

PUBLISHING AND ROYALTY AGREEMENT BETWEEN
ARCADIA PUBLISHING, INC., AND THE CITY OF AUSTIN FOR USE OF
PHOTOGRAPHS IN THE AUSTIN'S TRAVIS HEIGHTS NEIGHBORHOOD BOOK

This Publishing and Royalty Agreement is entered into this ____ day of _____, 2017, by and between Arcadia Publishing, Inc., a South Carolina corporation with its principal office at 420 Wando Park Boulevard, Mt. Pleasant, South Carolina 29464 (Publisher), and the City of Austin, a Texas home-rule municipal corporation, through the Austin History Center (City).

Publisher is in the business of coordinating, creating and publishing books for commercial sale. Publisher desires to publish a book about the Travis Heights neighborhood and has contracted with writer, Lori Duran (the Author), to write the copy for the book. Publisher wishes to include in the book certain historic photographs which are owned by City and housed at and managed by City's Austin History Center. City wishes to authorize Publisher to publish certain photographs in the book in exchange for the rights to certain royalty payments and credit, as described below. The book about Austin's Travis Heights Neighborhood is referred to below as "Book".

1. Publication & Marketing. Publisher agrees to publish and market the Book at its expense, and agrees that City shall have no financial obligations under this Agreement. The Publisher shall use all reasonable efforts to publish the Book (unless prevented by circumstances outside its control) within twelve (12) months of delivery of the photographs and copy by the Authors to the Publisher.

2. Waiver of City Fees/ Grant of License. In consideration of the royalty payment obligations undertaken by Publisher and the Publisher's agreement to credit the City and Austin History Center on the Book, as described in this Agreement, City waives all photo reproduction and other fees required by the City's fee schedule. City grants to Publisher a five-year non-exclusive license with a royalty fee to City, as described below (License), to print, reproduce, enhance, display, and transmit the photographs listed in Exhibit A as necessary to publish the photographs in the Book, including but not limited to digital or electronic media. Publisher may also crop the photographs provided that the Austin History Center Photo Curator approves the cropping in advance of publication. For cropped photographs, Publisher agrees to include citation language provided by the Austin History Center to denote that the original image has been changed. Exhibit A is attached to and made a part of this Agreement for all purposes.

3. Term and Termination. The term of this Agreement and the License granted herein shall be for five years and shall become effective following approval by the Austin City Council of the fee waivers and upon signature of this Agreement by the last party to sign (Initial Term). Unless terminated during the Initial Term in accordance with Section 12, the Agreement and the License shall automatically renew for one additional five-year term upon expiration of the Initial Term (Second Term). Either Publisher or City may terminate the Agreement and License without cause at any time during the Second Term by providing the other party with not less than sixty (60) days written notice of termination. Termination or expiration of the License shall not impact Publisher with respect to any Book sale contract Publisher has entered into with a third party prior to the date of termination or expiration. Publisher agrees to provide City with copies

of any such contracts upon request by City, both during the term of this Agreement and following the termination date.

4. Digital Images

City agrees to provide the photographs to Publisher, at no charge, in digital format. City shall provide the digital images within thirty (30) calendar days following the effective date of this Agreement.

5. Limited Purpose of License

Publisher acknowledges and agrees that this license is for the sole purpose of publishing the photographs in the Book, and that this Agreement shall not alter in any way the City's ownership rights and copyright to the photographs. Publisher also acknowledges and agrees that this license is limited to reproduction of the Book in a paper medium and does not convey any ancillary rights, including but not limited to any rights related to electronic storage, digital media, electronic publication, or companion products. The Publisher agrees to use the photographs and digital images provided under this Agreement solely for publication in the Book and to maintain strict control of the digital images and photographs in order to avoid access, use or duplication by a third party. Publisher also agrees to destroy the digital images and any prints within ninety (90) days of publication of the Book, and to send City a written confirmation that the digital images and prints have been destroyed.

6. Credits

The Publisher agrees to credit the photographs to the City and the Austin History Center by printing the following credit line next to each photograph: "Image #__, Austin History Center, City of Austin". In addition, Publisher agrees to include the Austin History Center logo on the back cover of the Book.

7. Copyright Ownership

City warrants that it is the sole owner and copyright holder of the photographs listed in Exhibit A and that publication of these photographs in the Book will not violate or infringe upon the copyright, license or proprietary rights of any third party. Publisher acknowledges that it is solely responsible for obtaining, or ensuring that the Author or other contributors to the Book have obtained, all authorizations, licenses or consents necessary to publish the text, illustrations and any photographs included in the Book that are not provided by City under this Agreement (Non-City Materials). Publisher warrants that it has title to the Non-City Materials published in the Book or that it has obtained valid authorizations or licenses to publish the Non-City Materials, and that no claims have been made by any person or entity with respect to the Non-City Materials. Publisher also warrants that only the City and the Authors (or licensees of the Authors) shall provide material to be included in the Book and that the Authors have warranted that the Non-City Materials included in the Book will not violate or infringe upon the existing copyright, license or proprietary rights of others.

8. Copyright Notice

The Publisher warrants that the City's copyright notice for the photographs provided by City will be printed upon every copy of the Book on verso of the title page and will appear as follows: *"For all photographs that are attributed to City of Austin - Copyright [insert year of first publication] City of Austin."*

9. Compensation to City

The Publisher shall pay City royalties described in Exhibit **B** with respect to the Book. The accounts of sales of the Book, together with any sums that may become due, shall be delivered to the City and settled within ninety (90) days of the end of the six month periods ending the 31st of December and the 30th of June of each year throughout the Term (September 30 for the six month period ending June 30 and March 31 for the six month period ending December 31) provided, however, that no account need to be submitted, unless specifically demanded, nor payment made, in respect of any period in which the sum due is less than thirty dollars (\$30.00), in which case the amount will be carried forward to the next accounting date.

10. Complimentary Copies of Book; Purchases of Book by City . The Publisher shall send City three (3) complimentary copies of the Book within seven (7) days of the publication date.

11. Trademark – Book Title. The City acknowledges that the Publisher owns all right, title and interest in the trademark rights in the title of the Book, Austin's Travis Heights Neighborhood, (the "Trademark"). City may not use the Trademark without authorization from the Publisher and shall not object to, or otherwise interfere with the use of registration by Publisher of the Trademark or attack or contest, in any manner, such Trademark.

12. Default and Termination. This Agreement may be terminated in writing by the Publisher in the event of a default by the City if the default has not been cured to Publisher's satisfaction within sixty (60) calendar days of receipt of written notice of default by the Publisher. In the event of a default by the Publisher which has not been cured to City's satisfaction within sixty (60) calendar days of receipt of written notice of the default by City, all licenses and rights granted to Publisher under this Agreement shall revert to the City forthwith and without further notice, and neither party shall have any further rights or liabilities under this Agreement provided, however, that Publisher may continue to sell the Book inventory that exists as of the termination date, and Publisher's duty to provide accounts of Book sales and royalty payments for Books shall survive the termination of this Agreement. In addition to the termination provisions set forth above, the parties agree that City or Publisher may terminate this Agreement immediately, upon written notice, if the Book has not been published and offered for sale within eighteen (18) calendar months following the effective date of this Agreement.

13. Notices. All notices and requests required or permitted under this Agreement shall be in writing and may be given by: (a) hand delivery to the party to be notified; (b) deposit in the United States mail, registered or certified, with return receipt requested and postage prepaid, and addressed to the party at the address set forth below; or (c) by confirmed facsimile at the numbers shown below. Notice given under this section shall be deemed delivered and effective

on the earlier of actual receipt or three calendar days following deposit in accordance with the requirements of subsection (b) above.

Arcadia Publishing, Inc.
Attn: Adam Ferrell, Publishing Director
420 Wando Park Boulevard
Mt. Pleasant, South Carolina 29464

Facsimile Number: 843-853-0044

Michael Miller
Manager, Austin History Center
City of Austin
P.O. Box 2287
Austin, Texas 78768

Facsimile Number: 512-974-7483

With copy to:

Roosevelt Weeks, Director
Austin Library Department
City of Austin
P.O. Box 2287
Austin, Texas 78768

Facsimile Number: 512- 974-7403

14. Indemnification. Publisher shall, at its own expense, indemnify, defend and hold harmless the City and Austin History Center, their employees and officers, from and against all liabilities, damages, costs or expenses (including court costs but excluding attorneys fees) arising out of or resulting from any claim that all or any portion of the Non-City Material(s) published in the Book infringe the intellectual property rights or licensure rights of a third party; and from any claim based upon the Publisher's alleged breach of any of Publisher's representations or warranties stated in this Agreement. City shall promptly notify Publisher of any such written claim or proceeding and shall not settle any such claim or proceeding without Publisher's prior written consent. However, City's failure to provide such timely notice to Publisher will not invalidate Publisher's obligations under this provision. Publisher shall have the right to control the defense of any such claim. City shall have the right at its expense to participate in the defense with counsel of its choice or monitor such claim, provided that Publisher shall have the right at all times to retain or resume control of the conduct of such defense.

15. Entire Agreement/Amendment. This Agreement constitutes the entire agreement between the parties with respect to the publication of a book about the Travis Heights

Neighborhood and supersedes any prior agreements and understandings, both oral and written. This Agreement may be amended only in a writing executed by both parties.

16. No Third Party Beneficiaries. This Agreement is not intended to confer, and shall not be deemed to confer, any rights upon any other person or entity.

17 Assignment. Neither party may transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

18. Independent Contractors. This Agreement shall not be construed as creating a partnership, joint enterprise, or a joint venture between the parties. Publisher shall perform all services required under this Agreement as an independent contractor.

19. Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement shall be proper in Travis County, Texas.

ARCADIA PUBLISHING, INC.

BY: _____

Adam Ferrell, Publishing Director

DATE: _____

CITY OF AUSTIN

BY: _____

Printed Name: Roosevelt Weeks, Director, Austin Public Library

DATE: _____

EXHIBIT A

PHOTOGRAPHS – Austin’s Travis Heights Neighborhood

The parties agree that the following City photographs will be provided to Publisher, in digital image format, for publication in the Book.

#	Book #	AHC Image #	Description
1	009	C03303	AF-Subdivisions - Travis Heights S6300 Riverside Dr. & Alameda
2	094	PICA 30530	AF-Subdivisions - Travis Heights S6300 Travis Heights Elementary
3	097	PICA 07582	AF-Public Schools - High Schools - Travis High P8780 original
4	092	PICA 07646	AF-Public Schools- Junior High - Fulmore P8830 1911
5	089	PICA 07649	AF-Public Schools - Junior High - Fulmore P8830 original school
6	091	C03813	AF-Public Schools - Junior High - Fulmore P8830 west entrance
7	093	PICA 22802	AF-Public Schools -Junior High - Fulmore P8830 Fulmore Talent Show
8	148	Photo in Folder	P6150 Postcard Motels (26) San Jose
9	003	C01694	Pontoon Bridge 1869
10	cover	C01462	Edgecliff Terrace 1012
11	026	PICA 12970	Texas School for The Deaf
12	025	C00502	Drawing of Texas School for the Deaf (Deaf and Dumb)
13	134	C00622	South Congress Avenue looking north (1930-39) created by Ellison Photo Co.
14	130	PICA 01545	Twin Oaks Library L2710 (56) AF - Libraries Public
15	131	PICA 13662	Twin Oaks Branch L2710 (56) AF - Libraries Public
16	132	PICA 28178	Twin Oaks Branch L2710 (56) Children Halloween Story Time
17	117	PICA 03555	Faith Presbyterian Church C3750 (4) 1972 Pic
18	108	PICA 21258	Stacy Park Swimming Pool - Parks P1200 (25)
19	110	PICA 37865	Stacy Park P1200 (25) pool and parking lot
20	109	PICA 21255	Stacy Park P1200 (25) undated picture of kids in swimming pool
21	111	PICA 25456	Stacy Parks P1200 (25) Stacy Park at Eastside Dr. & Sunset Ln
22	143	PICA 11050	Magic Time Machine R3800 (M) Restaurant,

			Lunchrooms Etc.
23	034	PICA 15170	Polar Bear R3800 (P) Restaurants, Lunchrooms, Etc.
24	144	PICA 37024	Continental Club - Saloons S0300 (77)
25	136	PICA 28697	Nighthawk R3800 (N) Restaurants, Lunchrooms, Etc.
26	095	PICA 26902	Travis Heights Elementary P8300 (46) Public Schools
27	084	PICH 01628	Congress - South (demolished) School for the Deaf
28	112	PICA 27478	Creeks C9060 (4) Blunn Creek
29	023	PICH 06056	Congress - South 1200-1204
30	022	PICH 06066	Congress - South 1200, man and woman in store
31	071	PICH 06059	Congress - South 1403 Victorian House
32	186	PICA 35079	Central Feed Store, AF - Nurseries Horticulture N3200 (9)
33	175	AR.1992.009 (004)	qHB Congress Ave South 1708 Terra Toys, Archives Oversize Box -54
34	149	PICH 07339	HB Congress - South 2400 Kinman Courts
35	174	C05561	HB Congress - Congress -South 1922-1924
36	005	PICA 20980	AF-Streets - South Congress S5715 (1) 1899 and Before
37	008	C00621	AF Streets South Congress S5715 (2) 1900-1919
38	019	PICA 17906	AF-Streets - South Congress S5715 (5) 1960-1979
39	020	PICA 17904	AF-Streets - South Congress S5715 (5) 1960-1979
40	021	PICA 17903	AF-Streets - South Congress S5715 (5) 1960-1979
41	018	PICA 17907	PICA 17907 AF-Streets - South Congress S5715 (5) 1960-1979
42	155	Photo in Folder	P6150 Postcards Motels (26) Terrace
43	118	PICA 03497	AF-Churches Methodist (369019) Grace United
44	160	Photo in folder	AF S0300 (53) Austin Opry House Sam & Dave flyer
45	161	Photo in folder	AF S0300 (53) Austin Opry House Ray Wylie Hubbard flyer
46	162	Photo in folder	AF S0300 (53) 4 small poster images including Crystal Gale, Rusty Wier, JJ Cale & Arlo Guthrie
47	049	PICH 12994	HB-Academy Dr. 607 House
48	040	PICH 01114	HB-Academy Dr. 106 (demolished) house
49	041	PICH 01115	HB -Academy Dr. 108 Residence of Mr. C.A. Newning
50	048	PICH 07077	HB-Academy Dr. 605 house with writing
51	142	PICA 05832	AF-Restaurants, Lunchrooms Etc. R380093) steak island
52	146	Photo in folder	P6150 Postcard Motels (26) Austin Motel
53	177	PICA 15160	AF-Drugstores D2300 (34) South Austin Drug Store

54	176	C05458	AF-Drugstores DD2300 (22) Sanders Drug Store 1952
55	179	C07084	AF-Moving Picture Theaters M8300 (39) Austin Theatre
56	178	PICA 36813	Austin Theatre 1966 South Congress
57	127	PICA 38133	AF-Fire Dept - Volunteer Austin, South Austin Hose Co. F1250 (7)
58	126	PICA 00172	AF-Fire Dept - Volunteer-South Austin Co. F1250 (7)
59	033	PICA 04148	AF-Weather W1700 (9) Floods Colorado River (1930-1939)
60	035	PICA 04169	AF-Weather W1700 (9) Floods Colorado River (1930-1939)
61	032	C09081	AF-Weather W1700 (9) Floods Colorado River (1930-1939)
62	002	C00693	AF-Transportation T7850 (7) Ferries Ferryboat on Colorado River
63	004	Photo in folder	AF-Postcards-Oversize P6150 (55) Bridges
64	133	PICA 13665	AF-Libraries - Austin Public Twin Oaks Branch L2710 (2)
65	164	PICA 01772	AF-Streets - Congress Ave S5710 (5) 1960-1979 S5710 (5)
66	163	AS-61-31073-8	S5710 AF-Streets - Congress Ave S5710 (5) 1960-1979 Also credit to Austin American Statesman
67	036	PICA 04170	looking northwest from South Congress Sept 28, 1936 flood
68	010	PICA 20583	AF Streets - Congress Ave 1900-1939 S5710 (3) riverside looking south 1930
69	165	PICA 17902	AF Streets - Congress Ave 1960-1979 S5710 (5) @ Barton Springs looking south 1964
70	011	C00481	AF Streets - Congress Ave 1920-1939 S5710 (3) @ Nellie/Academy
71	013	C02113	AF Streets - Congress Ave 1920-1939 S5710 (3) looking north
72	012	C00491	AF Streets - Congress Ae 1920-1939 S5710 (3) @ Monroe looking north
73	028	PICA 15163	AF - Groceries G4200 (35) Handy Andy
74	119	PICA 00539	AF - Churches Lutheran C360(7) "Christ Lutheran"
75	006	PICA 13968	View of Austin From The South 1900-1909
76	030	PICA 04009	Texas League Ball Park South Austin Flood Dec 3, 1913
77	027	C00073	Downtown Austin (view of) Austin From The School For The Deaf 1882/88
78	031	ND-A002-03	The Great Flood, The Nighthawk Restaurant #1 waist deep water

79	015	C05767	South Congress Avenue looking north
80	088	ND-57-514(m)-01	Texas School For the Deaf Housing Units
81	086	DM-46-C469	Students In Class Learning About Cows (TX School For the Deaf) 1946
82	125	ND-51-242-02	Congress Avenue Baptist Church, Education Bldg
83	123	ND-47-170-01	Congress Avenue Baptist Church
84	059	AR-X-016-A062	Travis Heights, Austin (car driving through it)
85	074	ND-49-336-01	Snow in Austin
86	075	ND-51-365-01	William R. and Lula S. Nabours
87	073	ND-47-144-03	Dean and Virginia Davis
88	038	PICA 30861	/ Map L-6 Swisher Addition
89	016	C09918	Spinach Farming
90	150	ND-62-164-01	Imperial 400 Motel
91	151	ND-61-328-01	A Man and Five Women near the pool of the Imperial 400 Motel
92	158	ND-58-453B-01	Sheraton Terrace Motor Hotel
93	137	ND-58-323-01	Harry Akin Candid
94	180	ND-56-202B-01	Exterior Shot of Farmers Insurance Group Building
95	090	PICA 14149	Fulmore Elementary School Students
96	121	ND-57-305-01	South Austin Baptist Church
97	024	PICA 02553	Powell Store and Stock Yards c. 1905
98	157	ND-58-4532D-01	Terrace Motor Hotel, man with jeep
99	154	ND-55-A-123-02	Austin Aerials – Terrace Motel
100	cover	PICA 26611	NightHawk No.1 Corner of Riverside & Congress Ave
101	068	PICH 06754	HB – Edgecliff Terrace 1012
102	070	PICH 06755	HB – Edgecliff Terrace 1012
103	069	PICH 06763	HB – Edgecliff Terrace 1012
104	087	ASPL_DM_46-C471	TX School Deaf Students and Teacher and Sheep
105	107	PICA 10798	AF Public Schools – High Schools – Travis HS P8780 4 Travis HS Coaches
106	106	PICA 03776	AF Public Schools – High Schools – Travis HS P8780 Coach Sonny Myers
107	105	AF Public Schools High School Travis P8780	AF Public Schools – High Schools – Travis HS P8780 Cheerleaders & football players
108	104	PICA 29570	AF Public Schools – High Schools – Travis HS P8780 1981 Bilingual Education teacher

109	103	PICA 07941	AF Public Schools – High Schools – Travis HS P8780 June 1975 10 th year reunion for class 1965 Travis HS
110	166	ASPL_DM-50- C7683	Interior View of the Tropic Shop
111	167	ASPL_DM-50- C7684	Exterior View of the Tropic Shop
112	168	ASPL_DM-47- C1353	Exterior View of Big Bear Food Store
113	169	ASPL_DM-47- C1354	Big Bear Food Store Meat Counter
114	153	ASPL_DM-52- C14840	An exterior view of the Terrace Motor Hotel Entrance
115	152	ASPL_DM-52- C14850	An exterior view of the Terrace Motor Hotel Bldg
116	156	ASPL_DM-52- C14825	An exterior view of the Terrace Motor Hotel Pool
117	124	ASPL_DM-48- C2737	Group Portrait Boys Baseball Team
118	120	ND-50-238-01	South Austin Christian Church
119	007	C02074	AF Bridges Congress Ave 1910-
120	014	PICA 06814	South Austin Trolley
121	017	C06350	AF-Streets – South Congress S5715(4)
122	135	PICA 28690	AF – Restaurants, Lunchrooms, etc. NightHawk

Image Total: 122

EXHIBIT B
ROYALTY EXHIBIT

Publisher shall pay City a royalty equal to four percent (4%) of the Net Sales, as described below.

The royalty payments to be paid to City shall be based on all copies of the Book that are distributed within or outside the United States with the exception of: a) complimentary copies provided by Publisher to Author, City and other entities that contributed text, photos or images to the Book; b) copies presented at no charge for purposes of promoting the sale of the Book or generating publicity for the Book; c) copies lost through theft, or damaged or destroyed by fire, water, earthquake, or otherwise; d) copies of the Book, or portions thereof, electronically displayed, transmitted, broadcast or distributed by Publisher without compensation for the purpose of promoting sales of the Book, e) copies lost in the course of shipment; f) damaged copies returned by retailers and g) copies sold to retailers or wholesalers and later returned to the Publisher.

Net Sales shall be calculated based upon the total sales amount received by Publisher for distribution of the Book. The parties agree that the sales price charged by Publisher to retailers may be discounted from the list price of the Book based upon the volume of Books ordered by retailers. Royalties paid on those sales shall be based upon the discount price agreed upon between Publisher and the retailer. Publisher will also sell some Books at the list price of \$21.99 each, including those books ordered through Publisher's web site. Royalties paid on those sales shall be based upon the list price.

City or City's authorized representative shall have the right upon written notice to audit, examine and copy Publisher's financial records regarding the Book, including records of account and all documents related to the publication, sales and marketing of the Book. Any audit and examination shall be at the cost of the City unless errors in the amount of royalties paid to City are found and such errors show that City has been underpaid, in which case the cost shall be paid by the Publisher.

Publisher and City agree that royalty payments shall be paid to City in accordance with the schedule described in Section 9 of the Agreement, titled "Compensation to City".

PUBLISHER
ARCADIA PUBLISHING, INC.

By: _____
Printed Name: Adam Ferrell
Title: Publishing Director
Date: _____

CITY
CITY OF AUSTIN

By: _____
Roosevelt Weeks, Director
Austin Public Library
Date: _____