Agreement to enable the District to pay the Bonds or to meet the obligations of its Financing Agreements.

C. Ineligible Expenses. The Authority is not obligated to make any payments to the District determined to be an ineligible Project Cost (as defined by the Tri-Party Agreement and the Act), and the District shall repay the Authority for any payment made by the Authority to the District that is determined to be an ineligible Project Cost. The Authority agrees not to cause any future amendment to the Project and Finance Plan that would disallow the Public Improvement Costs to be an ineligible Project Cost under the Tri-Party Agreement.

**ARTICLE VI  
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:

Fifth Ward Redevelopment Authority  
4300 Lyons Avenue, Suite 300  
Houston, Texas 77020  
Attention: Executive Director  
713.674.0175

With a copy to:

Ms. Andrea Hope J. Steel  
9 Greenway Plaza, Suite 1000  
Houston, TX 77046  
713.653.7334  
asteel@coatsrose.com

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:

Harris County Improvement District No. 23  
c/o Ms. Jessica B. Holoubek  
Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
713.860.6491  
jholoubek@abhr.com

**ARTICLE VII  
DEFAULT AND REMEDY**

A. Authority Default. The Authority agrees that its failure to pay the District the Annual Authority Payment 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 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 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 VIII GENERAL PROVISIONS**

B. 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.

C. 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 Authority and the District. 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.

D. Invalidity. In the event that any of the provisions contained in this Agreement is held unenforceable in any respect, such unenforceability will 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.

E. Successors and Assigns; Consent to Assignment. No Party may assign its rights or obligations hereunder without the consent of the other Parties; provided, however, such consent shall not be unreasonably conditioned or withheld.

F. 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.

G. 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 Authority of Texas.

H. 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.

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.

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

DRAFT

**DISTRICT:**

Harris County Improvement  
District No. 23

**AUTHORITY:**

Fifth Ward Redevelopment Authority

By: \_\_\_\_\_  
Adam Williams  
President, Board of Directors

By: \_\_\_\_\_  
Rev. Harvey Clemons, Jr.  
Chair, Board of Directors

**APPROVED:**

\_\_\_\_\_  
Andrew Icken, Chief Development Officer  
City of Houston, Texas

DRAFT

**EXHIBIT A  
DESCRIPTION OF PUBLIC IMPROVEMENTS**

**Design, permitting, construction and financing of certain public infrastructure and improvements within the District generally, including, but not limited to:**

<b>1</b>	<b>Water distribution system infrastructure, including: replacement of existing, antiquated public water lines, connections to existing City trunk water mains, lines to serve properties in the District and all related appurtenances.</b>
<b>2</b>	<b>Sanitary sewer system infrastructure, including: an extensive collection system within the District, replacement of existing, antiquated sewers, lift station(s), connections to sanitary sewer main in Clinton Drive, and all related appurtenances.</b>
<b>3</b>	<b>Gravity storm sewers throughout the District providing storm water runoff drainage and control, "off-site" storm water sheet flow bypass sewer, outfalls to Buffalo River, and all related appurtenances.</b>
<b>4</b>	<b>Other incidental utility construction costs, including: site preparation, storm water pollution control measures, disposal of any excess utility excavation materials, trench safety measures, etc.</b>
<b>5</b>	<b>Two and four lane reinforced concrete curb &amp; gutter public streets including travel lanes, parking spaces, dedicated bicycle lanes, traffic control improvements and related appurtenances.</b>
<b>6</b>	<b>Streetscape improvements in the "pedestrian realm", including: landscaping, street lighting, wayfinding, and related appurtenances.</b>
<b>7</b>	<b>Improvements to existing, surrounding major thoroughfares, including: pavement widening, sidewalks, bus stop structures, traffic signalization and other traffic control measures.</b>
<b>8</b>	<b>Parks, trails and open space improvements, including: landscaping, hike &amp; bike trails, public park furniture, lighting, wayfinding, etc.</b>
<b>9</b>	<b>Other typical municipal infrastructure related costs</b>
<b>10</b>	<b>District financing and other associated costs related to delivery of infrastructure.</b>
	<b>NOTES:</b>
	<b>a. Infrastructure improvements are phased as each Section of the project is developed.</b>
	<b>b. Water system includes replacement of current, old in service lines.</b>
	<b>c. Sanitary sewer system includes replacement of current, old in service lines.</b>
	<b>d. Storm sewer system includes replacement of current, old in service lines.</b>