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Contract Reference Cover Sheet

Responsible Department:	Law Department
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Project Name &Description:	First Amendment to City of Austin / Endeavor Real Estate Group Chapter 380 Economic Development Agreement
Contractor/Vendor/Party:	EGP Management, L.L.C. / City of Austin, Texas
Contract Period:	April 2, 2004 indefinitely
Contract/Agreement Type:	First Amendment to Economic Development Agreement
Extension Options:	N/A
Reference No.:	19069 / Construction, Land & Water Dept. Files
Requisition No.:	N/A
Solicitation No.:	N/A
RX No.:	N/A
Agenda Item Number:	Resolution No. 040311-14
Date Approved by Council:	March 11, 2004
Date of Execution:	April 2, 2004

NOTE:

Forward this document electronically to the Office of the City Clerk. It will be kept of file in the Office of the City Clerk and provided to customers seeking information regarding the contract/agreement

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 set forth herein, EGP and City agree to amend the Agreement 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. New Section 24. A new Section 24 is added to read as follows:

   No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

8. 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.

9. 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 2nd day of April, 2004.

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

By: Kirk Rudy

Printed Name: Kirk Rudy

Title: E.V.P

CITY:

By: Toby Hammett Futrell

Printed Name: TOBY HAMMETT FUTRELL

Title: City Manager

Approved as to form: David Lloyd
City of Austin Law Department