

**AGREEMENT BETWEEN
THE CITY OF SUGAR LAND AND
SETTLERS PARK HOMEOWNERS ASSOCIATION, INC.**

This agreement (Agreement) is entered into between the **CITY OF SUGAR LAND, TEXAS** (City) and the **SETTLERS PARK HOMEOWNERS ASSOCIATION, INC.** (Settlers Park).

Background:

Settlers Park is a property owners' association created for the Settlers Park community located within the City. By Resolution No. 20-03 the City Council of the City of Sugar Land adopted a Council Policy Regarding Participation With Community-Based Organizations in Capital Improvement Projects Using 4B Corporation Funds (Policy). Under the Policy, Settlers Park submitted an application to the City requesting that the Sugar Land 4B Corporation (SL4B) assist with funding for brick perimeter fencing along the Settlers Park side of Settlers Way Blvd., starting at the monument at Flintwood Drive and continuing down to Wagon Trail (Application). The brick perimeter fencing will replace the existing deteriorating fencing located along the Settlers Park side of Settlers Way Blvd., starting at the monument at Flintwood Drive and continue down to Wagon Trail. The decorative concrete wall will be located within public right-of-way (ROW).

The SL4B adopted Resolution No. 2021-02-03 approving funding for a portion of the costs of the brick perimeter fencing, subject to: (1) Settlers Park obtaining a survey showing the location of the brick perimeter fencing; (2) if the survey determines that any portion of the perimeter fencing will be located within an existing public utility easement, Settlers Park obtaining a "No Objection" letter or consent to encroachment from each entity with utility facilities located within the public utility easement evidencing that the entity does not object to the perimeter fencing being located within the public utility easement; (3) if the survey determines that a portion of the brick perimeter fencing will be located within another type of easement or on private property, Settlers Park obtaining an easement or consent to encroachment from any easement holder or private property owner, evidencing that they do not object to the perimeter fencing being located within their easement or on their private property; (4) Settlers Park submitting to the City the "No Objection" letters or consents to encroachment from each entity with utility facilities located within the public utility easement evidencing that the entity does not object to the perimeter fencing being located within the public utility easement; and (5) Settlers Park submitting to the City any easements or consents to encroachment from any easement holders or private property owners evidencing that they do not object to the perimeter fencing being located within their easement or on their private property.

Settlers Park: (1) obtained a survey showing the location of the brick perimeter fencing, and showing that all portions of the brick perimeter fencing will be located outside of any public utility easement and outside of private property, but located within ROW; and (2) provided an executed and recorded Consent to Encroach between the City and Settler Park, authorizing Settlers Park to locate the brick perimeter fencing in the ROW. The City and Settlers Park desires to enter into this Agreement to establish the terms of the brick perimeter fencing construction and maintenance.

Agreement:

In consideration of the promises of each, the City and Settlers Park agree as follows:

1. Definitions. The capitalized terms in the Background section of this Agreement have the meaning ascribed therein and apply to this Agreement. Furthermore, in this Agreement:

Application means the Sugar Land 4B Corporation Joint Participation Project Funding Request-Application submitted by Settlers Park to the City on February 28, 2020.

Improvements mean the brick perimeter fencing to be located along the Settlers Park side of Settlers Way Blvd., starting at the monument at Flintwood Drive and continuing down to Wagon Trail the depiction and specifications of which are shown in the attached Exhibit A, which is incorporated into this Agreement.

2. Effective Date and Term. This Agreement is effective on the latest date of the parties' signatures and ends on the date the City makes payment to Settlers Park as provided in this Agreement.

3. Installation. Settlers Park will own and may install, maintain, and replace the Improvements within the ROW in compliance with this Agreement, the City's ordinances, and other applicable laws and regulations. Settlers Park will enter into a contract(s) with contractor(s) to construct the Improvements. Settlers Park must obtain any permits and pay any fees required by the City or other governmental entities relating to the installation of the Improvements within the ROW, including any permits or fees required for working in City easements.

4. Maintenance. After construction and installation, Settlers Park must maintain and keep the Improvements in good condition and repair and in compliance with the City's ordinances, and other laws.

5. City Reimbursement for Improvements. Upon completion of the Improvements, Settlers Park will submit to the City:

- (a) Copies of all required permits obtained for installation of the Improvements;
- (b) Copies of receipts showing that all the contractors have been paid a total amount of at least \$168,669.00;
- (c) A letter from Settlers Park's Board President warranting that the Improvements have been completed according the requirements of this Agreement; and
- (d) Photographs of the completed Improvements.

The City will make one payment of \$63,697.75 to Settlers Park within 30 days of the City's review and approval of the documents and photographs listed above.

6. Termination.

- (a) If Settlers Park fails to substantially begin work to install the Improvements within 90 days of the effective date of this Agreement, the City's city manager may terminate this Agreement by giving Settlers Park at least 10 days' written notice of termination prior to the date of termination.
- (b) The City may terminate this Agreement as provided in this paragraph if Settlers Park fails to comply with any provision of this Agreement. The City will give Settlers Park notice of the default in writing citing the terms of the Agreement that have been breached and what action Settlers Park must take to cure the default. If Settlers Park fails to cure the default as specified in the notice within 30 days after receiving the notice (or such longer period as may be necessary provided that Settlers Park promptly begins curing the default and diligently continues such efforts to completion), the City's city manager may terminate this Agreement by written notice to Settlers Park, specifying the date of termination.

7. Notices. All notices required under this Agreement must be in writing and may be sent by: (a) delivering the notice in person; (b) depositing the notice in the U. S. Mail, certified or registered, return receipt requested, postage prepaid; (c) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (d) sending the notice by telefax with confirming copy sent by mail. Notice is deemed effective when received by the Party to be notified. All notices must be sent or delivered to the following addresses or as the City or Gannoway Lakes may hereafter designate by written notice:

City:	City of Sugar Land 2700 Town Center Boulevard North Sugar Land, Texas 77479 Attn: City Manager
Settlers Park:	Settlers Park Homeowners Association, Inc. c/o Creative Management 8323 Southwest Freeway, #330 Houston, Texas 77074 Attn: Christi Keller, Association Manager

8. Binding Agreement. This Agreement is binding on Settlers Park, its successors, assigns and grantees.

9. Law Governing and Venue. This Agreement is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

10. Entire Agreement. This Agreement represents the entire agreement between the City and Settlers Park and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both parties.


11. Severability. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

CITY OF SUGAR LAND

**SETTLERS PARK HOMEOWNERS
ASSOCIATION, INC.**

Michael W. Goodrum, City Manager

Date: _____

By: 
Name: Bonnie Finnigan
Its: Association President
Date: 10/19/2021

ATTEST:

Thomas Harris, III, City Secretary

Approved as to Form:

DAnn Shea Smith

EXHIBIT A

Improvements

(See attached)