

RESOLUTION NO. R-2017-4684

WHEREAS, EastGroup Properties, L.P., a Delaware limited partnership (“EGP”) has expressed to the City of Round Rock (“City”) its desire to construct two buildings (the “Facility”) for industrial use in the City which will provide jobs and additional tax base to the City, and


WHEREAS, the purpose of this Resolution is to approve an economic development agreement as contemplated by Chapter 380 of the Texas Local Government Code whereby EGP will expend at least \$7,000,000 in the construction of the Facility and to lease the Facility to one or more industrial tenants in conformance with the City’s development approvals for the Facility, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City, an Economic Development Program Agreement with Round Rock Transportation and Economic Development Corporation and EastGroup Properties, L.P., a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.


The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 10th day of August, 2017.



CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (“Agreement”) is entered into this 10th day of August, 2017, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation (“**City**”), the **Round Rock Transportation and Economic Development Corporation**, a Type B Corporation created pursuant to Chapter 505 of the Texas Local Government Code (“**TEDCO**”), and **EastGroup Properties, L.P.**, a Delaware limited partnership (“**EGP**”). The foregoing are referred to collectively as the “**Parties**.”

WHEREAS, the City has adopted Resolution No. R-2017-4603, attached as **Exhibit A** (“City Resolution”), establishing an economic development program and authorizing the Mayor to enter into this Agreement with EGP in recognition of the positive economic benefits to the City through the construction by EGP of two new buildings (the “Facility”) for industrial occupancy to be constructed on the site described in **Exhibit B**, (the “Property”); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby EGP will expend at least \$7,000,000 in the construction of the Facility and to lease the Facility to one or more industrial tenants in conformance with the City’s development approvals for the Facility; and

WHEREAS, the City and TEDCO agree to provide performance based economic development grants to EGP to defray a portion of EGP’s expenses;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and EGP agree as follows:

1. **Authority.** The City’s execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event EGP proceeds with construction of the Facility. The TEDCO’s execution of this Agreement is authorized by §505.102 of the Texas Local Government Code. The City and TEDCO acknowledge that EGP is acting in reliance upon the City’s and TEDCO’s performance of their obligations under this Agreement in making its decision to commit substantial resources and money to construct the Facility.
2. **Definitions.**
 - 2.1 **“Economic Incentive Payment(s)” (“EIPs”)** means the amount paid by the City and/or TEDCO to EGP under the Program.
 - 2.2 **“Effective Date”** is the date this Agreement is executed to be effective by the Parties.

- 2.3 “**Facility**” means the two buildings designated as “Building 1” and “Building 2” to be constructed by EGP on the Property located in the city limits of City and depicted on Exhibit B.
- 2.4 “**Opening Date**” means the date 30 days after the City issues a Certificate of Occupancy for the Facility.
- 2.5 “**Program**” means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 “**Property**” means the tract of land described in Exhibit B.
- 2.7 “**Property Tax**” means the amount of property tax on the Property collected by the City.
- 2.8 “**Recapture Liability**” means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City and/or TEDCO from EGP in the event of a EGP default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, of Year 6 as determined in accordance with 5.1 below.
4. **Rights and Obligations of EGP.**
- 4.1 Facility. EGP agrees to spend at least \$7,000,000.00 to construct and complete the Facility on or before the 31st day of December, 2018. EGP agrees to provide the City with documentation that shows proof that this obligation has been satisfied, and the City shall have the right to audit EGP’s records to verify same.
- 4.2 Compliance with regulations. EGP agrees that it will comply with the City’s development approval processes and shall lease and operate the Facility consistent with City ordinances, development regulations, and requirements.
- 4.6 Continuous operation. EGP agrees that it will continuously operate the Facility during the term of this Agreement, including any extensions.
5. **Rights and Obligations of the City.**

In consideration of EGP’s compliance with this Agreement, the City and TEDCO agree as follows:

5.1 Economic Incentive Payment ("EIP").

5.1.1 EIP. City and/or TEDCO shall, subject to EGP's satisfaction of its obligations set forth herein, make EIPs to EGP as set forth herein. The EIP's shall be made in annual payments on or before March 1 of each year and shall be a percentage of Property Tax paid for the previous year. "Year 1" shall be the calendar year immediately following the issuance of a Certificate of Occupancy for one of the buildings that make up the Facility. EIP's shall be calculated as paid as follows:

<u>Year</u>	<u>Percentage of Property Tax</u>	<u>Paid by March 1 of:</u>
Year 1	75%	Year 2
Year 2	75%	Year 3
Year 3	50%	Year 4
Year 4	50%	Year 5
Year 5	50%	Year 6

5.1.2 EIP Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to EGP. The EIPs by the City and /or TEDCO under this Agreement are subject to the City's and TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to EGP, if paid, shall be made solely from annual appropriations from the general funds of the City and/or TEDCO or from such other funds of the City or TEDCO 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 and/or TEDCO under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City and/or TEDCO do not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City and/or TEDCO shall not be liable to EGP for such EIP, however, the City and TEDCO shall extend this Agreement for another year(s), until EGP has received all of the EIPs provided for herein. In addition, EGP shall have the right but not the obligation to rescind this Agreement, which shall not be deemed to constitute a default by EGP. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6. EIP Recapture. In the event the City and/or TEDCO terminate this Agreement as a result of EGP's default, the City and/or TEDCO may recapture and collect from EGP the Recapture Liability. EGP shall pay to the City and/or TEDCO the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which EGP may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount

equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

- 7.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2 Representations and Warranties. The City represents and warrants to EGP that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. EGP represents and warrants to the City that it has the requisite authority to enter into this Agreement.
- 7.3 Default. If either the City, TEDCO or EGP should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, EGP shall have the right to terminate this Agreement by giving written notice thereof to City and to pursue any remedy at law or in equity for the City's breach. If EGP remains in default after notice and opportunity to cure, City shall have the right to terminate this Agreement by giving written notice thereof to EGP and to pursue any remedy at law or in equity for EGP's breach, in addition to the right of EIP recapture set forth above.
- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and EGP to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the EIP. This Agreement may only be amended, altered or revoked by written instrument signed by the Parties.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 7.7 Assignment. EGP may not assign all or part of their rights and obligations to a third party without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that

EGP may assign this Agreement without the consent of the City to an entity which controls, is controlled by or is under common control with EGP, any successor entity to EGP by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of EGP's assets, partnership or membership interests, or capital stock.

- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.
- 7.9 Termination. In the event EGP elects not to lease the building as contemplated by this Agreement, EGP shall notify the City in writing, and this Agreement and the obligations on the part of all Parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City and/or

TEDCO: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: lhadley@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to EGP: EastGroup Properties, L.P.
7301 N. State Highway 161, Suite 215
Irving, Texas 75039
Attn: Asset Manager
Email: david.hicks@eastgroup.net

With a required copy to:

EastGroup Properties
190 E. Capitol Street, Suite 400
Jackson, Mississippi 39201
Attn: CFO
Email: brent.wood@eastgroup.net

Any party may designate a different address at any time upon written notice to the other Parties.

- 7.11 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

- 7.17 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 Facility or the design, construction or operation of any portion of the Facility.
- 7.18 Estoppel Certificate. EGP may request an estoppel certificate from City so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. City agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Section 7.18. The certificate, which will upon request be addressed to EGP, or a lessee, purchaser or assignee of EGP, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the City) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

EXECUTED to be effective as of the 10th day of August, 2017 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: 

Craig Morgan, Mayor

Date: August 10, 2017

APPROVED as to form:



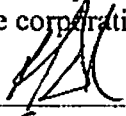
Stephan A. Sheets, City Attorney

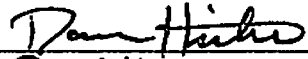
**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Craig Morgan, President

EASTGROUP PROPERTIES, L.P.,
a Delaware limited partnership

By: EastGroup Properties General Partners, Inc., a
Delaware corporation, its general partner

By:  Reid Dunbar
Its: Senior Vice President

By: 
Its: David Hicks, Vice President

Date: July 24, 2017

EXHIBIT "A"
TO THE ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

RESOLUTION NO. R-_____

WHEREAS, EastGroup Properties, L.P. a Delaware limited partnership ("EGP") has expressed to the City of Round Rock ("City") its desire to construct two buildings for industrial use in the City which will provide jobs and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit "A" will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City offers to EGP a §380.001 Program in exchange for EGP constructing two industrial use buildings in the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was

open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this ___ day of _____, 2017.

CRAIG MORGAN, Mayor

City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

**EXHIBIT A
TO THE RESOLUTION**

ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to EastGroup Properties, L.P., (“EGP”) in exchange for EGP’s constructing two new industrial use buildings in the City of Round Rock are as generally outlined below:

1. EGP’s obligations:

1.1. EGP agrees to construct two new buildings in the City that are suitable to lease industrial zoned purposes.

2. City’s obligations:

2.1 City shall, subject to EGP’s satisfaction of its obligation to construct two new buildings in the City make Economic Incentive Payments to EGP as follows:

City subject to EGP’s satisfaction of its obligations to construct two new buildings, make EIPs to EGP as set forth herein. The EIP’s shall be made in annual payments on or before March 1 of each year and shall be a percentage of Property Tax paid for the previous year. “Year 1” shall be the calendar year following the issuance of a Certificate of Occupancy for one of the buildings that make up the Facility. EIP’s shall be calculated as paid as follows:

<u>Year</u>	<u>Percentage of Property Tax</u>	<u>Paid by March 1 of:</u>
Year 1	75%	Year 2
Year 2	75%	Year 3
Year 3	50%	Year 4
Year 4	50%	Year 5
Year 5	50%	Year 6

3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

EXHIBIT "B"
TO THE ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Property Description

Lots 1A and 2A, Block A, Chandler Crossing Replat of Lot 1, a subdivision in Williamson County, Texas, according to the map or plat thereof, recorded in Cabinet FF, Slides 205, 206, 207 and 208 of the Plat Records of Williamson County, Texas.