CITY OF SEABROOK
RESOLUTION NO. 2016-02

EDC PROJECT DESIGNATION
RELOCATION AND IMPROVEMENTS FOR PUBLIC WORKS FACILITIES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, DESIGNATING THE PAYMENT BY THE SEABROOK ECONOMIC DEVELOPMENT CORPORATION OF DEBT SERVICE FOR CERTIFICATES OF OBLIGATION, NOT TO EXCEED $2,500,000.00, TO BE ISSUED BY THE CITY OF SEABROOK FOR THE RELOCATION AND IMPROVEMENTS FOR PUBLIC WORKS FACILITIES AS AN AUTHORIZED PROJECT OF THE SEABROOK ECONOMIC DEVELOPMENT CORPORATION

WHEREAS, on January 18, 1992, the voters of the City of Seabrook authorized the City of Seabrook to adopt a one-half cent sales and use tax to pay for the costs of projects authorized by Section 4B of Article 5190.6, V.T.C.S., as amended, and to pay for the principal and interest of bonds or other obligations issued to pay the costs of such designated projects; and

WHEREAS, the Seabrook Economic Development Corporation ("EDC") was established to oversee the expenditures of tax monies, and bylaws were established for the operation of the EDC; and

WHEREAS, the EDC has analyzed potential projects that will meet the enabling legislation's purposes and assist it in attracting new businesses, expanding existing businesses, creating jobs, and assisting in other statutorily authorized economic development programs; and

WHEREAS, the EDC has determined to undertake a project for economic development by providing funding through EDC sales tax revenue, to assist the relocation of the existing municipally owned Public Works Facilities, the demolition of existing structures, and the construction of new public works facilities, to promote or develop new or expanded business enterprises that create or retain primary jobs in or near the City of Seabrook, by paying the debt service for certificates of obligation, not to exceed $2,500,000.00, to be issued by the City of Seabrook for the "Relocation and Improvements for Public Works Facilities," (the "Project") with funding as more specifically delineated in Resolution 2016-1 and related written Construction Agreement, as generally authorized under Texas Local Government Code, (including Sections 501.101, 501.103, 505.152, 505.155, 505.158, and 505.302), and is an authorized project of the EDC; and

WHEREAS, the EDC met on January 14, 2016, and at that time took formal action to support and approve funding of the proposed Project and approved the publication of a Notice to the public of this Project; and

WHEREAS, a public hearing was conducted by the EDC on March 10, 2016 to receive public input for such Project; and

WHEREAS, the EDC has determined to proceed with the subject Project, subject to City Council approval of same in accordance with law; and

WHEREAS, the City Council ("City") desires to encourage the development or redevelopment within the city limits of the City of Seabrook, by specifically approving the EDC funding, as provided herein of the Relocation and Improvements for Public Works Facilities ("Project") and the "Agreement Regarding the Construction and Improvement of Public Works" ("Construction Agreement"), attached hereto, as approved by the EDC and submitted to City Council for approval; and

WHEREAS, the City Council finds that the funding incentives by the EDC and Construction Agreement, as provided herein will be reasonably likely to contribute to new or expanded business enterprises and the potential of the creation or retention of primary jobs, as provided by Chapters 501 and 505 of the Texas Local Government Code;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

Section 1. That the facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. That the funding through EDC sales tax revenue, to assist the relocation of the existing municipally owned Public Works Facilities, the demolition of existing structures, and the construction of new Public Works Facilities, to promote or develop new or expanded business enterprises that create or retain primary jobs by paying the debt service for certificates of obligation, not to exceed $2,500,000.00, to be issued by the City of Seabrook for the "Relocation and Improvements for Public Works Facilities," ("Project") and the "Agreement Regarding the Construction and Improvement of Public Works" ("Construction Agreement") as approved by the Seabrook Economic Development Corporation ("EDC") and attached hereto, is hereby approved by the City Council of the City of Seabrook.

ADOPTED AND APPROVED this the 15thth day of March, 2016.

PASSED, APPROVED, AND ADOPTED on second and final reading this 5th day of April, 2016.

CITY OF SEABROOK, TEXAS

BY: _____
Gary Johnson, Mayor Pro Tem

ATTEST:

_____
Robin Hicks, TRMC
City Secretary

THE CITY OF SEABROOK TEXAS

DRAFT 9.11.2015

AGREEMENT REGARDING THE CONSTRUCTION AND IMPROVEMENT OF PUBLIC WORKS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This Agreement regarding the Construction and Improvement of Public Works (the "Agreement") is entered into as of the 5th day of April, 2016, between the CITY SEABROOK, TEXAS, a home rule municipality situated in Harris County, Texas (the "City") and the SEABROOK ECONOMIC DEVELOPMENT CORPORATION, a non-profit economic development corporation (the "Corporation") created and operating as a Type B corporation pursuant to the provisions of Chapters 501 and 505, Texas Local Government Code, as amended (the "Act").

RECITALS

At an election held within the City on January 18, 1992 (the "Election"), the voters approved a proposition authorizing the levy and collection of a sales and use tax within the City at the rate of one-half of one cent (the "Additional Sales Tax") as authorized by the Act for economic development purposes.

The Corporation was formed pursuant to the Act for the purpose of the payment of costs of "Projects" authorized by Section 4B of Article 5190.6 V.A.T.C.S., (now recodified in the Texas Local Government Code Section, 501.001 et. seq. and more specifically Section 505 relating to Type B corporations), and to pay for the principal and interest on bonds or other obligations issued to pay the costs of such "Projects" as authorized by the Act and the Election.

Pursuant to the provisions of the Act, the City collects the Additional Sales Tax and pays it to the Corporation.

The Corporation hereby finds, determines and declares that expenditures for infrastructure and related improvements/expenditures associated with the construction and improvement of public works, relating to the relocation of water and sewer facilities, specifically including the relocation of the existing municipally owned Public Works facility, the demolition of existing structures, and the development of new public improvements for related new public works facilities, is necessary to promote or develop new or expanded business enterprises that create or retain primary jobs and is an authorized project of the Corporation under the Act, in accordance with Sections 501.101, 501.103, 505.152, 505.155, 505.158, 505.302, and related authority, (the "Authorized Project").

The Corporation additionally finds that notice and hearing for the Authorized Project has been provided in accordance with Section 505.159, and that in accordance with Section 505.158 that the Corporation shall not undertake the Authorized Project until the City Council of the City of Seabrook adopts a Resolution of approval of the Project after two separate readings (the "Resolution"), and complying with the legal prerequisites for undertaking the Authorized Project

under the Act. The City's approval of the Resolution and execution of this Agreement shall evidence compliance with these legal prerequisites, and the City and the Corporation now wish to proceed with the Authorized Project effective on the date of final approval of the Resolution.

The City and the Corporation have determined that the most economical means of financing the costs of and delivering the Authorized Project is for the City to issue one or more series of its certificates of obligation (the "Certificates") in an aggregate principal amount not to exceed $2,500,000.00 for the purpose of the Authorized Project, with the agreement of the Corporation to (i) make payments to the City from the Additional Sales Tax in amounts sufficient to pay the debt service on the Certificates as and when it becomes due, all as more specifically detailed in the schedules described in Section 1.04(b) of this Agreement and (ii) make payments to the City for costs of the Authorized Project when due. The Corporation hereby finds that this Agreement is for the benefit of the Corporation and that all payments made hereunder are for authorized project costs under the Act.

The City and the Corporation hereby find, determine, and declare that the respective meetings of the City Council of the City and the Board of Directors of the Corporation at which this Agreement was approved were open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Agreement, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended.

AGREEMENT

For and in consideration of the respective promises and mutual covenants and benefits hereinafter set forth, the City and the Corporation agree as follows:

ARTICLE I

THE PROJECTS

Section 1.01 Definitions, Declarations, Findings and Determinations. The definitions, declarations, determinations and findings contained in the recitals to this Agreement are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.02 Construction of the Project.

(a) The City in consultation with the Corporation agrees to prepare or cause to be prepared all plans and specifications required for the construction of the Authorized Project, which costs shall be payable from funds to be paid by the Corporation as provided herein.

(b) The City agrees to contract with all individuals or entities necessary to complete the Authorized Project in accordance with the plans, specifications and other construction documents. The City will provide all construction and contract management services in connection with the construction of the Authorized Project. The public infrastructure improvements being financed with the Certificates and funded by the Corporation will be owned by the City.

(c) The costs of constructing the Authorized Project shall be payable from Certificate proceeds or other funds to be paid by the Corporation on a pay-as-you-go basis. The Corporation will only be responsible for and pay any and all costs associated with the design and construction of the Authorized Project in excess of the Certificate proceeds allocated to the Authorized Project if authorized by the Corporation in a separate action.

Section 1.03 Issuance of the Certificates.

(a) Subject to applicable legal restrictions, the City agrees to issue and sell one or more series of Certificates and to use the applicable portion of the proceeds from the sale of the Certificates to pay the costs of the Authorized Project and the costs of issuing the Certificates.

Section 1.04 Use of Additional Sales Tax.

(a) The Corporation agrees to use the Additional Sales Tax, and any interest earned thereon, to make payments to the City in amounts sufficient to pay the principal of and interest on the Certificates and any bonds issued to refund the Certificates when due. Unless it receives the prior written consent of the City, the Corporation shall make such payments to the City prior to using the Additional Sales Tax, and any interest earned thereon, for any other lawful purposes of the Corporation in accordance with law.

The City will provide the Corporation with a final schedule of the principal and interest payments due on each series of Certificates issued for the Authorized Project upon the pricing of each series of Certificates. The Corporation agrees to pay to the City amounts sufficient to make the principal and interest payments described in such schedules at least fifteen (15) days before each payment is due. Upon delivery of such schedules to the Corporation, which receipt shall be acknowledged by the President of the Corporation or his or her designee, the schedules shall be considered incorporated into this Agreement. Each schedule shall indicate the title of the series of Certificates to which it relates. Upon the issuance of any bonds refunding one or more series of the Certificates, the City will provide the Corporation with a revised schedule of principal and interest payments, which receipt shall be acknowledged by the President of the Corporation or his or her designee, and such schedule shall be considered incorporated into this Agreement. The Corporation agrees to pay to the City amounts sufficient to make the principal and interest payments described in such refunding bond schedules at least fifteen (15) days before each payment is due.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the City. (a) The City hereby confirms the earlier levy by the City of the Additional Sales Tax, and hereby warrants and represents that the City has duly and lawfully ordered the imposition and collection of the Additional Sales Tax upon all sales, uses and transactions as are permitted by and described in the Act throughout the boundaries of the City as such boundaries existed on the date of said election and as they may be expanded from time to time pursuant to applicable law.

(b) The City agrees to take and pursue all action permissible under applicable law to cause the Additional Sales Tax to be collected and remitted and deposited with the Corporation as required by the Act, at the earliest and most frequent times permitted by applicable law.

(c) The City agrees to do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under this Agreement.

Section 2.02 Representations and Warranties of the Corporation. (a) The Corporation represents and warrants that it is and will be authorized by applicable law and by its articles of incorporation and bylaws to enter into this Agreement and make the payments to the City in the manner and to the extent provided in this Agreement.

(b) The Corporation represents and warrants that the Project is an authorized project of the Corporation under the Act, and that the Corporation has taken all action and obtained all approvals required by law and the Corporation's bylaws in order to proceed with this Project and to undertake its obligations under this Agreement.

(c) The Corporation agrees to do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Corporation under this Agreement.

(d) The Corporation represents and warrants that this Agreement constitutes a valid, legal and binding obligation of the Corporation enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting creditors' rights, and that the execution and delivery of this Agreement will not conflict with or constitute a material breach of or a default under any agreement or instrument to which the Corporation is a party.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.01 Term. This Agreement shall be in force and effect from the date of execution hereof until the date on which the Certificates or bonds issued to refund the Certificates are paid in full.

Section 3.02 Amendments and Supplements. This Agreement may be amended, supplemented or extended by mutual agreement of the parties hereto.

Section 3.03 Merger. This Agreement embodies the entire understanding between the parties hereto and there are no prior effective representations, warranties, or agreements between the parties hereto.

Section 3.04 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original instrument and each will have the force and effect of an original and all of which together constitute, and will be deemed to constitute, one and the same instrument.

Section 3.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

Section 3.06 Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application hereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

[Execution Page Follows]

DRAFT 9.11.2015

EXECUTED in multiple counterparts as of the date first written above.

CITY OF SEABROOK, TEXAS

By:_____
Mayor

ATTEST:

By:_____
City Secretary

SEABROOK ECONOMIC
DEVELOPMENT CORPORATION

By:_____
President, Board of Directors

ATTEST:

By: Ernie Davis
Secretary, Board of Directors

SCHEDULE I

Debt Service Schedule

[The debt service schedule for each series of Certificates or refunding bonds will be provided in connection with pricing of such Certificates or refunding bonds and incorporated herein as provided in Sections 1.03 and 1.04 of this Agreement.]