

J. N. [Signature]

City of Houston, Texas, Ordinance No. 98-301

AN ORDINANCE APPROVING AND AUTHORIZING A FIRST AMENDMENT TO THE AGREEMENT BY AND BETWEEN THE CITY OF HOUSTON, TEXAS, REINVESTMENT ZONE NUMBER TWO, CITY OF HOUSTON, TEXAS AND THE MIDTOWN REDEVELOPMENT AUTHORITY; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AND EMERGENCY.

* * * * *

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

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document that is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute the First Amendment described in the title of this Ordinance 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 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking described in the title of this Ordinance in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from City Council.

Section 4. 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 22ND day of April, 1998.

APPROVED this ____ day of _____, 1998.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is APR 28 1998.



City Secretary

(Prepared by Legal Department ~~DEBORAH FALKENBERG~~ SY)
(DFM/dfm March 16, 1998)
(Requested by Richard Lewis, Director, Finance and Administration Department)
(L. D. File No. 34-94360-19)

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**FIRST AMENDMENT
TO AGREEMENT BY AND BETWEEN THE
CITY OF HOUSTON, TEXAS,
REINVESTMENT ZONE NUMBER TWO, CITY OF HOUSTON, TEXAS,
AND THE MIDTOWN REDEVELOPMENT AUTHORITY**

STATE OF TEXAS

§

COUNTY OF HARRIS

§

§ **KNOW ALL PERSONS BY THESE PRESENTS:**

This First Amendment to Agreement ("First Amendment") is made and entered into by and between the City of Houston, Texas, a municipal corporation and a home-rule city in the State of Texas (the "City"); Reinvestment Zone Number Two, City of Houston, Texas a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Midtown TIRZ"); and the Midtown Redevelopment Authority, a not-for-profit local government corporation organized and existing under the laws of the State of Texas (the "Authority").

W I T N E S S E T H:

WHEREAS, pursuant to Ordinance No. 96-389, the City, the Midtown TIRZ, and the Authority have previously entered into that certain Agreement By and Between the City of Houston, Texas, Reinvestment Zone Number Two, City of Houston, Texas, and the Midtown Redevelopment Authority dated April 1, 1996 (the "Original Agreement"), pursuant to which the City delegated to the Authority the power and authority to administer the Midtown TIRZ, including, but not limited to, the power to issue, sell or deliver its bonds, notes or other obligations in accordance with the terms of the Original Agreement; and

WHEREAS, by Ordinance No. 97-600, adopted on May 28, 1997, the City Council approved the final Project Plan and Financing Plan for the Midtown TIRZ; and

WHEREAS, by Ordinance No. 97-1540, adopted on December 10, 1997, the City authorized the Authority to issue, sell or deliver its bonds or notes in an amount not to exceed Sixteen Million Dollars (\$16,000,000) to be secured by payments to be made by the City and the Midtown TIRZ pursuant to the Original Agreement; and

WHEREAS, by Ordinance No. 97-1540, adopted on December 10, 1997, the City approved certain modifications to the Original Agreement to correct certain ambiguities; and

WHEREAS, the City, the Midtown TIRZ, and the Authority desire to amend the Original Agreement in order to incorporate the modifications to the Original Agreement approved by Ordinance No. 97-1540 and to modify certain provisions of the Original Agreement related to the payments to be made by the City and the Midtown TIRZ pursuant to the Original Agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits herein expressed, the City, the Midtown TIRZ, and the Authority agree as follows:

ARTICLE I

The following Section is added to Article III of the Original Agreement:

"G. Low Income Housing. Pursuant to Section 311.011(f) of the TIRZ Act, one-third of the Tax Increments must be dedicated to providing low-income housing during the term of the Zone as provided in the Project Plan. The Authority covenants and agrees that it shall dedicate one-third of the Tax Increments received by the Authority pursuant to this Agreement to providing low income housing during the term of this Agreement as provided in the Project Plan and Budget."

ARTICLE II

Article IV of the Original Agreement is amended as follows:

A. Article IV, Section C, of the Original Agreement entitled "Limitation of Source of Payment" is amended to read as follows:

"C. Limitation of Source of Payment. The City and the Midtown TIRZ shall have no financial obligation to the Authority other than as provided in this Agreement or in other agreements between the City, the Midtown TIRZ and the Authority. The obligation of the City and the Midtown TIRZ to the Authority under this Agreement is limited to the Tax Increments. This Agreement shall create no obligation on the City or the Midtown TIRZ which is payable from taxes or other moneys of the City other than from the Tax Increments. 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."

B. Article IV, Section E, of the Original Agreement is amended to read as follows:

"E. Collection and Payment of Tax Increments by the City and the Midtown TIRZ. In consideration of the services and TIRZ Projects to be provided by the Authority, the City and the Midtown TIRZ covenant and agree that they will, as authorized under the TIRZ Act and other applicable laws, continuously collect the Tax Increments from the Taxing Units whose participation in the Midtown TIRZ is reflected in the Project Plan and Financing Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law or by contract with a participating Taxing Unit. To the extent the City and the Midtown TIRZ may legally do so, the

City and the Midtown TIRZ also covenant and agree that they will not permit a reduction in the Tax Increments paid by the Taxing Units except to the extent provided in the agreement with the Taxing Unit executed at the time the Taxing Unit agreed to participate in the Midtown TIRZ. In addition, the City covenants and agrees that it will not dissolve the Authority and that any repeal of the right and power to collect the Tax Increments will not be effective until all the bonds, notes, or other Authority Obligations of the Authority have been paid in full or until they are legally defeased. The City and the Midtown TIRZ further covenant and agree that they will make all payments as set forth in Article V below, by a direct deposit or by check if requested by the Authority into fund of the Authority (the "Revenue Fund"), without counterclaim or offset, but minus any expenses incurred by the City in connection with the collection of the Tax Increments and minus any amounts retained pursuant to the provisions set forth in Article V below."

ARTICLE III

Article V of the Original Agreement is amended to read as follows:

"ARTICLE V

CITY PAYMENT TO AUTHORITY

The City, on behalf of itself and the Midtown TIRZ, will pay the Authority, not later than the first business day of each calendar quarter in which a current, approved Budget is in effect for the Authority, all monies then available in the Tax Increment Fund (subject to the retention by the City of a reserve of up to ten percent (10%) of the monies then available in the Tax Increment Fund) but never in an amount to exceed the amount of the approved Budget for that fiscal year. The Authority shall use such payments for its budget-approved administrative and operating expenditures, the payment of principal and interest due to the holders of its outstanding Bonds and notes, or its obligations to Developers/Builders pursuant to any Development Agreement, all in accordance with an approved Budget from funds in the Tax Increment Fund. Notwithstanding the foregoing, however, in the event that the Budget has not been approved in accordance with Article V of this

Agreement by the thirtieth (30th) day before the date of a principal or interest payment on the Authority's Bonds, and upon the request of the Authority, the City shall pay to the Authority the amount of monies in the Tax Increment Fund necessary for the payment of the principal and interest due to the holders of the Authority's outstanding Bonds next due in accordance with this Article, and the obligation to make such payments shall survive a termination of this Agreement as provided by Article V.

The Authority shall submit a quarterly accounting of expenditures and revenues of the Authority, including its operating statements and balance sheets, to the Director of Finance and Administration by the thirtieth (30th) day of the calendar quarter following such expenditure or receipt of revenue (the "Accounting"). The City's review of the Accounting shall be limited to determining whether the expenditures are authorized by the Budget and not a review to determine whether the Authority Board properly exercised its discretion in making the expenditure."

ARTICLE IV

Article VI, Section B, of the Original Agreement is amended as follows:

"B. Accounts, Records, and Accounting Reports. The Authority will maintain books of records and accounts in which full, true, and proper entries will be made on all dealings, transactions, business, and matters which in any way affect or pertain to the operation of the Midtown TIRZ, and the allocation and application of the Tax Increments. All such records shall be maintained in accordance with Generally Accepted Accounting Principles and shall be clearly identified and readily accessible. The Authority shall provide free access to such books and records at all times; to the City and the Midtown TIRZ or their representatives and shall permit them to examine and audit the same and make copies thereof. The Authority shall further allow the City and the Midtown TIRZ and their representatives to make inspections of all work data, documents, proceedings, and activities related to this Agreement. Such right of access and audit shall continue for a period of three (3) years from

the date of final payment under this Agreement. The Authority will operate on the basis of a fiscal year which begins July 1."

ARTICLE V

Page 34 of the Original Agreement is amended to reflect that the Original Agreement is Dated as of April 1, 1996.

ARTICLE VI

Except as modified herein, the Original Agreement will remain in full force and effect. In the event of a conflict between the Original Agreement and this First Amendment, this First Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment, in multiple copies, each of which shall be an original, as of the date of countersignature by the City Controller.

MIDTOWN REDEVELOPMENT AUTHORITY

By: _____
Chairman, Board of Directors

ATTEST:

By: _____
Secretary, Board of Directors

**REINVESTMENT ZONE NUMBER TWO,
CITY OF HOUSTON, TEXAS**

By: _____
Chairman, Board of Directors

ATTEST:

By: _____
Secretary, Board of Directors

(The remainder of this page intentionally left blank.)

CITY OF HOUSTON, TEXAS

By: _____
Mayor

ATTEST/SEAL:

By: _____
City Secretary

APPROVED:

Director, Finance and Administration Department

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

Senior Assistant City Attorney
L.D. File No. 34-94360-19