

City of Houston Ordinance No. 97-1540

**AN ORDINANCE AMENDING THE AGREEMENT BETWEEN THE CITY OF HOUSTON, THE MIDTOWN REDEVELOPMENT AUTHORITY AND REINVESTMENT ZONE NUMBER TWO, CITY OF HOUSTON, TEXAS; APPROVING THE AUTHORITY'S BUDGET AND ISSUANCE OF BONDS BY THE AUTHORITY IN CONFORMANCE WITH THE AGREEMENT; PROVIDING FOR CONTINUING DISCLOSURE WITH RESPECT TO SUCH BONDS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, by Resolution No. 95-96 of the City Council of the City of Houston (the "City"), adopted on June 28, 1995, the City authorized the creation of the Midtown Redevelopment Authority (the "Authority") as a local government corporation pursuant to Section 4A, Article 1528I, Texas Revised Civil Statutes, as amended, (now Subchapter D of Chapter 431, Texas Transportation Code) to aid, assist, and act on behalf of the City in the promotion of its redevelopment of the Midtown area and neighboring areas within the City as described in the City's Ordinance No. 94-1345; and

**WHEREAS**, Reinvestment Zone Number Two, City of Houston, Texas ("Midtown TIRZ") was duly created by the City under Ordinance No. 94-1345 pursuant to the provisions of Chapter 311, Tax Code (the "TIRZ Act"); and

**WHEREAS**, the City, the Midtown TIRZ, and the Authority entered into an agreement pursuant to Ordinance No. 96-389 (the "Agreement") pursuant to which the Authority would have complete authority and power to administer the Midtown TIRZ, make recommendations to the board of directors of the Midtown TIRZ (the "Zone Board") and the City with respect to redevelopment of the Midtown TIRZ, perform and engage in activities relating to the acquisition and development

of land and other properties in the Midtown TIRZ; engage in redevelopment activities and construct and improve infrastructure in the Midtown TIRZ; enter into development agreements with developer/builders in the Midtown TIRZ; subject to City Council approval, issue, sell or deliver its bonds or notes; and perform the other activities provided in the Agreement; and

**WHEREAS**, the City, the Authority and the Midtown TIRZ desire to amend the Agreement to clarify certain terms and conditions contained therein; and

**WHEREAS**, the Agreement provides that the Authority shall submit an annual budget to the City for approval by the City Council; and

**WHEREAS**, the Authority has submitted, and the City Council desires to approve, the first annual budget of the Authority; and

**WHEREAS**, the Agreement provided that the Authority could issue notes in the maximum amount of ONE MILLION DOLLARS (\$1,000,000), payable from the revenues to be paid pursuant to the Agreement, but could not issue notes in excess of that amount or bonds without further approval by the City; and

**WHEREAS**, the Authority has requested the City to permit it to issue bonds or notes in the total amount of SIXTEEN MILLION DOLLARS (\$16,000,000) (which amount includes the ONE MILLION DOLLARS (\$1,000,000) in previously authorized notes), to be secured by payments to be made by the City and the Midtown TIRZ ("Agreement Revenues") pursuant to the Agreement; and

**WHEREAS**, the City desires to grant the Authority the right and power to issue bonds or notes in a total amount not to exceed SIXTEEN MILLION DOLLARS (\$16,000,000) secured by Agreement Revenues; **NOW, THEREFORE**,

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

**Section 1.** Findings. The findings and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are adopted as part of this Ordinance for all purposes.

**Section 2.** Approval and Authorization of Bonds or Notes. The City hereby approves and authorizes the Authority to issue its bonds or notes, secured by Agreement Revenues in an amount not to exceed SIXTEEN MILLION DOLLARS (\$16,000,000). The total amount of bonds and notes payable from Agreement Revenues which the Authority may issue, including the ONE MILLION DOLLARS (\$1,000,000) heretofore authorized pursuant to the Agreement, shall not exceed SIXTEEN MILLION DOLLARS (\$16,000,000) without further approval of the City.

**Section 3.** Bonds or Notes Not an Obligation of City. The City shall have no obligation with respect to the bonds or notes of the Authority other than to make payments of tax increments to the Authority pursuant to the Agreement. The bonds and notes of the Authority shall contain on their face a statement that the City is not obligated to make payments on the bonds or notes from taxes or other moneys of the City other than the tax increments in the Midtown TIRZ pursuant to the terms of the Agreement.

**Section 4.** Authorization to Provide Information and Documents. The Mayor and the staff of the City are hereby authorized to provide to the Authority such information and documents, and the staff of the City is authorized to execute such certificates and provide such financial information with respect to the City, the tax increment fund of the Midtown TIRZ, and other financial information of the City with respect to the Midtown TIRZ, as may be needed or requested by the Authority to offer and sell the bonds and notes hereby approved.

**Section 5. Annual Reports.** The City shall provide annually to the Midtown TIRZ and the Authority, and at the request of the Authority to each NRMSIR and any SID, within six months after the end of each fiscal year ending on or after June 30, 1998, financial information and operating data with respect to the tax increment fund created by the City for the Midtown TIRZ (the "Tax Increment Fund"). Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles acceptable to the Director of Finance and Administration and the Controller of the City and (2) audited, if the audit is completed within the period during which they must be provided. If audited financial statements are not so provided, then the City shall provide unaudited financial statements within such period and audited financial statements for the applicable fiscal year to each NRMSIR and any SID, when audited financial statements become available.

If the City changes its fiscal year, it will notify the Midtown TIRZ and the Authority, and at the request of the Authority each NRMSIR and any SID, of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents, may be included by specific reference to any document (including an official statement or other offering document of the Midtown TIRZ or the Authority if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC, or may be provided in any other manner consistent with Rule.

**Section 6. Material Event Notices.** The City shall notify the Midtown TIRZ and the Authority, and at the request of the Authority, any SID and either each NRMSIR or the MSRB, in a timely manner, of any material events with respect to the bonds or notes, if such event is material

within the meaning of the federal securities laws as agreed to by the Director of Finance and Administration and the Controller of the City and the Authority.

The City shall notify the Midtown TIRZ and the Authority, and at the request of the Authority, any SID and either each NRMSIR or the MSRB in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 6 of this Ordinance by the time required by such Section.

**Section 7. Limitations, Disclaimers, and Amendments.** The City shall be obligated to observe and perform the covenants specified in this Ordinance for so long as, but only for so long as, the City remains an "obligated person" with respect to the Agreement within the meaning of the Rule.

The provisions of this Ordinance are for the sole benefit of the Authority, owners, and beneficial owners of bonds or notes of the Authority, and nothing in this Ordinance, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements and notices which it has expressly agreed to provide pursuant to this Ordinance and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Ordinance or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell bonds or notes at any future date.

**UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE AUTHORITY OR THE OWNER OF ANY BOND OR NOTE OF THE AUTHORITY, OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN**

WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ORDINANCE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Ordinance shall constitute a breach of or default under the Agreement for purposes of any other provision of the Agreement.

Nothing in this Ordinance is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

**Section 8.** Definitions. As used in this Ordinance, the following terms have the meanings ascribed to such terms below:

"MSRB" shall mean the Municipal Securities Rulemaking Board.

"NRMSIR" shall mean each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Rule" shall mean SEC Rule 15c2-12, as amended from time to time.

"SEC" shall mean the United States Securities and Exchange Commission.

"SID" shall mean any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

**Section 9. Modification to Agreement.** The date of the Agreement between the Midtown Authority, the TIRZ, and the City is dated as of April 1, 1996 and not April 1, 1995, as provided in the Agreement. The Agreement provides that the Authority will operate on a fiscal year beginning January 1. In order for convenience, the parties would like to modify the Agreement to require the Authority to operate on a fiscal year beginning July 1 to bring it into conformity with the City and the Midtown TIRZ audit years. The obligations of the City and the Midtown TIRZ to pay tax increments to the Authority pursuant to the Agreement are subject to the rights of any of the holders of bonds, notes or other obligations that have been heretofore or are hereafter issued by the City, Harris County, and the Houston Independent School District that are payable from and secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the City, Harris County, or the Houston Independent School District, as applicable. Upon acceptance of the provisions of this Ordinance by the Board of Directors of the Authority and the Zone Board, the Agreement is amended to provide for its dated date to be changed to April 1, 1996, the fiscal year of the Authority to be on the basis of a year beginning July 1, and to clarify that the obligations to pay tax increments under the Agreement are subject to rights of holders of other obligations heretofore or hereafter issued by the City, Harris County, and the Houston Independent School District payable from and secured by ad valorem tax general levies. Except as otherwise provided in this Ordinance, the terms and provisions of the Agreement are hereby ratified and confirmed.

The Authority shall continue to be authorized to enter into development agreements, with the approval of the Director of Finance and Administration of the City, as provided in the Agreement. The Authority shall continue to have the power to issue obligations and otherwise enter into

agreements relating to its redevelopment activities in the Midtown TIRZ which are not secured by Agreement Revenues.

**Section 10.** Approval of Authority Budget. The Authority's budget for the fiscal year beginning July 1, 1997 and ending June 30, 1998 in the form attached as Exhibit "A" is approved.

**Section 11.** Severability. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining provisions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 12.** Meeting Notice. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall Annex for the time required by law preceding this meeting, as required by the Open Meetings Law, TEX. GOV'T CODE ANN., Ch. 551 (Vernon 1994); and that this meeting was open to the public as required by law at all times during which this Ordinance and the subject matter thereof was discussed, considered and acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

**Section 13.** Emergency. 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 (5) days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 10<sup>th</sup> day of December, 1997.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

CITY OF HOUSTON, TEXAS

\_\_\_\_\_  
Mayor of the City of Houston

Approved as to Form:

Gary L Wood  
Senior Assistant City Attorney

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 16 1997.

Ann Russell  
City Secretary

MILITOWN REDEVELOPMENT AUTHORITY

Exhibit A

Fiscal Year Ending June 30, 1998  
OPERATING AND DEVELOPMENT BUDGET

Sources of Funds:

Beginning Fund Balance	180,000
Tax Increment Revenues	108,000 (1)
Bank Loan Financing	250,000
Bond Proceeds for Current Operations	350,000
Total Funds Provided	<u>888,000</u>

Uses of Funds:

Administrative Staff	73,000
Office Expenses	25,000
Insurance	6,000
Reproduction & Postage	7,000
Accounting Services	9,000 (2)
Auditing	3,000 (3)
Interest (through redemption on 1/1/98)	
TCB	23,000
Reliable Life	40,000
HHFC	15,000
<u>Variable and Non-Recurring</u>	
Creation Expenses	63,000 (4)
<u>Development Expenses</u>	
Legal: Vinson & Elkins/Burney & Foreman	72,000
Land Planning: V.G. Henry/ R.F. Burough	48,000
Engineering: Carter & Burgess/ PTI Engin.	24,000
Total Uses of Funds	<u>408,000</u>
Ending Fund Balance	<u><u>480,000</u></u>

(1) Tax Year 1996 tax increment of \$32,000 plus 2/3 of \$0.96 of 1997 tax increment.

(2) Lindsay V. McWilliams, CPA

(3) Mir Fox & Rodriguez, P.C.

(4) Future payments: \$50,050 on 11/98 & \$22,300 on 11/99

Prepared by Midtown Redevelopment Authority

11/10/97