



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 14
AGENDA DATE: Thu 03/11/2004
PAGE: 1 of 1**

SUBJECT: Authorize negotiation and execution of a First Amendment to the City of Austin/Endeavor Real Estate Group Chapter 380 Economic Development Agreement, to include a "subject to future appropriations" provision and other clarifying amendments.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING Law
DEPARTMENT:**

**DIRECTOR'S
AUTHORIZATION: Dana Johnson**

FOR MORE INFORMATION CONTACT: Robin Sanders, Assistant City Attorney / 974-2429

PRIOR COUNCIL ACTION: May 15, 2003

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

This Council action would approve the inclusion of a "subject to future appropriations" clause as well as other clarifying amendments to the City of Austin / Endeavor Real Estate Group Chapter 380 Economic Development Agreement. Staff is requesting authority to negotiate and execute a First Amendment to the above Agreement.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager is authorized to negotiate and execute a First Amendment to the City of Austin/Endeavor Real Estate Group Chapter 380 Economic Development Agreement, in substantially the form attached as Exhibit "A."

ADOPTED: _____, 2004

ATTEST: _____

Shirley A. Brown
City Clerk

EXHIBIT A

**FIRST AMENDMENT TO CITY OF AUSTIN / ENDEAVOR REAL ESTATE
GROUP**

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO CITY OF AUSTIN / ENDEAVOR REAL ESTATE GROUP CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (the "Amendment"), is entered into by and between EGP Management, L.L.C., a Texas limited liability company ("EGP") and the City of Austin, Texas, a Texas home rule city and municipal corporation ("City").

RECITALS

- A. EGP and City entered into that certain "City of Austin/Endeavor Real Estate Group, Chapter 380 Economic Development Agreement," dated effective June 13, 2003 (the "Agreement") relating to economic development grants regarding the development of a mixed use project consisting of between approximately forty two (42) acres and fifty five (55) acres of land, as more particularly described in the Agreement (the "Property").
- B. EGP and City desire to amend the Agreement as set forth below.

AGREEMENT

In consideration of the mutual covenants and agreements, EGP and City agree as follows:

- 1. Amendment to Section 4. The first sentence of Section 4 of the Agreement is amended as follows:

Owner Obligations. In consideration of the City's participation in the Program, if Owner proceeds with the Project and accepts Chapter 380 Payments from the City pursuant to this Agreement, Owner agrees that the following performance guidelines shall be met:

- 2. Amendment to Section 4(b). The first sentence of Section 4(b) of the Agreement is amended as follows:

During the term of this Agreement, Owner will designate and allocate a One Million and No/100 Dollars (\$1,000,000) fund from its construction budget to assist small local businesses to locate at the Project.

- 3. Amendment to Sections 5 (a) and 5(b)(i). Sections 5(a) and 5 (b)(i) of the Agreement are deleted in their entirety and replaced with the following:

Chapter 380 Payments.

a. Payments. The City shall pay to Owner grants based on the following formulas applied to the Sales Tax Revenues and Ad Valorem Revenues paid to the City from the Project.

b. Sales Tax Formula.

- i. For a period of five (5) years beginning on the Sales Tax Effective Date, the City shall pay the Owner a Chapter 380 Payment equal to eighty percent (80%) of the One Cent Sales Tax Revenues. For a period of fifteen (15) years following the initial five (5) year period, the City shall pay the Owner a Chapter 380 Payment equal to fifty percent (50%) of the One Cent Sales Tax Revenues. The Chapter 380 Payments calculated with respect to the One Cent Sales Tax Revenues shall be paid by the City to Owner no later than October 30th of each year based upon the amount of sales taxes collected by the City for the twelve (12) month period ending with the preceding April 30th.

4. Amendment to Section 5 (c). The first sentence of Section 5(c) of the Agreement is amended as follows:

For a period of twenty (20) years beginning on the Ad Valorem Tax Effective Date, the City shall pay the Owner a Chapter 380 Payment equal to twenty-five percent (25%) of the Incremental Ad Valorem Revenues. ▬

The sixth sentence of Section 5(c) of the Agreement is amended as follows:

The Chapter 380 Payments with respect to the Incremental Ad Valorem Revenues shall be based on the amount stated in the Ad Valorem Revenue Notice, which shall be verified by the City, and shall be repaid to Owner by the City on an annual basis for the preceding year on or before October 30th following the tax year for which they were paid.

5. Amendment to Section 5 (e). The first sentence of Section 5(e) of the Agreement is amended as follows:

If, during the term of this Agreement, state law applicable to municipal taxation changes either in the form of sales taxes or ad valorem taxes, and as a result, the Chapter 380 Payments differ from the amount which would have been paid to Owner under the laws in effect as of the Effective Date of this Agreement, then the City, in its sole discretion may adjust the Chapter 380 Payments using whatever discretionary taxes and revenues that are legally available to the City which can be allocated to the Chapter 380 Payments.

6. Amendment to Section 5. Section 5 of the Agreement is amended to add the following subsection (f) as follows:
 - f. Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to ad valorem and/or sales tax revenues, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Owner. All payments by the City under this Agreement are subject to City's appropriation of funds for such payments in the budget year for which they are made. The payments to be made to Owner, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event the City does not appropriate funds in any fiscal year for payments due under this Agreement, City shall not be liable to Owner for such payments, and the Owner shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph 5(f) and any other language or covenant in this Agreement, this paragraph 5(f) shall control.
7. Effect of Amendment. Except as specifically amended by this Amendment, the terms and provisions stated in the Agreement shall remain in full force and effect. This Amendment and the Agreement, including all exhibits to such documents, constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements and understandings of the parties. In the event of any inconsistency, the terms and provisions of this amendment shall control over and modify the terms and provisions of the Agreement.
8. Execution. This instrument may be executed in any number of counterparts. Additionally, the (i) the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature shall be deemed to be an original signature for all purposes. All executed counterparts of this instrument shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement.

EXECUTED to be effective as of the _____ day of _____, 2004.

EGP: **EGP MANAGEMENT, L.L.C.,**
a Texas limited liability company

By: _____

Printed Name: _____

Title: _____

CITY:

By: _____

Printed Name: _____

Title: _____

Approved as to form: _____
City of Austin Law Department