

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- (✓) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other.

Ronald C. [Signature]
Sherard [Signature]

Date: 1-12, 2015. City Controller of the City of Houston _____

FUND REF: 7-NA-5060- AMOUNT: -0- ENCUMB. NO.: NF 50018-15

MRJ
OK
AKS

City of Houston, Texas, Ordinance No. 2015 - 33

AN ORDINANCE APPROVING AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND THE MUSEUM OF FINE ARTS, HOUSTON ("MFAH") FOR THE DEVELOPMENT AND CONSTRUCTION OF A PROJECT TO EXPAND THE MAIN CAMPUS OF THE MFAH AND CERTAIN PUBLIC WORKS AND IMPROVEMENTS RELATED THERETO; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

THERE TO; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, by Ordinance No. 99-674, adopted by City Council on June 20, 1999, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code (“Chapter 380”) under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City (“Chapter 380 Program”); and

WHEREAS, the Chapter 380 Program includes “Criteria for Chapter 380 Assistance” attached as Exhibit “A” to Ordinance No. 99-674; and

WHEREAS, Section 2 of Ordinance No. 99-674 provides that the Director of the City’s Planning and Development Department or the Director’s designee shall administer the Chapter 380 Program (“Program Administrator”); and

WHEREAS, the Director of the Planning and Development Department has designated the Deputy Director of the Mayor’s Office of Economic Development/TIRZ as Program Administrator; and

WHEREAS, the Museum of Fine Arts, Houston (“MFAH”) has submitted an application for assistance pursuant to the Chapter 380 Program; and

WHEREAS, the Program Administrator has reviewed MFAH’s application for assistance initiating the required consideration for economic assistance and determined that MFAH has satisfied the qualifications for assistance; and

WHEREAS, the MFAH proposes to develop and construct an expanded fine arts museum facility with appurtenant parking, office, display and retail space, as well as

certain public improvements on Bissonnet Street, including new sidewalks, improved lighting and public amenities such as streetscape, signage and related improvements to create a pedestrian-friendly campus, and the relocation, replacement and upsizing of a water line (the "Project"); and

WHEREAS, the Project will require the abandonment of a portion of the right-of-way of Roseland Street between Barkdull Street and Berthea Street, and a 20-foot-wide storm sewer easement (the "Right-of-Way"), and MFAH has requested an economic incentive from the City in the form of a grant to help offset the value difference of the Right-of-Way that MFAH would otherwise be required to pay upon the City's abandonment of the Right-of-Way; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales and use tax to the City and additional jobs resulting from the construction and operation of the Project, the City desires to enter into an Economic Development Agreement (the "Agreement") pursuant to Chapter 380 and other laws applicable to the development of municipal infrastructure and to grant to MFAH the value of the Right-of-Way that MFAH would otherwise be required to pay upon the City's abandonment of this Right-of-Way, in consideration for the development, use and operation of approximately 36,000 square feet of the Project for an expanded sculpture plaza area on Montrose Street that will be open to the public free of charge and operated as part of the Cullen Sculpture Garden; and

WHEREAS, the City Council finds that the Project will attract tourism and commerce to the surrounding area and to the greater City that otherwise would not occur, resulting in a significant economic impact to the City through timely development

and diversification of the economy, elimination of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional sales and use tax revenue generated by the Project for the City; and

WHEREAS, the City Council finds that the Project will provide a public benefit to the citizens of and the visitors to the City of Houston, including opportunities for students of all ages to participate in the free tours and educational programs offered by MFAH; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the City Council finds it advantageous to the City to make a grant to MFAH to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state; and

WHEREAS, the City Council finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and MFAH; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, MFAH has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to raising private funds for the Project, job creation and Project operations; and

WHEREAS, the Program Administrator has determined, and the City Council finds, that the Agreement generally meets the criteria for Chapter 380 assistance

guidelines set forth in Ordinance No. 99-674; and

WHEREAS, the City Council hereby waives any requirements in Ordinance No. 99-674 with which MFAH or the City have not complied; **NOW, THEREFORE**,

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

Section 1. Findings. That the facts and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Economic Development Agreement. That the City Council hereby approves and authorizes the Economic Development Agreement described in the title of this Ordinance, in substantially the form shown in the document attached hereto as Exhibit "A" (the "Economic Development Agreement") and incorporated herein by this reference. The Mayor is hereby authorized to execute the Economic Development Agreement and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

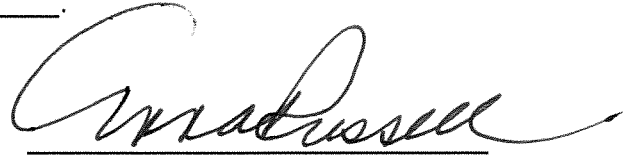
Section 3. City Attorney Authorization. That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contracts, agreements, or other undertakings approved by this Ordinance without further authorization from Council.

Section 4. Emergency. That 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 days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 14th day of January, 2015.
APPROVED this _____ day of _____, 2015.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JAN 20 2015.



City Secretary



(Prepared by Legal Department
(MFB:mfb January 6, 2015)
(Requested by Andrew F. Icken, Chief Development Officer)
(L.D. File No. 0421500001001)

Senior Assistant City Attorney

G:\REAL ESTATE\CHAPTER 380\380 MFAH\ORD 1-6-15.DOC

AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
	ABSENT	BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: JAN 20 2015

EXHIBIT A
ECONOMIC DEVELOPMENT AGREEMENT

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT (the "Agreement") by and between the CITY OF HOUSTON, TEXAS, a Texas home-rule municipal corporation (the "City"), and THE MUSEUM OF FINE ARTS, HOUSTON, a Texas nonprofit corporation (the "Developer" or the "MFAH"), is entered into as of the date the City Controller countersigns hereto (the "Effective Date").

RECITALS

WHEREAS, Developer owns or has contracted to purchase certain tracts of land within the corporate limits of the City, as generally depicted on **Exhibit A** attached hereto (the "Property"), for the purpose of developing an expanded fine arts museum facility with appurtenant parking, office, display and retail space; and

WHEREAS, the Project (as defined below) consists of the approximately 465,000 square foot expansion of the MFAH's main campus at the corner of Main Street and Bissonnet Street; consisting of a 165,000 square foot museum building with galleries, auditorium and restaurant, an 80,000 square foot Glassell School of Art building with a 34,000 square foot walkable green roof rising from the existing Cullen Sculpture Garden, a 35,000 square foot conservation center above the Fannin Street garage, a 200,000 square foot subterranean parking facility with capacity for 400 cars, a pedestrian plaza on Main Street between Bertha Street and Bissonnet Street, and a 36,000 square foot expanded sculpture plaza area north of the existing Cullen Sculpture Garden that will be open to the public and operated as part of the Cullen Sculpture Garden. The Project also encompasses certain public improvements on Bissonnet Street, including new sidewalks, improved lighting and public amenities such as streetscape, signage and related improvements to create a pedestrian-friendly campus. The Project will also result in water line relocation, replacement and upsizing infrastructure costs and other associated public utility costs. The total expansion is anticipated to be \$350 million, and is anticipated to be complete in September 2019 (all, the "Project"); and

WHEREAS, the MFAH will take the extraordinary step of placing its parking facilities underground at an added cost of approximately \$15.5 million, allowing for reconfigured site design, a 165,000 square foot museum exhibition building clad in luminous, translucent glass, a new 80,000 square foot Glassell School of Art, and the incorporation of approximately 36,000 square feet of expanded sculpture garden plaza area into the MFAH's Main Campus, enhancing the visual appeal and walk-ability of the entire museum campus area, reducing storm water runoff, and reducing car noise, and with no obstruction of views or sunlight from adjacent property owners and neighborhoods and no contribution to the heat island effect; and

WHEREAS, the Project will allow the MFAH to exhibit \$700 million worth of 20th and 21st century art and artifacts, which are currently stored. Additionally, the Project will allow consolidation of conservation functions that are currently spread out in several facilities; and

WHEREAS, the Developer agrees to finance and develop the Project in accordance with the terms and conditions of the Agreement; and

WHEREAS, the City has determined that the Project will attract tourism and commerce to the surrounding area and to the greater City that otherwise would not occur, resulting in a significant economic impact to the City through timely development and diversification of the economy, elimination of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional sales and use tax revenue generated by the Project for the City; and

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code (“Chapter 380”) under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the City agrees to make a grant to Developer to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales and use tax to the City and additional jobs resulting from the construction and operation of the Project, the City desires to enter into this Agreement pursuant to Chapter 380 and other laws applicable to the development of municipal infrastructure and to grant to the Developer the value of the right-of-way that the Developer would otherwise be required to pay upon the City’s abandonment of this right-of-way in consideration for the development, use and operation of approximately 36,000 square feet of its Project for an expanded sculpture plaza area on Montrose Street that will be open to the public free of charge and operated as part of the Cullen Sculpture Garden; and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements under Chapter 380 and the City’s established economic development program, and, further, is in the best interests of the City and Developer; and

WHEREAS, the City has concluded and hereby finds that the Project will provide a public benefit to the citizens of and the visitors to the City of Houston, including opportunities for students of all ages to participate in the free tours and educational programs offered by the MFAH; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, the Developer has agreed to comply with certain conditions for receiving those benefits, including performance conditions relating to raising private funds for the Project, job creation and Project operations; and

WHEREAS, consistent with Chapter 380 and other law, City and the Developer, as contemplated in this Agreement agree to work together to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or

underemployment in the state, and developing or expanding transportation or commerce in the state; and

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and Developer hereby agree as follows:

ARTICLE I GENERAL TERMS

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

B. Definitions and Terms. The terms “Agreement,” “Chapter 380,” “City,” “Developer,” “MFAH,” “Effective Date,” “Project,” and “Property” shall have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

“Force Majeure” shall have the meaning ascribed to it in Article V, Section D of this Agreement.

“Parties” or “Party” shall mean the City and the Developer, the parties to this Agreement.

“Project Completion Deadline” shall have the meaning ascribed to it in Article II of this Agreement.

“Right-of-Way” means the portion of the right-of-way of Roseland Street between Barkdull Street and Berthea Street, and a 20-foot-wide storm sewer easement, that the Developer has requested the City to abandon.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

ARTICLE II THE PROJECT

The Developer intends to construct (or cause to be constructed) the Project. A conceptual site plan for the Project is attached hereto as **Exhibit B**.

The Developer shall construct the Project in compliance with all applicable ordinances, rules and regulations of the City and all other entities having jurisdiction over the Project. The Developer shall satisfy all City permitting requirements, including, but not limited to, Chapter 9 of the City’s Department of Public Works and Engineering Infrastructure Design Manual and building permitting requirements.

The Developer shall complete the Project and make it available for occupancy, as evidenced by a certificate of occupancy issued by the City, no later than September 30, 2019 (the “Project Completion Deadline”), subject to Article V, Section D of this Agreement. Subject to

Article V, Section D of this Agreement, failure to complete the Project by this date shall constitute an incurable event of default under this Agreement.

ARTICLE III REPRESENTATIONS

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

The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery and performance of this Agreement by the City do not require the consent or approval of any person which has not been obtained.

B. Representations of the Developer. The Developer hereby represents to the City that as of the date hereof:

The Developer is duly authorized and existing and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

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

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms except to the extent that the enforceability of such instruments may be limited by bankruptcy,

reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

ARTICLE IV
ABANDONMENT OF RIGHT-OF-WAY; DEVELOPER COMMITMENTS

A. Abandonment of Right-of-Way. To develop and construct the Project, the Developer must acquire the Right-of-Way that will become part of the Project. Subject to adherence to the conditions in City Motion No. 2013-0708, and the other standard City procedures for the abandonment of a City right-of-way, relating to the abandonment of the Right-of-Way, the City agrees to approve an ordinance or other appropriate form of agreement for the abandonment of the Right-of-Way to facilitate the development of the Project. As an incentive for the Developer to construct the Project, pursuant to the authority of Chapter 380 and other law, the City hereby agrees to make a Chapter 380 grant to the Developer of the amount the Developer would otherwise be required to pay the City for abandoning the Right-of-Way.

B. Developer Commitments. In consideration of City agreeing to abandon the Right-of-Way in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following:

1. Sculpture Plaza Area. Developer shall develop, use and operate approximately 36,000 square feet of its Project, as indicated on Exhibit B and as depicted on **Exhibit C** attached hereto, for an expanded sculpture plaza area on Montrose Street that will be open to the public free of charge and operated as part of the Cullen Sculpture Garden (Glassell Sculpture Plaza) for the time period during which MFAH operates the Cullen Sculpture Garden on behalf of the City under that certain Sculpture Garden Construction and Operating Agreement between the City and MFAH made effective on February 8, 1985, as extended by that certain Extension of Sculpture Garden Construction and Operating Agreement between the City and MFAH made effective on January 30, 2014. This provision shall survive the stated Term of this Agreement.

2. Project Funding. Developer shall generate at least \$200,000,000 from private funding sources to be used toward the design and construction of the Project. Developer shall be deemed to have met this condition upon submitting to the City a report from an independent auditor engaged by the MFAH to document that the amount of such private funding that has been spent on the Project is at least \$200,000,000. Such report will not include the actual names of individuals or entities from which the funds came.

3. Job Retention. Developer shall comply with the following commitment (the "Job Creation Condition"): the Developer agrees that, beginning from the time that the Project is completed, as evidenced by the issuance of a certificate of occupancy by the City, at least 25 full-time equivalent positions will be employed at the Property. As used herein, the term "jobs" shall mean full-time equivalent positions providing a regular work schedule of at least 35 hours per week; provided that two part-time positions shall be equivalent to and considered one full-time equivalent position (For purposes hereof, a part-time position shall mean position, which is not a full-time equivalent position, which

provides a regular work schedule of at least 20 hours per week). For the ten years following the completion of the Project, upon the request of the City, the Developer shall annually submit documentation as reasonably necessary to evidence that the Developer has satisfied the Job Creation Condition. This provision shall survive the stated Term of this Agreement.

2. Operational Condition. Developer shall continuously operate the Project on the Property for not less than ten years following the completion of the Project, as determined in accordance with Article IV, Section B.3 of this Agreement, subject only to (i) events of Force Majeure, (ii) reasonable periods of closing actually required for repair or restoration following casualty and condemnation, and (iii) temporary closings (not to exceed 270 days, and not more frequently than once each 5 years) for repair, renovations and/or alterations of the Property. This provision shall survive the stated Term of this Agreement.

3. Business Opportunity; Non-Discrimination. Developer shall comply and shall require its contractors to comply with the City's Small Business Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15 of the City of Houston Code of Ordinances. The City's policy does not require Developer to in fact meet or exceed this goal, but it does require Developer to objectively demonstrate that it has made good faith efforts to do so. The agreements between Developer and its contractors and any subcontractor must expressly require compliance with such Chapter 15 requirements.

Developer shall not discriminate in its employment practices, service provisions, or in any other manner in the use of the Properties or in the exercise of the rights and privileges granted by this Agreement because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy ancestry, handicap, or religion.

Developer will, in the conduct of its business as a private non-profit corporation, seek to encourage the hiring of minorities and women employees and the contracting with small minority and disadvantaged business enterprises.

ARTICLE V. DEFAULT AND REMEDY

A. General Events of Default. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

Before any failure of either party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.

B. Project Completion Default. The Developer and its successors and assignees shall be in default under this Agreement if construction of the Project is not substantially complete and does not have a certificate of occupancy issued by the City on or before the Project Completion Deadline, subject to Article V, Section D of this Agreement (a "Project Completion Default"). A Project Completion Default shall be an incurable event of default. Upon the occurrence of a Project Completion Default, the Developer shall, within thirty (30) days of receipt of written notice of default from the City, pay the City the amount of money the Developer otherwise would have had to pay the City for the abandonment of the Right-of-Way as the City's sole and exclusive remedy for a Project Completion Default, all other remedies for a Project Completion Default being waived by the City, such amount being agreed upon as liquidated damages because of the difficulty of ascertaining the actual damages for any such Project Completion Default. In lieu of declaring a Project Completion Default, the Chief Development Officer of the City, if he or she believes that reasonable progress is being made toward completion of the Project and that the Project can and will be completed, may recommend that the City Council approve an amendment to this Agreement extending the Project Completion Deadline, subject to receipt of adequate consideration from the Developer.

C. Default Remedies. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

D. Force Majeure. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

E. Exercise of Rights in the Event of Default. In addition to any other right or remedy available to the parties pursuant to this Agreement, in the event of a default or a breach by either party under this Agreement which continues for 30 days after written notice to the party alleged to have defaulted or breached and the failure of the party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining party's reasonable satisfaction, the complaining party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regard to mandamus, specific performance or mandatory permanent injunction to require the party alleged to have defaulted or breached to perform.

**ARTICLE VI
GENERAL PROVISIONS**

A. Time of the essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation, subject to Developer's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate Developer's timely procurement of all entitlements required for the Project.

B. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to the Developer:	The Museum of Fine Arts, Houston Chief Operating Officer 1001 Bissonnet Street Houston, Texas, 77005
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If to the City of Houston:	Director of Finance Department City of Houston, Texas P. O. Box 1562 Houston, Texas 77002
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Notice shall be deemed to have been received on the date such notice is personally delivered or three days from the date such notice is mailed or sent by rapid transmission. Either party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the Developer or the City, as the case may be.

C. Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Developer and the City. No course of dealing on the part of the Developer or the City nor any failure or delay by the Developer or the City with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

D. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

E. Successors and assigns. Developer may assign, without City consent, all or part of its rights (including the right to receive payments), duties and obligations under this

Agreement to any lender; investor; escrow agent; affiliate, subsidiary, or related party of the Developer; or an owner or Developer of the Project.

F. Exhibits, titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

G. Applicable law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas or the United States District Court for the Southern District of Texas.

H. Entire agreement. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

I. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall terminate on the first anniversary of the Project Completion Deadline (the "Term").

J. Approval by the parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably withheld or delayed.

K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

L. Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

M. Conflicts with Ordinances. The City and the Developer agree that any City ordinance, or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, that addresses matters that are covered by this agreement shall not be enforced by the City or the other regulatory agency within the property, and that the provisions of this agreement govern development of the property. Without limited the foregoing, the terms and conditions of this Agreement specifically control over any conflicting provisions of City Ordinance No. 99-674.

N. Powers. The City hereby represents and warrants to Developer that the City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing

have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

O. City Council Approvals and Appropriations. This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the Controller of the City. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Commencement Date in connection with this Agreement (and the transactions contemplated herein or therein), or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

[EXECUTION PAGE FOLLOWS]

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

CITY:

DEVELOPER:

CITY OF HOUSTON, a Texas home-rule municipal corporation

THE MUSEUM OF FINE ARTS, HOUSTON

Mayor

By: _____

Name: _____

Date: _____

Title: _____

ATTEST/SEAL:

City Secretary

Date: _____

COUNTERSIGNED:

City Controller

Date: _____

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD No. 0421500001001

EXHIBIT A
DEPICTION OF PROPERTY

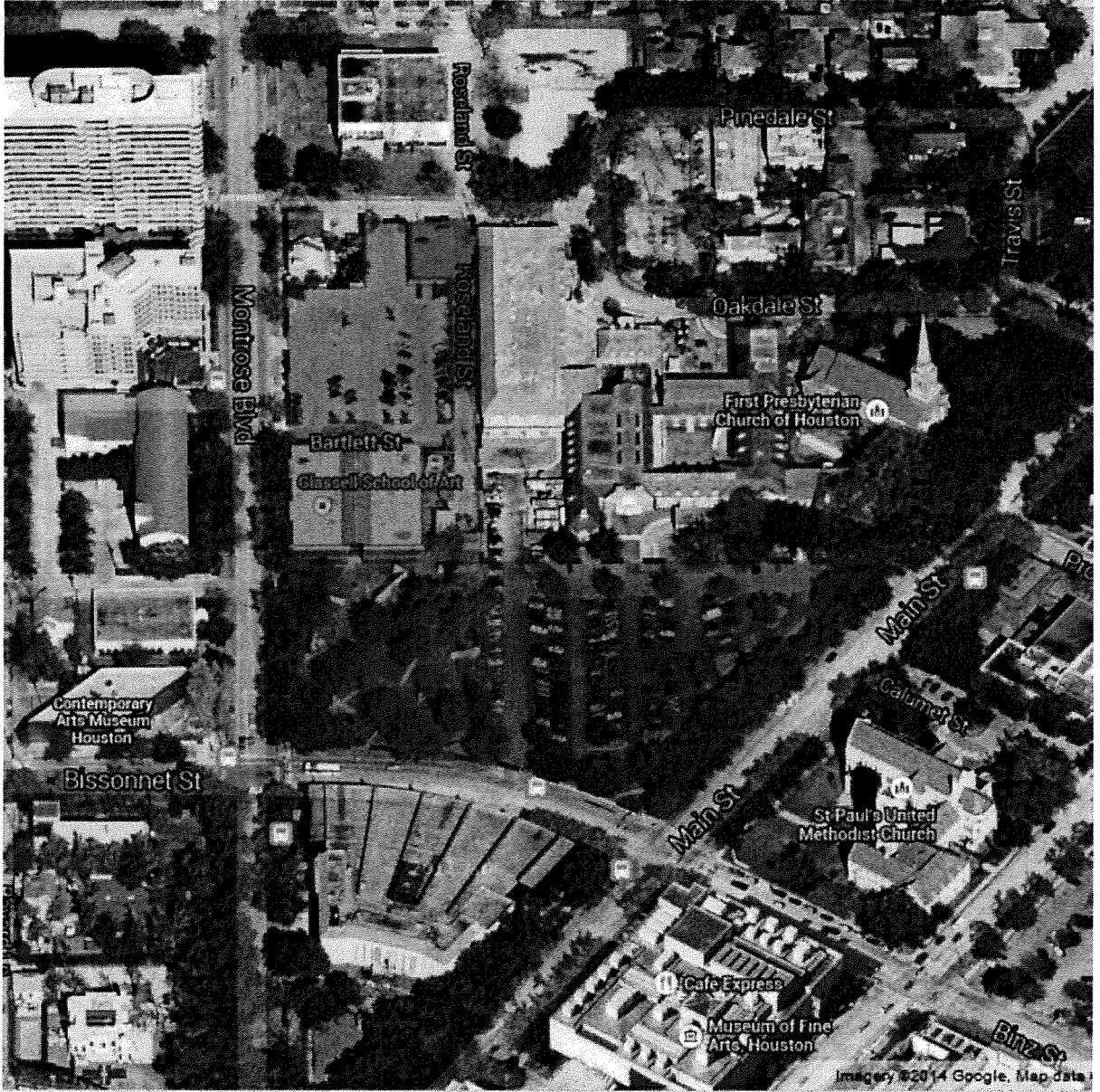
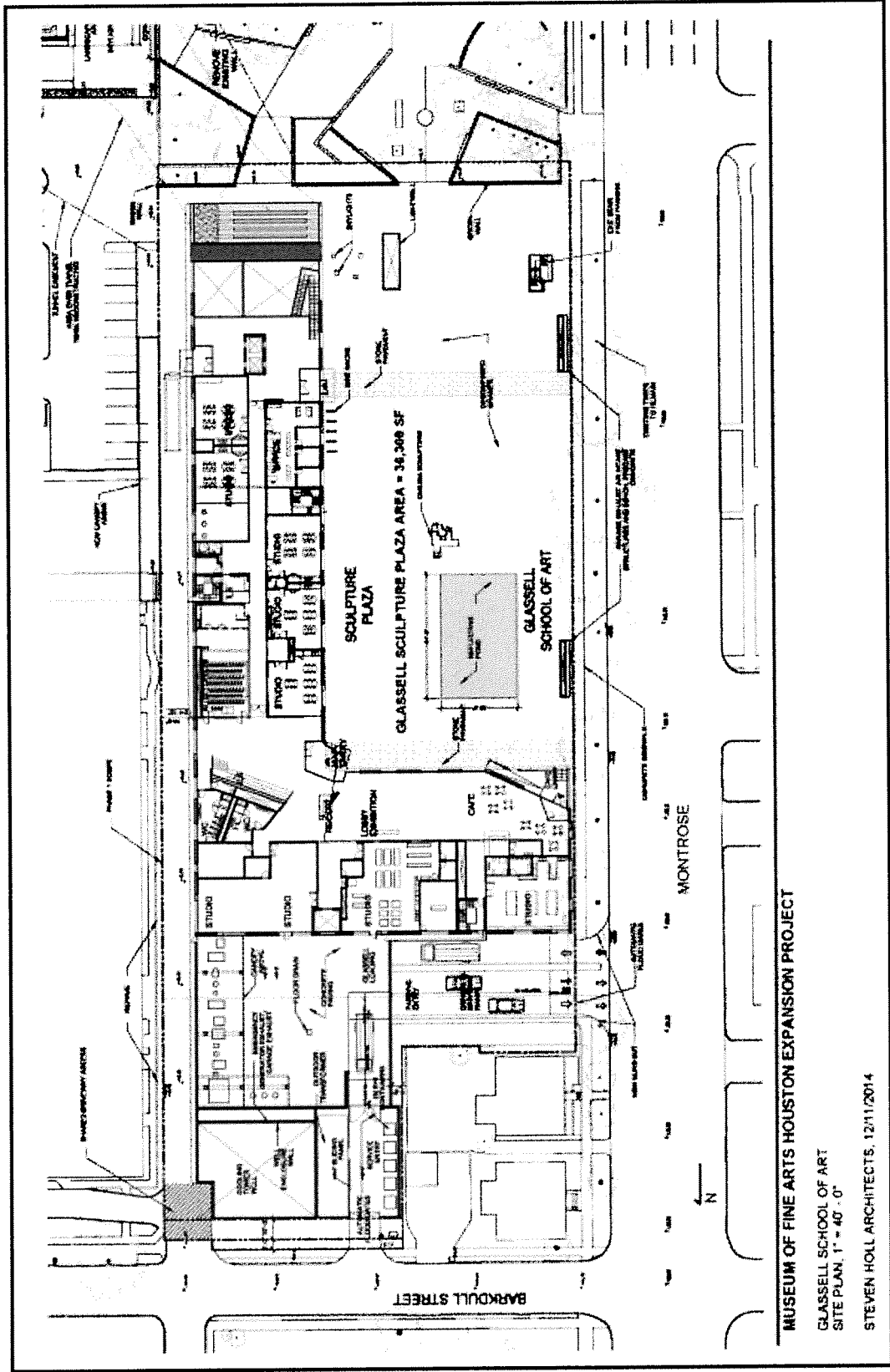


EXHIBIT B

CONCEPTUAL SITE PLAN OF PROJECT



MUSEUM OF FINE ARTS HOUSTON EXPANSION PROJECT

GLASSELL SCHOOL OF ART
SITE PLAN, 1" = 40' - 0"

STEVEN HOLL ARCHITECTS, 12/11/2014

EXHIBIT C

GLASSELL SCULPTURE PLAZA



View of Expanded Area of the Sculpture Garden