

City of Houston, Texas Ordinance No. 2003-911

**AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT AMONG THE CITY OF HOUSTON, TEXAS, HOUSTON INDEPENDENT SCHOOL DISTRICT, AND THE OLD SIXTH WARD REDEVELOPMENT AUTHORITY FOR THE CITY TO ACQUIRE THE DOW SCHOOL PROPERTY, LOTS 1 THROUGH 12, BLOCK 428, NORTH SIDE BUFFALO BAYOU, W.R. BAKER ADDITION, AS PER MAP OR PLAT OF SAID ADDITION APPEARING IN VOLUME Y AT PAGE 351 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, IN THE JOHN AUSTIN SURVEY, A-1, HARRIS COUNTY, TEXAS (THE "LAND"), AND THE IMPROVEMENTS THEREON; APPROVING AND AUTHORIZING A SPECIAL WARRANTY DEED FROM THE CITY OF HOUSTON CONVEYING THE IMPROVEMENTS AND 44,440 SQUARE FEET OF THE LAND TO MULTI CULTURAL EDUCATION AND COUNSELING THROUGH THE ARTS (MECA); APPROVING AND AUTHORIZING A DECLARATION OF CONDITIONS AND RESTRICTIONS; APPROVING AND AUTHORIZING AN ENFORCEMENT AGREEMENT AMONG THE CITY OF HOUSTON, REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF HOUSTON, TEXAS, AND THE OLD SIXTH WARD REDEVELOPMENT AUTHORITY; AND DEDICATING 15,560 SQUARE FEET OF THE LAND AS CITY PARK PROPERTY AND NAMING SAID PARK; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED THERETO; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. The City Council hereby authorizes the City of Houston to acquire from Houston Independent School District ("Seller") the Dow School property, being a tract or parcel of land described as Lots 1 through 12, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas, together with all of Seller's right, title and interest, if any, in and to (i) all improvements located on the property, (ii) all fixtures, appliances, appurtenances, equipment, machinery and all other items of personal property which are affixed or attached to or placed or situated upon the property or the foregoing improvements, and are necessary to or used in the operation, ownership, use, maintenance or management thereof, including, without limitation, all heating, ventilation and air-conditioning systems and (iii) all and singular, the rights and appurtenances pertaining to the property.

Section 2. The City Council hereby approves and authorizes the contracts, agreements or other undertakings described in the title of this Ordinance, in substantially the form as shown in the documents which are attached hereto and incorporated herein by this reference. The Mayor (or, in the absence of the Mayor, the Mayor Pro Tem) is hereby authorized to execute such documents, including all documents attached to the Interlocal Agreement as exhibits thereto, and take all actions necessary to effectuate the City's intent and objectives in approving such contracts, agreements or other undertakings in the event of changed circumstances. The City Secretary (or,

in the absence of the City Secretary, any Assistant City Secretary) is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. The City Attorney is hereby authorized to take all action necessary to enforce legal obligations under said contracts, agreements or other undertakings without further authorization from City Council.

Section 3. The City Council hereby designates the tract of land described on Annex I of this Ordinance as park property to be used for public park and recreational purposes. The park is hereby named "Kane Street Park."

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five (5) days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this the 1<sup>st</sup> day of October, 2003.

APPROVED this the \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 07 2003, 2003.

[Signature]  
City Secretary

(Prepared by Legal Dept.  
KJF/jg

[Signature]  
Senior Assistant City Attorney

Requested by Robert Litke, Director, Planning and Development Department

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: OCT 07 2003

AYE	NO	2003-911
✓		MAYOR BROWN
.....	.....	COUNCIL MEMBERS
✓		TATRO
✓		GALLOWAY
✓		GOLDBERG
✓		EDWARDS
✓		WISEMAN
✓		ELLIS
✓		KELLER
✓		VASQUEZ
✓		ALVARADO
✓		PARKER
	ABSENT-OUT OF THE CITY	QUAN
✓		SEKULA-GIBBS
✓		BERRY
✓		ROBINSON
CAPTION	ADOPTED	

**INTERLOCAL AGREEMENT  
1912 Dow School Building**

THIS INTERLOCAL AGREEMENT, together with any amendments and supplements hereto (collectively, the "Agreement") is entered into by and among the **City of Houston, Texas** (the "City"), a Texas municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas, and the **Houston Independent School District** (the "HISD"), an independent school district and political subdivision organized under the laws of the State of Texas, and the **Old Sixth Ward Redevelopment Authority** (the "Authority") to be effective upon the date of countersignature by City's Controller (the "Effective Date").

**RECITALS**

WHEREAS, the parties to this Agreement are each authorized by the Interlocal Cooperation Act, Texas Government Code Chapter 791, as amended, to enter into cooperative agreements between and among themselves and other political subdivisions for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives and programs in an efficient and economic manner; and

WHEREAS, HISD is the owner of that certain tract of land (the "Land"), as more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, together with certain improvements situated thereon which are commonly known as the "1912 Dow School Building" (the "Improvements"), which Land and Improvements (being hereafter collectively referred to as the "Property") are surplus to the needs of HISD; and

WHEREAS, the City desires to acquire the Property, and is willing to cause to be paid to HISD the sum of **One Million And No/100 (\$1,000,000.00) Dollars** (the "Purchase Price"). As evidenced by the loan commitment attached hereto as **Exhibit B** and made a part hereof for all purposes, the Authority has obtained financing for purposes of paying the Purchase Price in cash to HISD upon closing of the herein transaction. HISD agrees to transfer title upon receipt of the Purchase Price.

NOW, THEREFORE, in order to effectuate the conveyance of the Property to the City, HISD, the City and the Authority agree as follows:

**AGREEMENTS**

1. HISD agrees to convey the Property to the City, and the City agrees to acquire the Property from HISD in consideration of the Purchase Price to be paid in cash to HISD by the Authority. Conveyance will be by Special Warranty Deed, conveying to the City "AS IS", "WHERE IS" fee simple title, subject only to the Permitted Exceptions and special provisions required to be included in conveyances by public schools in Texas pursuant to the modified order in Civil Action No. 5281, *United States of America v. State of Texas, et. al.* in the United States

District Court for the Eastern District of Texas, Tyler Division. The closing of this transaction (the "Closing") shall take place within ninety (90) days after the Effective Date of this Agreement. It is expressly agreed between the City and HISD that the City has no obligation to pay the Purchase Price and that failure of the Authority to pay the Purchase Price at Closing will not result in any liability to the City or the Authority. The failure of the Authority to pay the Purchase Price at Closing will result in the termination of this Agreement by HISD and upon such termination neither HISD or the City shall have further rights, duties or obligations hereunder, and neither HISD or the City will have the right to compel or cause the Authority to pay the Purchase Price.

2. HISD represents the following:

- a. The Property is located in the City of Houston Old Sixth Ward Historic District; and
- b. Other than an existing lease with the City of Houston for the portion of the Land used as a park and an existing lease with the Multi-Cultural Education & Counseling through the Arts ("MECA", collectively, the "Existing Leases"), there are no other leases or any other written or verbal occupancy agreements entered into by HISD affecting the Property.

3. On or before thirty (30) days after the Effective Date of this Agreement, the City may obtain, at the City's sole cost and expense, a commitment for title insurance (the "Commitment") from Stewart Title Company (the "Title Company"), setting forth the status of the title of the Property, showing all liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, historical designations, recorded leases and any other matters of affecting title to the Property, and including copies of all recorded instruments affecting the Property. Additionally, on or before thirty (30) days after the Effective Date of this Agreement, the City may obtain, at the City's sole cost and expense, a Category 1A, Condition II Survey (the "Survey") of the Property from a surveyor acceptable to the City and the Title Company. The field notes to be developed for such Survey shall be substituted for the legal description of the Land provided in Exhibit A and shall be used for all instruments executed in connection with the conveyance. The City will have thirty (30) days after receipt of the both of the Commitment and the Survey (the "Objection Period") to examine such items and to specify to HISD those items affecting the Property which the City finds objectionable (the "Encumbrances"). Items shown in the Commitment or Survey and not objected to by the City in its written objections within the Objection Period will be deemed acceptable exceptions to title (the "Permitted Exceptions"). HISD has the option, but not the obligation, to satisfy any Encumbrances other than liens created by HISD. The Title Company shall deliver at Closing an amended Commitment reflecting any cure of such Encumbrances. Any liens affecting the Property are agreed to be Encumbrances, whether or not so specified in any notice by the City, and HISD must cause any lien arising by, through or under HISD to be released at or prior to Closing. The Existing Leases and all City rules, regulations, orders or ordinances are deemed to be Permitted Exceptions.

4. After execution of this Agreement, HISD agrees to join with the City in an Application for an Amending Plat of the Property into two parcels. If the Amending Plat is not completed before the passage of title from HISD to the City, then HISD agrees to grant any required permission to the fulfillment of amending the plat of the Property. One parcel will be that portion of the Property currently leased to the City's Parks Department and the second parcel will be the remainder of the Property. The City agrees to bear all costs of the plat amendment and no final plat approval will occur prior to the Closing and conveyance of title from HISD to the City. If this Agreement is terminated, then the City agrees to take all necessary steps, at the City's sole cost and expense, to terminate the plat amending process and the Property shall remain as presently platted.

5. HISD grants the City a period of sixty (60) days (the "Inspection Period") from the Effective Date to conduct, at the City's sole cost and expense, such inspections, studies and evaluations of the Property as the City determines is necessary or desirable to assist the City in determining the suitability and condition of the Property. The City will coordinate any inspections, studies and evaluations of the Property with MECA so as not to disturb MECA's operations on the Property. Such studies and evaluations may include, without limitation, an environmental study conducted by an environmental engineering company selected by City, and may include such soil testing and other invasive and non-invasive procedures as may be indicated to detect the presence of environmental pollutants or hazards on or under the Property, within any surface or underground water on the Property or within the structure of any building or other improvements on the Property. The City has the right and option, at its sole and absolute discretion, to terminate this Agreement at any time on or before the expiration of the Inspection Period, whereupon:

- a. This Agreement will be terminated and all parties fully and finally released therefrom; and
- b. The City agrees to restore the Property to the condition it was in prior to the commencement of the Inspection Period, including but not limited to, the filling of all holes and the resurfacing of said holes and area inspected, if necessary.

6. Closing shall take place at the offices of Title Company, with the exact time and date (the "Closing Date") of Closing to be specified in a written notice from City to HISD given at least fourteen (14) days in advance of such date, provided that the Closing will occur on or before the date which is ninety (90) days from the Effective Date. The time, date or location of Closing may be modified by agreement of the parties. At the Closing, the following (which are mutually concurrent conditions) will occur:

- a. City, at its sole cost and expense, will deliver or cause to be delivered to HISD, through the Title Company:

- i. Evidence satisfactory to HISD and the Title Company that the persons executing the closing documents on behalf of the City and the Authority have full right, power, and authority to so act;
  - ii. An Assignment and Assumption of Lease in form and substance substantially equivalent to the form of that attached hereto as **Exhibit D** fully executed and acknowledged by the City; and
  - iii. Such other instruments duly executed by City as are customarily executed in Texas to effectuate the conveyance of property similar to the Property as may be reasonably required by the Title Company.
- b. HISD, at its sole cost and expense, will deliver or cause to be delivered to City, through the Title Company, the following:
- i. Evidence satisfactory to the City and the Title Company that the person executing the closing documents on behalf of the HISD has full right, power and authority to so act;
  - ii. A Special Warranty Deed in form and substance substantially equivalent to the form of that attached hereto as **Exhibit C** fully executed and acknowledged by HISD, conveying to the City good and indefeasible fee simple title in and to the Property subject only to the Permitted Encumbrances, which shall be set forth in an exhibit thereto and attached prior to recordation of such instrument;
  - iii. An Assignment and Assumption of Lease in form and substance substantially equivalent to the form of that attached hereto as **Exhibit D** fully executed and acknowledged by HISD;
  - iv. An executed and acknowledged affidavit that HISD is not a "foreign person" as described, in the form of that attached hereto as **Exhibit E**; and
  - iv. Such other instruments duly executed by HISD as are customarily executed in Texas to effectuate the conveyance of property similar to the Property as may be reasonably required by the Title Company with the effect that, after the Closing, the City will have succeeded to all of the rights, titles and interests of HISD related to the Property and HISD will no longer have any rights, titles or interests in and to the Property.

c. The Authority, at its sole cost and expense, will deliver or cause to be delivered to HISD, through the Title Company, the following:

i. The Purchase Price

d. The Purchase Price will be paid by the Authority as set out in Paragraph 1. All closing costs will be paid by the Authority on behalf of the City, provided, however, that HISD agrees to be solely responsible for the payment of any ad valorem taxes (excluding "rollback taxes"), penalties and interest accrued as of the Closing Date, the costs of payment and release of any liens or other encumbrances to the Property which HISD is required to release or otherwise elects to release pursuant to the terms hereof, and its own attorneys' fees. All normal and customarily proratable items, including without limitation, real estate taxes for the year of closing and utility bills will be prorated as of the Closing Date, HISD being charged and credited for all of the same up to such date and City being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known at the Closing, the prorations shall be made on the basis of the best evidence available. HISD and City hereby acknowledge that both HISD and the City are exempt from the accrual of ad valorem taxes. The provisions of this Subparagraph 6(d) will survive the Closing.

7. Upon the completion of the Closing, HISD will deliver to City possession of the Property with all parts of the Property in the same condition as they were on the Effective Date of this Agreement, save and except only normal wear and tear.

8. In the event of any dispute between the parties with regard to the interpretation of this Agreement or with regard to any other matter connected with this Agreement, the parties shall make every attempt to reconcile such differences through interaction by appropriate staff from each party. In the event that any such dispute cannot be resolved through such interaction, then the parties shall, upon approval of both parties, attempt to resolve the dispute through mediation; however, neither party shall be required to mediate and the results of such mediation shall not be binding, except upon approval of the governing bodies of both parties.

9. The parties agree that each shall only perform activities in furtherance of this Agreement that are public and governmental in nature, and that neither HISD nor the City waives or relinquishes any immunity or defense on behalf of itself or its officers or employees solely as a result of its execution of this Agreement and performance of the functions described herein. The execution of this Agreement by HISD and the City does not in any manner limit, impair, diminish, or affect the rights or powers of the parties to perform other educational and/or governmental functions as authorized by law, or to enter into other interlocal agreements not inconsistent with the terms of this Agreement.



10. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested. Notice given as aforesaid shall be effective on the date actually received at the address indicated below for the applicable party, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. Notice given in any other manner shall be effective only upon receipt by the party to whom it is addressed. For purposes of notice, the addresses of the parties shall be as follows:

If to HISD, to:

Superintendent of Schools  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027-5838  
Fax No. 713-892-6203

with a copy to:

Office of the Attorney, Finance and Business  
Services  
Houston Independent School District  
Houston, Texas 77027-5838  
Fax No. 713-892-6203

If to City, to:

Director  
Planning & Development Department  
City of Houston  
611 Walker, 6th Floor  
P. O. Box 1562  
Houston, Texas 77251-1562

with a copy to:

Kathryn J. Farley  
City of Houston Legal Department  
900 Bagby, 3rd Floor  
P.O. Box 1562  
Houston, TX 77251-1562

If to the Authority, to:

Old Sixth Ward Redevelopment Authority  
C/o Vinson & Elkins, L.L.P.  
2300 First City Tower  
1001 Fannin  
Houston, TX 77002-6760  
Attention: Barron F. Wallace

Any party may change its address to another location upon five (5) days prior written notice to the other given in the manner provided above.

11. This Agreement contains the entire agreement between the City, HISD and the Authority relating to the rights herein granted and the obligations herein assumed. Any modification concerning this Agreement will be of no force or effect, unless in writing and signed by all parties to this Agreement. The parties have the right to amend this Agreement at any time upon written approval of the governing bodies of all parties.

12. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. Any action brought to enforce or interpret this Agreement will be brought in the court of appropriate jurisdiction in Houston, Harris County, Texas. Should any provision of this Agreement require judicial interpretation, the parties hereby agree and stipulate that the court interpreting or considering the same must not apply the presumption that the terms hereof shall be construed more strictly against the party who prepared the same, it being agreed that both parties have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.

13. This Agreement is made for the benefit of the City, HISD and the Authority and nothing herein will be construed to create any right or benefit enforceable by any third party. None of the parties hereto may assign, in whole or in part, this Agreement or any obligation hereunder without the prior written consent of the other parties hereto.

14. Until the Closing is consummated, risk of loss with respect to the Property remains with HISD.

15. The City Attorney or his or her designee has the right to enforce all legal rights and obligations under this Agreement without further authorization from other City officials.

16. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

17. Notwithstanding anything herein to the contrary, the Authority joins in the execution of this Agreement for the limited and sole purpose of evidencing its agreement to pay the Purchase Price to HISD at Closing under the terms and conditions set forth herein.

18. The undersigned individuals have been authorized by their respective governing bodies to execute this Agreement on behalf of HISD, the City and the Authority.

18. **Time is of the essence in this Agreement.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in multiple original counterparts, each of which shall be an original, and which together constitute but one and the same instrument, to be effective as of the Effective Date as defined above.

ATTEST:

**CITY OF HOUSTON**

By: \_\_\_\_\_  
**Anna Russell, City Secretary**

By: \_\_\_\_\_  
**Lee P. Brown**  
Mayor of the City of Houston

APPROVED AND  
RECOMMENDED:

COUNTERSIGNED:

By: \_\_\_\_\_  
**Robert Litke, Director**  
Planning & Development Dept.

By: \_\_\_\_\_  
**Judy Gray Johnson, City Controller**  
Countersignature Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
**Kathryn J. Farley**  
Senior Assistant City Attorney  
LD# 049-0200113-001

**(Signatures continued on the following page.)**

ATTEST:

**HOUSTON INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
**Arthur M. Gaines, Jr.**  
Secretary, Board of Education

By: \_\_\_\_\_  
**Kevin Hoffman**  
President, Board of Education

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Donald R. Boehm, HISD Attorney

Attest:

**OLD SIXTH WARD REDEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Secretary  
(Seal)

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Lots 1 through 12, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas.**

**EXHIBIT B**

**Loan Commitment**

**EXHIBIT C**

**SPECIAL WARRANTY DEED**

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

That **HOUSTON INDEPENDENT SCHOOL DISTRICT**, an independent school district and political subdivision organized under the laws of the State of Texas ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, acting herein pursuant to the resolution of the Board of Trustees of Grantor passed \_\_\_\_\_, 2003, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Grantee"), and Grantee's successors and assigns, the following described tract or parcel of land located in Harris County, Texas (the "Property"):

Lots 1 through 12, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas and being more particularly described by metes and bounds on **Exhibit A** attached hereto and incorporated herein for all purposes;

**TOGETHER WITH**, all of Grantor's right, title and interest, if any, in and to (i) all improvements located on the Property, (ii) all fixtures, appliances, appurtenances, equipment, machinery and all other items of personal property which are affixed or attached to or placed or situated upon the Property or the foregoing improvements, and are necessary to or used in the operation, ownership, use, maintenance or management thereof, including, without limitation, all heating, ventilation and air-conditioning systems and (iii) all and singular, the rights and appurtenances pertaining to the Property (collectively, the "Appurtenances"). The Property, together with the Appurtenances are herein referred to collectively as the "Subject Property".

This Deed is executed by Grantor and accepted by Grantee subject only to (i) those matters (the "Permitted Encumbrances") set forth on **Exhibit B** attached hereto and incorporated herein by reference, to the extent that same are valid, existing and affect the Subject Property; (ii) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Subject Property; and (iii) ad valorem taxes for the current year, which have been prorated as of the date hereof and assumed by Grantee and subsequent years, including any subsequent taxes or assessments by any taxing authority for prior years due to a change in land usage or ownership.

This conveyance is expressly made and accepted subject to the further covenant, consideration and condition that the following restrictions shall in all things be observed, followed and complied

with:

- (a) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.
- (b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains, reinforces, renews or encourages, or which tends to create, maintain, reinforce, renew or encourage, a dual school system.
- (c) These restrictions and conditions shall be binding upon Grantee, its successors and assigns, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the Grantor herein and its successors, this instrument shall be null and void, and Grantor and its successors shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of Grantor herein and its successors shall be a waiver of the operation or enforcement of such condition.

The restrictions set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restrictions specified in (b) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation.

THE SUBJECT PROPERTY IS CONVEYED "AS-IS WHERE-IS", AND WITH ALL FAULTS AND GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR COMMON LAW, WITH RESPECT TO THE AVAILABILITY OF UTILITIES, ACCESS TO PUBLIC ROADS OR ITS PHYSICAL AND ENVIRONMENTAL CONDITION. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MATERIALS, WORKMANSHIP OR APPLIANCES HAS BEEN MADE OR IS EXPRESS OR IMPLIED BY THIS CONVEYANCE. GRANTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY, GOOD AND WORKMANLIKE CONSTRUCTION, SUITABILITY OR DESIGN.

**TO HAVE AND TO HOLD** the Property together with all and singular the Appurtenances unto the Grantee, its successors and assigns forever, subject to the matters herein stated and the Permitted Encumbrances, and Grantor does hereby bind itself, its successors and assigns, to warrant and forever, defend all and singular the Property, subject to the matters herein stated and the Permitted Encumbrances, unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.



EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

ATTEST:

**HOUSTON INDEPENDENT SCHOOL  
DISTRICT**

By: \_\_\_\_\_  
**Arthur M. Gaines, Jr.**  
Secretary, Board of Education

By: \_\_\_\_\_  
**Kevin Hoffman**  
President, Board of Education

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Donald R. Boehm, HISD Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_  
**Kathryn J. Farley**  
Sr. Assist. City Attorney  
LD# 049-0200113-001

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

This instrument was acknowledged before me on \_\_\_\_\_, 2003 by **Kevin Hoffman**, President of the Board of Trustees of **Houston Independent School District**, an independent school district organized under the laws of the State of Texas, on behalf of said school district.

[SEAL]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**GRANTEE'S ADDRESS**

City of Houston  
Legal Dept./Real Estate Div.  
P.O. Box 1562  
Houston, Texas 77251-1562  
Attention: Katy Farley

**Exhibit A**  
**to Special Warranty Deed**

**Lots 1 through 12, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas.**

**Exhibit B**  
**to Special Warranty Deed**

**Attach Permitted Encumbrances**

## EXHIBIT D

### ASSIGNMENT OF LEASE AGREEMENT

This Assignment of Lease Agreement ("Agreement") is entered into by and between the **Houston Independent School District** ("Assignor"), an independent school district and political subdivision organized under the laws of the State of Texas, and the **City of Houston, Texas** (the "Assignee"), a Texas municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas, to be effective upon the date of countersignature by City's Controller (the "Effective Date").

#### RECITALS:

Pursuant to that certain Lease Agreement dated November 8, 1996, between Assignor as lessor ("Lessor"), and Multicultural Education and Counseling through the Arts, a Texas non-profit corporation, as lessee ("Lessee"), a copy of such Lease Agreement being attached to this Agreement as Exhibit A and incorporated herein by this reference (the "Lease Agreement"); and

Pursuant to the Lease Agreement, Lessee leases certain portions of the premises and grounds known as the Dow Elementary School Site located on a portion of Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas (the "Real Property"), more particularly described in the Lease Agreement, for the purpose of operating an educational center; and

Pursuant to that certain Interlocal Agreement dated effective \_\_\_\_\_, 2003, between Assignor and Assignee, ( the "Interlocal Agreement"), all of Assignor's right, title and interest as lessor under the Lease Agreement is to be assigned by Assignor to Assignee. Unless expressly provided otherwise, capitalized terms used in this Agreement shall have the same meaning set forth in the Interlocal Agreement.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the execution and delivery hereof, the parties hereto agree as follows:

1. Assignor hereby assigns and transfers to Assignee, as of the Effective Date, all of Assignor's right, title and interest in and to the Lease Agreement, all of the rights, benefits and privileges of the lessor thereunder and all of the lessor's duties, obligations and liabilities thereunder relating to the period on or after, and arising out of events occurring on or after, the Effective Date.
2. Assignee hereby accepts such assignment and transfer and assumes, accepts and agrees to be bound by all of the terms and conditions of the Lease Agreement and covenants and agrees to assume, accept and perform all of the duties, obligations and liabilities of Assignor thereunder, in each case relating to the period on or after, or arising out of events occurring on or after, the

Effective Date; provided however, no provision of this Agreement shall be construed as an assumption by Assignee or Assignee's agreement to pay or to indemnify Assignor for any indebtedness secured by any lien against or interest in the Lease Agreement or for any duties, obligations or liabilities of Assignor under the Lease Agreement relating to the period before, or arising out of events occurring before the Effective Date.

3. Assignor represents and warrants to Assignee that no consent of the Lessee under the Lease Agreement is required to be obtained for Assignor's assignment of the Lease Agreement to Assignee pursuant to this Agreement. The individual executing this Agreement on behalf of Assignor represents and warrants to Assignee that such individual has the sole, complete and unilateral authority to execute and deliver this Agreement on behalf of Assignor, that no consent of any other person is required for this Agreement to constitute the legal, valid and binding agreement of Assignor, that Assignor's title to the Lease Agreement is absolute and that Assignor has full right and authority to enter into this Agreement and make this assignment of the Lease Agreement.

4. Assignor further represents and warrants to Assignee as follows:

a) The Lease Agreement has not been assigned by Assignor to any other person, nor has the Lease Agreement been extended, modified or amended in any respect whatsoever, except as described in this Agreement, and represents the entire agreement between Lessee and Assignor concerning the Real Property. Assignor has no obligations to Lessee other than as set forth in the Lease Agreement. Exhibit A attached hereto is a true, correct and complete copy of the Lease Agreement.

b) The Lease Agreement is in full force and effect as of the Effective Date. Assignor has no knowledge of any default, or state of facts which with the passage of time or notice (or both) would constitute a default on the part of Lessee or Assignor in the performance and observation of their respective covenants, conditions and agreements contained in the Lease Agreement. Assignor has not sent or received any written notice regarding any state of facts which, if incurred, would constitute a default under the Lease Agreement.

c) All rentals and other payments required to be paid to Assignor by Lessee pursuant to the Lease Agreement prior to and through the Effective Date of this Agreement have been timely paid and made by Lessee to Assignor. Assignor has not leased or sublet any portion of the Real Property or the property described in the Interlocal Agreement to any party other than to Lessee.

5. The parties covenant and agree that this Agreement shall inure to the benefit of and be binding upon Assignor and Assignee, and their respective legal representatives, successors and assigns. Assignor and Assignee covenant and agree that to the extent any portion of the foregoing shall conflict with the terms of the Lease Agreement, the provisions of this Agreement shall prevail for all purposes.

6. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute but a single instrument. Additionally, the parties, and any third party, may rely on a copy or facsimile of an executed counterpart as if such copy or facsimile were an original.

IN WITNESS WHEREOF, the parties hereto have caused this certificate to be duly executed, as of the Effective Date.

ASSIGNOR:

ATTEST:

**HOUSTON INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
**Arthur M. Gaines, Jr.**  
Secretary, Board of Education

By: \_\_\_\_\_  
**Kevin Hoffman**  
President, Board of Education

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Donald R. Boehm, HISD Attorney

ASSIGNEE:

ATTEST:

**CITY OF HOUSTON**

By: \_\_\_\_\_  
**Anna Russell, City Secretary**

By: \_\_\_\_\_  
**Lee P. Brown**  
Mayor of the City of Houston

[Signatures continued on the following page.]

COUNTERSIGNED:

By: \_\_\_\_\_  
**Judy Gray Johnson, City Controller**  
Countersignature Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
**Kathryn J. Farley**  
**Senior Assistant City Attorney**  
**LD# 049-0200113-001**



**EXHIBIT A**

To Assignment of Lease Agreement

Lease Agreement  
[Attached]

**EXHIBIT E**

**NONFOREIGN AFFIDAVIT**  
(Pursuant to 26 U.S.C. § 1445 & Treas. Reg. § 1.1445-2(b)(2)(iii))

Date: \_\_\_\_\_

Transferor: **Houston Independent School District**, a Texas public free school corporation

Transferor's Address: President, Board of Education  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027-5838

Transferor's U.S. Taxpayer Identification Number: \_\_\_\_\_

Transferee: **The City of Houston, Texas**, a municipal corporation principally situated in Harris, Fort Bend and Montgomery Counties

Property: being more particularly described by metes and bounds in **EXHIBIT "A"** attached hereto and incorporated herein for all purposes;

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person". To inform Transferee that the with-holding of tax is not required upon disposition of a U.S. real property interest by Transferor, I certify on behalf of Transferor that the contents of this affidavit are true.

Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code of 1986, as amended, and the corresponding Income Tax regulations).

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained in this affidavit could be punished by fine, imprisonment, or both. Under penalties of perjury, I declare that I have examined this affidavit and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

ATTEST:

**HOUSTON INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
**Arthur M. Gaines, Jr.**  
Secretary, Board of Education

By: \_\_\_\_\_  
**Kevin Hoffman**  
President, Board of Education

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Donald R. Boehm, HISD Attorney

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on \_\_\_\_\_, 2003 by Kevin Hoffman, President of the Board of Trustees of Houston Independent School District, an independent school district organized under the laws of the State of Texas, on behalf of said school district.

[SEAL]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit A**

**LEGAL DESCRIPTION**

**Lots 1 through 12, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas.**

**SPECIAL WARRANTY DEED**

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

**KNOW ALL PERSONS BY THESE PRESENTS:**

That the **CITY OF HOUSTON, TEXAS** ("Grantor"), a home-rule municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, including the implementation of the Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number Thirteen, City of Houston, Texas, the receipt and sufficiency of which is hereby acknowledged by Grantor, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto **MULTI CULTURAL EDUCATION AND COUNSELING THROUGH THE ARTS** ("Grantee"), a Texas nonprofit corporation, whose address is 1900 Kane Street, Houston, Texas 77043, the following described tract or parcel of land located in Harris County, Texas (the "Property"):

**Legal Description per the Amending Plat**

together with all of Grantor's rights, title and interest, if any, in and to (i) all improvements located on the Property, (ii) all fixtures, appliances, appurtenances, equipment, machinery and all other items of personal property which are affixed or attached to or placed or situated upon the Property or the foregoing improvements, and are necessary to or used in the operation, ownership, use, maintenance or management thereof, including, without limitation, all heating, ventilation and air-conditioning systems and (iii) all and singular, the rights and appurtenances pertaining to the Property. The Property and Grantor's rights, title and interest, if any, in and to the foregoing improvements, personalty and appurtenances are herein referred to collectively as the "Subject Property."

This Deed is executed by Grantor and accepted by Grantee subject only to (i) that certain Declaration of Conditions and Restrictions imposed on the Subject Property by Grantor, dated of even date herewith, filed of record, or to be filed of record, in the Official Public Records of Real Property of Harris County, Texas (the "Declaration"), and Grantor's right of re-entry contained in the Declaration; (ii) those matters (the "Permitted Encumbrances") set forth on **Exhibit A** attached hereto and incorporated herein by reference, to the extent that same are valid, existing and affect the Subject Property; (iii) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Subject Property; and (iv) ad valorem taxes for the current year, which have been prorated as of the date hereof and assumed by Grantee and subsequent years, including any subsequent taxes or assessments by any taxing authority for prior years due to a change in land usage or ownership.

**THE SUBJECT PROPERTY IS CONVEYED "AS-IS WHERE-IS", AND WITH ALL FAULTS AND GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED,**

STATUTORY OR COMMON LAW, WITH RESPECT TO THE AVAILABILITY OF UTILITIES, ACCESS TO PUBLIC ROADS OR ITS PHYSICAL AND ENVIRONMENTAL CONDITION. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MATERIALS, WORKMANSHIP OR APPLIANCES HAS BEEN MADE OR IS EXPRESS OR IMPLIED BY THIS CONVEYANCE. GRANTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY, GOOD AND WORKMANLIKE CONSTRUCTION, SUITABILITY OR DESIGN.

**TO HAVE AND TO HOLD** the Subject Property together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, its successors and assigns forever, subject to the matters herein stated, the Restrictions and the Permitted Encumbrances, and Grantor does hereby bind itself, its successors and assigns, to warrant and forever, defend all and singular the Subject Property, subject to the matters herein stated, the Restrictions and the Permitted Encumbrances, unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Attest:

**City of Houston, Texas**

By: \_\_\_\_\_  
Anna Russell, City Secretary

By: \_\_\_\_\_  
Lee P. Brown, Mayor

**AGREED AND ACCEPTED BY GRANTEE:**

**Multi Cultural Education and Counseling Through the Arts**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Kathryn J. Farley  
Sr. Assist. City Attorney  
LD# 049 0200113 001

THE STATE OF TEXAS §  
  §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by Lee P. Brown, Mayor of the City of Houston, Texas, a home-rule municipal corporation duly organized under the laws of the State of Texas, on behalf of said municipal corporation.

[SEAL]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS §  
  §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_, of Multi Cultural Education and Counseling Through the Arts, a Texas nonprofit corporation, on behalf of said nonprofit corporation.

[SEAL]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**to Special Warranty Deed**

**Attach Permitted Encumbrances**

**Civil Order 5281**



After Recording, Return To:

City of Houston  
Attn: Katy Farley, Sr. Asst. City Atty.  
900 Bagby, 3rd Floor  
Houston, Texas 77002

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**DECLARATION OF CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF CONDITIONS AND RESTRICTIONS (this "Declaration") is made by the CITY OF HOUSTON, TEXAS ("Declarant"), a municipal corporation and home-rule city organized under the laws of the State of Texas.

**Preliminary Statement:**

A. Declarant is the owner of certain real property more particularly described in Exhibit A attached hereto (the "Property"). The Property is located in Reinvestment Zone Number Thirteen, City of Houston, Texas (the "Zone").

B. Certain improvements commonly known as the "Dow School Building" (the "Building") are situated on the Property.

C. Declarant desires to subject the Property to use and preservation conditions, as more particularly described below to ensure, among other things, that the Property remains compatible with Project Plan and Reinvestment Zone Financing Plan for the Zone.

NOW, THEREFORE, Declarant does hereby establish, adopt and impose upon the Property the following restrictions and conditions which will run with the land and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof.

1. Preliminary Statement. The Preliminary Statement set forth above is incorporated herein as a substantive part hereof.

2. Definitions.

a. "Director" means the Declarant's Director of the Planning & Development Department or her/his designee in writing.

b. "Facade" means any exterior surface of the Improvements, including, but not limited to exterior walls, windows, doors and roofs thereof.

c. "Improvements" means the Building designed in 1912 by C. H. Page, Page &

Brother Architects, Austin Texas and around 1912, including the structural members of the Building, driveways, sidewalks, curbs and exterior lighting built or installed in conjunction with the Building and all distinctive architectural features of the Building.

d. "Initial Owner" means Multicultural Education and Counseling Through the Arts, a Texas nonprofit corporation.

e. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to the Property, excluding those having such interest merely as security for the performance of an obligation.

3. Restrictions. The Property will be held, sold and conveyed subject to the following conditions and restrictions (the "Restrictions"):

a. Use: The Property will at all times be used for community-based cultural and educational purposes in a manner that primarily promotes the public purposes of Declarant.

b. Facade and Improvements: The historic character of the Improvements will be retained and maintained, and the Facade will be preserved as it exists on the date of this Declaration.

c. Architectural Modifications: Without the prior written consent of Director, Owner will not:

i. Demolish, damage or destroy or alter the Improvements.

ii. Build or add any additional structure or fencing on the Property.

iii. Rehabilitate, alter or in any manner modify the exterior appearance or condition of the Facade, including, without limitation, exterior paint colors; provided, however, that no consent shall be required solely to refinish without change of color of any exterior surface of any Improvement.

d. Plan Approval.

i. Any change, rehabilitation or modification to the exterior appearance or condition of the Facade must be built or made according to plans and specifications submitted to and approved by Director in writing in advance of the commencement of any such change, rehabilitation or modification. Director's consent shall not be unreasonably withheld.

ii. If Director fails to approve or deny in writing any request required under Sections 3.c or 3.d within sixty (60) days following submission of the request for approval, such failure to respond by Director shall be deemed as approval, and Owner may commence work.

e. Maintenance.

i. Upon Initial Owner's acquisition of the Property, Initial Owner will make such repairs to the Improvements as are necessary for the Improvements to be in a good state of repair. Thereafter, Owner must maintain the Improvements and every other improvement, including structural members, in a good state of repair, excepting only reasonable wear and tear. The term "good state of repair" includes but is not limited to, considerations of historical accuracy, structural soundness, safety, and freedom from public or private nuisance. Determinations by the Director as to what constitutes a good state of repair shall be final.

ii. Every exterior surface of any Improvements, including, but not limited to the Facade, and all other portions of land within the Property, including, but not limited to sidewalks, driveways, curbs, fences, exterior lighting, landscaping, and plantings ("Grounds") must be maintained in an attractive condition. The term "attractive condition" includes, but is not limited to considerations of historical accuracy, texture, choice of colors, choice of materials, cleanliness and other purely aesthetic considerations. Determinations by Director of what constitutes attractive condition shall be final.

4. Right of Re-entry. In addition to any other rights and remedies of Declarant set forth herein, if the Property ceases to comply with the Restrictions, Declarant has the right to re-enter and take possession of the Property and to hold, own and possess the Property in the same manner and to the same extent as if the Declarant had never conveyed the Property to an Owner, it being the intent of Declarant that an Owner own the Property on a condition subsequent.

5. Historic Designations. Owner agrees to allow the Property to be designated on any list of historic properties approved by the Declarant. Owner also agrees to allow the Declarant to install and maintain historic markers on the Improvements or on the Property. Declarant will pay the cost of the installation and maintenance of the historic markers.

6. Term; Amendments. This Declaration shall have an initial term of thirty (30) years, after which time it will be automatically extended for successive periods of ten (10) years. This Declaration shall not be modified, amended or terminated except by written instrument duly executed by the Director and filed for record in the Real Property Records of Harris County, Texas.

7. Miscellaneous.

a. Successors and Assigns. The benefits of this Declaration shall inure to the benefit of Declarant and its successors and assigns, as appropriate, and the burdens and obligations of this Declaration shall be binding upon its successors and assigns, as appropriate.

b. Enforcement.

i. If a violation any Restriction continues uncured for a period of twelve (12) months after Declarant gives written notice of such violation to Owner, then Declarant may institute suit(s) to enjoin any violation of the terms of this Declaration by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Improvements to the condition and appearance that existed prior to the violation complained of, and Declarant will also have available all legal and other equitable remedies to enforce the Restrictions, including, without limitation, the right of re-entry set forth in paragraph 4 above.

ii. In the event Owner is found to have violated any of the Restrictions, Owner will reimburse Declarant, or Declarant's nominee or assignee, for any costs or expenses incurred in connection with enforcement of the terms of this Declaration, including all reasonable court costs, and attorneys, architectural, engineering, and expert witness fees.

iii. Exercise by Declarant of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

iv. Declarant may engage a third party to aid, assist and act on behalf of Declarant in enforcing the terms of this Declaration.

c. Captions. Captions used in this Declaration are for convenience only and will be given no effect in construing this Declaration and will not be restrictive of the subject matter of any article, section, or part of this Declaration.

d. Invalidity. If any portion of this Declaration is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Declaration shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure of Declarant to enforce any term or provision of this Declaration shall be deemed not to be a waiver of Declarant's

right to enforce the same or any other such term or provision.

e. Governing Law. This Declaration shall be governed, construed, applied and enforced in accordance with the law of the State of Texas, without regard to choice-of-law rules in any jurisdiction.

IN WITNESS WHEREOF, this Declaration of Conditions and Restrictions has been executed pursuant to Ordinance No. \_\_\_\_\_ to be effective as of the countersignature date of the City Controller.

Attest:

CITY OF HOUSTON, TEXAS

By: \_\_\_\_\_  
Anna Russell, City Secretary

By: \_\_\_\_\_  
Lee P. Brown, Mayor

APPROVED AND  
RECOMMENDED:

COUNTERSIGNED:

By: \_\_\_\_\_  
Robert Litke, Director  
Planning and Development Department

By: \_\_\_\_\_  
City Controller

Approved As To Form:

Date Countersigned: \_\_\_\_\_

By: \_\_\_\_\_  
Kathryn J. Farley  
Sr. Assistant City Attorney  
L.D.# 049-0200113-001  
L.D.# 061-9800038-009

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by Lee P. Brown, Mayor of the City of Houston, Texas, a home-rule municipal corporation duly organized under the laws of the State of Texas, on behalf of said municipal corporation.

Notary Seal:

\_\_\_\_\_  
Notary Public in and for Texas

My Commission expires: \_\_\_\_\_

**EXHIBIT A**  
**(Legal Description of the Property)**  
*[See Attached]*

## ENFORCEMENT AGREEMENT

This Enforcement Agreement (this "Agreement") is made by and among the **REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF HOUSTON, TEXAS** (the "Zone"), a tax increment reinvestment zone created by the City of Houston, Texas pursuant to Chapter 311 of the Texas Tax Code, as amended, acting by and through its governing body, the Board of Directors (the "Zone Board"), the **OLD SIXTH WARD REDEVELOPMENT AUTHORITY** (the "Authority"), a public non-profit local government corporation created and organized under the provisions of Chapter 431 of the Texas Transportation Code, acting by and through its governing body, the Board of Directors (the "Authority Board"), and the **CITY OF HOUSTON, TEXAS**, a municipal corporation and a home-rule city in the State of Texas (the "City").

### WITNESSETH:

**WHEREAS**, by City Ordinance No. 98-1256, the City created the Zone pursuant to Chapter 311, Texas Tax Code (the "TIRZ Act") pursuant to a preliminary Reinvestment Zone Financing Plan for the Zone; and

**WHEREAS**, the Zone Board adopted a Project Plan and Reinvestment Zone Financing Plan for the Zone and by City Ordinance No. 1999-794, adopted July 28, 1999, the City approved the Project Plan and Reinvestment Zone Financing Plan; and

**WHEREAS**, the Zone Board adopted a first amendment to the Project Plan and Reinvestment Zone Financing Plan and by City Ordinance No. 1999-827, dated August 11, 1999, the City approved the First Amendment to the Project Plan and Reinvestment Zone Financing Plan (as amended, the "Project Plan"); and

**WHEREAS**, by City Resolution No. 2000-40 adopted on August 16, 2000, the City authorized the creation of the Authority to aid, assist and act on behalf of the City in the performance of the City's governmental and proprietary functions with respect to the common good and general welfare of the Old Sixth Ward and neighboring areas as described in City Ordinance No. 98-1256; and

**WHEREAS**, the City, the Zone and the Authority have entered into an agreement approved by City Ordinance No. 2001-1163 (the "Tri-Party Agreement"), pursuant to which the City delegated to the Authority the power and authority to administer the Zone and to assist the City and the Zone in implementing the Project Plan; and

**WHEREAS**, as part of implementing the Project Plan the City purchased a tract of land consisting of the 1900 block of Kane Street with money from the Authority, and conveyed the tract of land more particularly described on Exhibit A attached hereto (the "Property") to Multi-Cultural Education & Counseling Through the Arts ("MECA"); and



WHEREAS, in connection with conveyance of the Property to MECA the City recorded and filed that certain Declaration of Conditions and Restrictions (the "Declaration") in the Official Public Records of Real Property of Harris County, Texas, which Declaration imposes certain restrictions (the "Restrictions") on the Property; and

WHEREAS, to implement the Project Plan and achieve its purposes the City and the Zone consider it necessary and convenient for the Authority to assist the City in monitoring and enforcing the Declaration to ensure compliance with of the Restrictions;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Zone, the Authority and the City agree as follows:

**Article I.**  
**Engagement of Authority**

The City hereby engages the Authority, and the Authority hereby agrees to provide, furnish, or perform the services described in Article II below for the benefit of the City pursuant to this Agreement.

**Article II.**  
**The Authority's Duties and Responsibilities**

The Authority shall use its best efforts to carry out its duties and responsibilities relating to monitoring and enforcing compliance with the Declaration, as specified in this Article II. Subject to the provisions of Section C below, the City shall, however, retain all of its rights to monitor and enforce the Declaration at any time the City, in its sole discretion, deems necessary or appropriate. All services performed by the Authority under this Agreement shall be at the Authority's sole cost.

The services that the Authority shall furnish consist of, among other things, the following:

A. **Monitoring Compliance with the Declaration.** The Authority will take all necessary steps to monitor the Property to ensure compliance with the Restrictions, including regular inspections of the Property.

B. **Compliance Reports.** The Authority will deliver a report detailing its monitoring of the Property to the City annually not later than January 31. The Authority will notify the City immediately of any violation of any Restriction in the Declaration.

C. **Enforcement of Declaration.** The Authority will have a period of twelve (12) months, commencing upon the occurrence of a violation of the Restrictions and notification thereof to the City, to take all necessary steps to enforce the Restrictions and seek all appropriate remedies available under the Declaration. The Authority will notify the City of all actions taken under this

Section II.C. At the end of the twelve (12) month period, the City has the right to assume enforcement of the Restrictions on its own behalf and the Authority's right of enforcement will terminate with respect to such violation.

**Article III.**

**No Personal Liability of Public Officials**

No director of the Zone or the Authority nor any employee or agent of either shall be personally responsible for any liability arising under or growing out of this Agreement, or operations of the Authority under the terms of this Agreement.

**Article IV.**

**Independent Contractor**

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

**Article V.**

**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:

Old Sixth Ward Redevelopment Authority  
c/o Vinson & Elkins, L.L.P.  
1001 Fannin Street, Suite 2300  
Houston, TX 77002  
Attention: Barron Wallace

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

Reinvestment Zone Number Thirteen, City of Houston, Texas  
c/o Vinson & Elkins  
1001 Fannin Street, Suite 2300  
Houston, TX 77002  
Attention: Barron Wallace

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

City of Houston  
P.O. Box 1562  
Houston, Texas 77251  
Attention: Director of Planning and Development

**Article VI.**  
**Applicable Laws**

This Agreement shall be governed, construed, applied and enforced in accordance with the Constitution and the laws of the State of Texas, without regard to choice-of-law rules in any jurisdiction.

**Article VII.**  
**Captions**

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

**Article VIII.**  
**Successors and Assigns**

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

**Article IX.**  
**Term and Termination**

The term of this Agreement shall begin on the countersignature date of the City Controller and end as otherwise provided herein, or on the first of the following to occur (i) the termination

of the Authority, and (ii) the mutual written consent of parties hereto. Upon termination, the Authority will provide the Zone and the City with access to all files and information administered hereunder.

**Article X.**  
**Amendment or Modifications**

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

**Article XI.**  
**Recordation**

This Agreement will be recorded in the Real Property Records of Harris County, Texas.

[Signature pages follow.]

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the Authority, the Zone and the City to be effective as of the countersignature date of the City Controller.

Attest:

OLD SIXTH WARD REDEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chair, Board of Directors

Attest:

REINVESTMENT ZONE NUMBER  
THIRTEEN, CITY OF HOUSTON, TEXAS

By: \_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chair, Board of Directors

Attest:

CITY OF HOUSTON, TEXAS

By: \_\_\_\_\_  
Anna Russell, City Secretary

By: \_\_\_\_\_  
Lee P. Brown, Mayor

APPROVED AND  
RECOMMENDED:

COUNTERSIGNED:

By: \_\_\_\_\_  
Robert Litke, Director  
Planning and Development Department

By: \_\_\_\_\_  
City Controller

Approved As To Form:

Date Countersigned: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant City Attorney  
L.D.# 049-0200113-001

STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by Lee P. Brown, Mayor of the City of Houston, Texas, a home-rule municipal corporation duly organized under the laws of the State of Texas, on behalf of said municipal corporation.

Notary Seal:

\_\_\_\_\_  
Notary Public in and for Texas

My Commission expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by \_\_\_\_\_, in his/her capacity as Chair of the Board of Directors of the Reinvestment Zone Number Thirteen, City of Houston, Texas, a tax increment reinvestment zone duly organized under the laws of the State of Texas, on behalf of said tax increment reinvestment zone.

Notary Seal:

\_\_\_\_\_  
Notary Public in and for Texas

My Commission expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2003, by \_\_\_\_\_, in his/her capacity as Chair of the Board of Directors of the Old Sixth Ward Redevelopment Authority, a public non-profit local government corporation, duly organized under the laws of the State of Texas, on behalf of said public non-profit local government corporation.

Notary Seal:

\_\_\_\_\_  
Notary Public in and for Texas

My Commission expires: \_\_\_\_\_

### **Exhibit A**

Attach new legal description of approximately 44,440 square feet, East ½ of Lot 2, Lots 3 through 10, and East ½ of Lot 11, Block 428, North Side Buffalo Bayou (N.S.B.B.), W.R. Baker Addition, as per map or plat of said addition appearing in Volume Y at Page 351 of the Map Records of Harris County, Texas, in the John Austin Survey, A-1, Harris County, Texas, as such existing map or plat is amended or re-platted.

# ANNEX I

**CITY OF HOUSTON, TEXAS  
DEPARTMENT OF PUBLIC WORKS AND ENGINEERING  
E. C. R. E /ADMINISTRATIVE SERVICES /SURVEY**

**City of Houston  
Tract 1, Block 428 of the W.R. Baker Addition  
Parcel No. BY4-001  
0.3572 acres (15,560 square feet)  
John Austin Survey A-1  
Harris County, Texas  
Drawing No. 38452  
Page 1 of 2**

Being a 0.3572 acres, (15,560 square feet) tract of land, herein called Tract 1, being out of and a part of Block 428 of the W. R. Baker Addition, dedicated to Houston Independent school District (H.I.S.D.) by SB402, Chapter 91 of the 38<sup>th</sup> Legislature, 1923, State of Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a cut "X" set for corner, being the intersection of the south right-of-way line of Kane St. (70' feet wide, per historical records) and the west right-of-way line of Silver St. (50' feet wide, per historical records) and the northeast corner of the H.I.S.D. property and having 1927 Texas State Plane Coordinates, South Central Zone, of E=3149275.45 and N=720472.77;

THENCE South 87°43'06" West, along the south right-of-way line of Kane St. and the north line of the H.I.S.D. property, a distance of 222.20' feet to a cut "X" for corner being the northeast corner of the herein described tract and the POINT OF BEGINNING;

THENCE South 2°16'54" East, at 77.80' feet east and parallel to the west property line of the H.I.S.D. property and the east right-of-way line of White St. (60' feet wide, per historical data) a distance of 200.00' feet to a cut "X" set for corner being the southeast corner of the herein described tract;

THENCE South 87°43'06" West, along the north right-of-way line of Lubbock St. (70' feet wide, per historical data) and the south line of said H.I.S.D. property, a distance of 77.80' feet, to a cut "X" set for corner marking the southwest corner of the herein described tract;

THENCE North 2°16'54" West, along the east right-of-way line of said White St. and the west line of said H.I.S.D. property, a distance of 200.00' feet, to a cut "X" set for corner marking the northwest corner of the herein described tract;



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Harris County, Texas  
Drawing No. 38452  
Page 2 of 2

THENCE North 87°43'06" East, along the south right-of-way line of said Kane St. and the north line of said H.I.S.D. property, a distance of 77.80' feet to the POINT OF BEGINNING and containing 0.3572 acres (15,560 square feet) of land.

Notes: This metes and bounds description was prepared in conjunction with a plat of this property, which same can be found in the City of Houston File Room, Drawing# 38452. All bearings are referenced to State Plane Coordinate System, South Central Zone. The Monuments used as a basis of bearings were C. O. H. Monuments 5357-1216 and 5357-1413, said bearing being North 41°13'33" West.

All distances shown hereon are surface distances and can be converted to grid distances by multiplying them by a combined scale factor of .9998914. All coordinates hereon are true grid coordinates.

Compiled by *Robyn J. Jordan*

Date 8-7-03

Checked by *MLC*  
R. O. W. Section

Checked by *Karen F. Leback*  
Assistant Director

