

RESOLUTION NO. R-01-05-24-12A3

WHEREAS, the City of Round Rock has established an Economic Development Program, and

WHEREAS, Sears, Roebuck and Co. desires to participate in the Economic Development Program by entering into an Economic Development Program Agreement ("Agreement"), and


WHEREAS, the City Council desires to enter into said agreement with Sears, Roebuck and Co., 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 Sears, Roebuck and Co., a copy of said agreement being attached hereto and incorporated herein for all purposes.

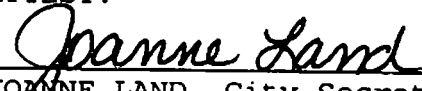
The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were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

RESOLVED this 24th day of May, 2001.



ROBERT A. STLUKA, JR., Mayor
City of Round Rock, Texas

ATTEST:



JOANNE LAND, City Secretary

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is made and entered into by and between SEARS, ROEBUCK AND CO. ("Sears"), a Corporation, and the CITY OF ROUND ROCK (the "City"), a home-rule city and municipal corporation, for the purposes and considerations stated below:

RECITALS:

WHEREAS, the City has adopted Resolution No. R-01-05-24-12A2 establishing an Economic Development Program and authorizing this Agreement as part of the Economic Development Program; and

WHEREAS, Sears desires to participate in the Economic Development Program by entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization.

This Agreement is authorized by §380.001 of the Texas Local Government Code and by Resolution No. R-01-05-24-12A2 of the City.

2. Definitions.

Additional ½ Cent Tax Revenues means the amount collected by the City from the ½ cent sales tax imposed by the City pursuant to Texas Tax Code §321.101(b).

Sears means Sears, Roebuck and Co. and all companies under common control with, controlled by, or controlling Sears, Roebuck and Co. For purposes of this definition, "control" means 50% or more of the ownership determined by either value or vote.

One Cent Sales Tax Revenues means that portion of Sales Tax Revenues resulting from the imposition of a one percent municipal sales tax, such as that presently in effect pursuant to Texas Tax Code §§321.101(a) and 321.103.

Program means the economic development program established by the City pursuant to Local Government Code §380.001 and under the Resolution referenced in Section 1 above.

Program Payment means the amount paid by the City to Sears each month under the Program.

Sales Tax Revenues means the net amount of sales tax received from the state of Texas by the City derived from sales tax collected by Sears on taxable Texas sales as a direct result of Sears's location in the City. The term Sales Tax Revenues is limited to sales tax collected by Sears from sales occurring over the telephone or Internet. Sales Tax Revenues does not include any sales tax collected from sales made by Sears from a retail outlet or business located in the City, either now or in the future. Sales Tax Revenues also does not include any administrative fee deducted by the state of Texas from sales tax collected.

3. **Term.**

This Agreement shall be effective as of the date of execution by both parties. This Agreement shall remain in full force and effect until December 31, 2031; provided, however, that the City may terminate this Agreement between January 1 and June 1 of any year beginning with 2009 if the One Cent Sales Tax Revenues, for the immediately prior calendar year was less than \$500,000.00.

4. **Submission of Data.**

Within thirty (30) days of the end of each calendar month, Sears shall submit to the City a schedule detailing the amount of Sales Tax Revenues for that month. As backup for the schedule, Sears shall submit the following:

- (a) A copy of all state of Texas sales tax reports, including amended reports, filed by Sears for that month showing the amount of sales tax collected;
- (b) Such other data as the parties determine appropriate to support One Cent Sales Tax Revenues.

In addition to the foregoing, Sears shall provide the City with copies of any and all sales tax audits, amended sales tax returns and/or any error corrections.

Sears hereby gives its consent to the State of Texas Comptroller's Office to provide the City with a Limited Sales, Excise, and Use Tax Taxpayer history and Payment Information relating to Sales Tax Revenues. Sears agrees to execute any and all documents that may be required by the state of Texas in the future to reflect Sears's permission and/or consent to granting the City access to the foregoing or similar reports related to Sales Tax Revenues.

5. **Program Payment.**

Within thirty (30) days of receipt of Sales Tax Revenues from the State of Texas for the

month covered by a schedule submitted by Sears pursuant to Section 4, the City shall pay the Program Payment to Sears or as directed in writing by Sears.

6. **Computation of Program Payment.**

The Program Payment for a month shall include 60% of One Cent Sales Tax Revenues for the first ten years and 50% of One Cent Sales Tax Revenues for the remaining twenty years of this Agreement.

7. **Default.**

If either party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default.

8. **Mutual Assistance.**

The City and Sears shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions. Sears hereby consents to and agrees to cooperate in any request by the City to obtain copies of Sales/Use tax returns from the State which contains information pertinent to the calculation of a Program Payment.

9. **Relocation or Expansion by Sears.**

The City's agreement herein to establish the Program is conditioned upon Sears locating its telephone and Internet sales site to the City so that such sales made to customers residing in Texas will be subject to the City's sales tax. In the event that Sears shall relocate or expand its business so that any telephone and/or Internet sales made to customers residing in Texas are no longer subject to the City's sales tax, then Sears agrees to pay the City a sum equal to all Program Payments previously received by Sears. Such payment shall be made by Sears to City within sixty (60) days following such relocation or expansion.

10. **Representations and Warranties.**

The City represents and warrants to Sears that the Program and this Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to establish the Program and enter into this Agreement. Sears represent and warrants to the City that it has the requisite authority to enter into this Agreement.

11. **Section or Other Headings.**

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

12. **Attorneys Fees.**

In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.

13. **Amendment.**

This Agreement may only be amended, altered, or revoked by written instrument signed by Sears and the City.

14. **Successors and Assigns.**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Sears may assign all or part of its rights and obligations hereunder only upon prior written approval of the City, which approval shall not be unreasonably withheld or delayed. The determination of such approval shall be based upon the credit worthiness and financial ability of any proposed assignee to assume such rights and obligations of Sears. Notwithstanding the foregoing provisions of this Section, in the event Sears desires to transfer or assign its rights or obligations hereunder any entity which falls within the definition of "Sears" contained in this Agreement, it shall have the right to do so without the consent or approval by the City, so long as Sears shall remain responsible and obligated to the City for the performance of its obligations under this Agreement.

15. **Notice.**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Sears: Ron Douglas
Vice President of Real Estate
3333 Beverly Road, Mail Stop B2-154b
Hoffman Estates, IL 60179

With a Copy to: Susan Russell
Assistant General Counsel
3333 Beverly Road, Mail Stop B2-094a
Hoffman Estates, IL 60179

City: Robert L. Bennett, City Manager
City of Round Rock
221 E. Main Street
Round Rock, Texas 78664

With a Copy to: Stephan L. Sheets, City Attorney
309 E. Main Street
Round Rock, Texas 78664

16. **Interpretation.**

Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

17. **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.

18. **Severability.**

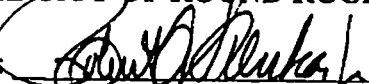
In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

19. **Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

THE CITY OF ROUND ROCK

By:


Robert A. Stiluka, Jr., Mayor


Date: May 24, 2001

ATTEST:


Joanne Land, City Secretary

SEARS, ROEBUCK AND CO.

By:


Susan Russell, Assistant General Counsel

Date: May 21, 2001

RESOLUTION NO. R-01-05-24-12A2

WHEREAS, Sears, Roebuck and Co., ("Sears") is one of the largest retailing companies in the world, and

WHEREAS, Sears is in need of expanding its facilities to accommodate expected growth in its direct telephone and Internet sales business, and

WHEREAS, Sears has expressed to the City of Round Rock ("City") its desire to maintain its strong competitive position in the retailing industry by entering into a mutually beneficial economic development program with 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 CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS THAT

The City Council hereby offers to establish a § 380.001 Program as generally outlined in Exhibit "A" in exchange for Sears locating its needed expansion facilities in the City.

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, and the Act.

RESOLVED this 24th day of May, 2001.



ROBERT A. STLUKA, JR., Mayor
City of Round Rock, Texas

ATTEST:



JOANNE LAND, City Secretary

ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Program Agreement to be offered to Sears in exchange for Sears locating its needed expansion facilities to the City of Round Rock are as generally outlined below.

1. Sears agrees to locate in the City a facility from which Sears will make retail sales over the telephone and Internet so that such sales made to customers residing in Texas are subject to the City's sales tax.
2. In consideration of the foregoing, the City agrees to share with Sears the proceeds of the net amount of sales tax received from the state of Texas by the City derived from sales tax collected by Sears on taxable Texas sales as a direct result of Sears's location in the City. This sharing agreement applies only to sales tax collected by Sears from sales occurring over the telephone or Internet.
3. Sears's share of said sales tax collected shall be equal to 60% for the first ten years and 50% for the last twenty years of the Program Agreement.
4. The term of the Program Agreement will be until December 31, 2031.
5. Sears agrees to submit to the City data in sufficient detail to determine the amount of sales tax collected each month.
6. In the event that Sears shall relocate or expand its business so that any telephone and/or Internet sales made to customers residing in Texas are no longer subject to the City's sales tax, then Sears agrees to pay the City a sum equal to the amount of money it received as a result of the sharing agreement set forth in paragraph 3. above.