

ADMINISTRATION & OPERATIONS AGREEMENT

(Millennium Youth Entertainment Center)

This Operations Agreement (this "Agreement") is entered into as of _____, 2018, between the CITY OF AUSTIN, TEXAS, a Texas home rule city and corporation under Chapter 9, Texas Local Government Code (the "City"), and the AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government corporation under Subchapter D, Chapter 431, Texas Transportation Code (the "Corporation").

RECITALS

WHEREAS, on August 3, 1995, the City Council of the City passed a resolution adopting a 1995-1996 community development program (the "Program") in accordance with Chapter 373, Texas Local Government Code, as amended; and

WHEREAS, the Program includes the development of the Central City Entertainment Center, currently known as the Millennium Youth Entertainment Complex (the "Property"); and

WHEREAS, on November 16, 1995, the City Council of the City adopted a resolution approving the creation of the Corporation as a local government corporation under Subchapter D of Chapter 431, Texas Transportation Code, for the purpose, among others, of developing and operating the Property; and

WHEREAS, on July 18, 1996, the City Council of the City adopted an ordinance authorizing the execution and delivery of certain notes and contracts (the "HUD Documents") relating to the \$8,875,000 HUD Section 108 guaranteed loan to finance the Corporation's construction of the Property; and

WHEREAS, the HUD loans have been fully repaid and the Property has been improved and developed; and

WHEREAS, the City and the Corporation desire to enter into this Agreement to evidence the arrangements for the continued operation of the Property; and

WHEREAS, the City and the Corporation are authorized to enter into this Agreement pursuant to the provision of Chapter 373, Texas Local Government Code, and Subchapter D of Chapter 431, Texas Transportation Code; and

WHEREAS, on _____, 2018, the City Council of the City authorized the execution of this Agreement between the City and the Corporation; and

WHEREAS, on _____, 2018, the Board of Directors of the Corporation authorized the execution of this Agreement between the City and the Corporation; and

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are acknowledged and confessed, the City and the Corporation agree as follows:

ARTICLE I
DEFINITIONS

Administrative Agreement: The agreement between the City and the Corporation authorizing the City to carry out the administrative responsibilities of the Corporation, which Administrative Agreement shall be in substantially the form attached hereto as Exhibit B,

Advance: An advance of funds under this Agreement.

Allowable Costs: Shall have the meaning assigned to it in Section _____.

Approved Operating Budget: The budget, acceptable to City in writing, setting forth the Corporation's annual operating revenues and expenses associated with the Property, as the same may be amended from time to time with City's prior written consent.

Billing Package: The documentation required by City to be submitted by the Corporation to receive an advance.

Budgeted/Actual Variance Report: The form of the report the Corporation is required to submit to City as required by section 4.5(c).

City: City of Austin, Texas.

Construction Contracts: All contracts and agreements, written or oral, between the Corporation and any contractor, between any of the foregoing and any subcontractor and between any of the foregoing and any other Person relating in any way to the construction of the Improvements, including the performing of labor or the furnishing of standard or specially fabricated materials in connection therewith.

Corporation: Austin-Rosewood Community Development Corporation.

Default: An event which with the passage of time, giving of notice, or both would constitute an Event of Default.

Event of Default: Any event described in Article 6.

Facility Manager: The firm or person, acceptable to the City, that the Corporation enters into a Facility Management Agreement with to manage the day to day operations of the Mortgaged Property.

Facility Management Agreement: The agreement between the Corporation and the Facility Manager authorizing the Facility Manager to manage the day to day operation of the Property, which Facility Management Agreement shall be acceptable in form to the City.

Financing Documents: This Agreement, the Administrative Agreement, and all other documents now or hereafter executed by the Corporation or any other Person to evidence, secure or guaranty the performance and discharge of the Obligations.

Governmental Authority: Any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Land: the real estate or interest therein described in Exhibit A. All fixtures and improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: All leases, subleases, licenses, concessions or other agreements (written, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, any part of the Property, together with all security and other deposits made in connection therewith, and all other agreements, such as professional service contracts, utility contracts, maintenance agreements and services contracts, which in any way relate to the design, use, occupancy, operation, maintenance, repair, enjoyment or ownership of the Property,.

Legal Requirements: (1) All present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to the Corporation, the Land or the Property, including, without limitation, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (2) all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Land or the Property or the ownership, use or occupancy thereof, (3) the Corporation's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (4) all Leases, (5) any other contracts (written or oral) that relate in any way to the Land or the Property and to which the Corporation may be bound, including, without limitation, any lease or other contract pursuant to which the Corporation is granted a possessory interest in the Land, and (6) local, state or Federal Requirements.

Lien: Any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on common law, statute or contract, including, without limitation, the lien or security interest arising from a deed of trust mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes.

Property: The Land, improvements on the Land, and Leases generally referred to as the Millennium Youth Entertainment Complex, which is located at 1156 Hargrave Street, Austin, Texas 78702.

Obligations: All of the covenants, conditions, warranties, representations and other obligations made or undertaken by the Corporation to City or others as set forth in the Financing Documents.

Operational Guidelines: The guidelines established by the City that set forth the policies and procedures for operation of the Property.

Performance Report: The form of report the Corporation is required to submit to City as required by section 4.5(b).

Person: Any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

Program Income: Shall have the meaning assigned to it in Section 2.9

Receipts: A receipt of funds in connection with the Property.

Revenue Account: Shall have the meaning assigned to it in Section 4.4.

Statement of Work: Subject to available funds, the operation, management, administration, maintenance, repair and improvements of the Millennium Youth Entertainment Center.

ARTICLE 2
TERM, CONTRACT MANAGERS & FUNDS

Section 2.1 Term. This Agreement shall commence on the date first above stated and shall end on, unless extended, suspended, or terminated in accordance with other applicable conditions and provisions of this Agreement. The Parties, with the respective approval of their governing bodies, may extend this Agreement for up to three additional one-year terms. If the initial term of this Agreement and any authorized period of renewal expire, the Parties agree to hold over under the terms and conditions of this Agreement for a period of time as may be reasonably necessary, not to exceed 60 days, in order to renew this Agreement. The City's obligations during the term are subject to appropriation of current revenue for each fiscal year during the term.

Section 2.2 Contract Managers: The following may serve as contract managers and should be notified in the event any notice to a party is required under this Agreement:

City of Austin

Kimberly McNeely, Acting Director, City of Austin Parks & Recreation Department, or successor
City of Austin Parks & Recreation Department
200 S. Lamar Blvd.
Austin, TX 78701
kimberly.mcneely@austintexas.gov

Austin-Rosewood Community Development Corporation

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Section 2.3 Advances. Subject to the terms of this Agreement, the City will make and the Corporation will accept Advances not to exceed the annual amount of the Corporation's annual Operating Budget. Advances will be made by the City quarterly, or as otherwise approved by the Corporation and the City pursuant to the terms of this Agreement. For quarterly advances, Corporation must submit a billing package no sooner than October 1st, ten calendar days before January 1st, ten calendar days before April 1st and ten calendar days July 1st.

Advances shall be disbursed, at the City's option, (a) by depositing the amount into the Revenue Account, or (b) by any other method the City may from time to time elect. Under no circumstances shall any portion of an Advance be used for any purpose other than the operation of the Property as set forth in the Annual Operating Budget, as may be amended from time to time, submitted by Corporation to City. The Parties acknowledge that funding for any advance, or any other financial obligation imposed by this Agreement, will be from the current revenues available to each party.

To receive an advance from City, Corporation must submit a Billing Package for payment to City in accordance with the terms and conditions of this Agreement and its exhibit(s). City shall make payment to Corporation within a reasonable time, not to exceed thirty (30) calendar days, following receipt of billing, provided it is complete and accompanied by documentation as required in this Agreement. City will endeavor to process quarterly advance billings in ten calendar days.

Section 2.4 Any Advance. Notwithstanding anything to the contrary contained in or inferable from any of the above, City shall not be required to make any Advance hereunder if, at the time of the requested advance, any of the following exists:

- (a) An Event of Default; or
- (b) An order or decree in any court of competent jurisdiction exists enjoining or prohibiting the Corporation or City, or either of them, from performing their respective obligations under this Agreement; or
- (c) The City has failed to appropriate funds for its obligations under this Agreement, or if there no other lawfully available funds for this Agreement. It is expressly understood that this Agreement in no way obligates the City's General Fund or any other monies or credits of the City of Austin; or
- (d) The Corporation is in arrears on any taxes that it may owe to the City. Furthermore, the City may offset from any Advance the amount of debt that Corporation may owe to the City, as reasonably determined by the City from time to time.
- (e) Any cost of the operating the Property:
 - (1) has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Corporation's own funds;
 - (2) was incurred prior to the beginning date or after the ending date specified in Section 2.1, unless specifically authorized in writing by City; or
 - (3) is not incurred in strict accordance with the terms of this Agreement including all exhibits attached hereto.
- (f) Any cost or portion thereof which is incurred with respect to any activity of Corporation after City has requested that Corporation furnish data concerning such action prior to proceeding further, unless and until Corporation is thereafter advised by City to proceed; or
- (g) Payment to any party other than Corporation for any monies or for provision of any goods or services was previously made by the Corporation.

Section 2.5 Allowable Costs

- (a) Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of the Obligations and the Approved Operating Budget.
- (b) Even if included in the Approved Operating Budget, City's prior written authorization is required in order for the following to be considered allowable costs:
 - 1. Encumbrance or expenditure during any one-month period which exceeds one-twelfth of any budgeted line item for personnel costs as specified in the Budget,
 - 2. Any subcontract in an amount greater than \$3,000,
 - 3. Out-of-town travel, meals, lodging, and entertainment,
 - 4. Alteration or relocation of the facilities on and in which the activities specified in the Obligations are conducted,
 - 5. Any alterations, deletions or additions to the Personnel Schedule incorporated in the Budget,
 - 6. Costs or fees for temporary employees or services in an amount greater than \$3,000,
 - 7. Any fees or payments for consultant services in an amount greater than \$3,000,
 - 8. Fees for attending out-of-town meetings, seminars, or conferences.

- (c) Requests for prior approval are Corporation's responsibility and should be made within sufficient time to permit a thorough review by City. Written approval by City must be obtained prior to the commencement of procedures to solicit or purchase services, equipment or real or personal property. Any procurement or purchase which may be approved under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement and its exhibits.

Section 2.6 Excess Payments. Corporation shall refund to City within ten working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines;

- (a) has resulted in overpayment to Corporation; or
- (b) has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure

Section 2.7 Disallowed Costs

- (a) Should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by City, or any other state or federal agency, Corporation will refund such amount to City within ten working days of written notice to Corporation specifying the amount disallowed.
- (b) Refunds of disallowed costs may not be made from these or any other funds received from or through City

Section 2.8 De-obligation of Funds. In the event that actual expenditures deviate from Corporation's provision of a corresponding level of performance, as specified in the Statement of Work, City hereby reserves the right to re-appropriate or recapture any such under-expended funds.

Section 2.9 Program Income

- (a) For purposes of this Agreement, program income includes, but is not limited to, earnings of the Corporation realized from activities undertaken in accordance with this Agreement or from Corporation's management of funding provided or received hereunder. Such earnings include, but are not limited to, income from interest, usage or rental fees, income produced from Agreement-supported services of individuals or employees or from the use of equipment or facilities of Corporation provided as a result of this Agreement, or payments from clients or third parties for services rendered by Corporation under this Agreement.
- (b) Corporation shall report and remit to City, on a periodic basis, but not less often than semi-annually, as determined by City, all program income received or accrued during the applicable period. Alternative arrangements to this requirement may be made upon written request to and approval by the City.
- (c) Records of the receipt and disposition of program income must be maintained by Corporation in the same manner as required for other Agreement funds, and reported to City in the format prescribed by City.
- (d) It is Corporation's responsibility to obtain from the City a prior determination as to whether or not income arising directly or indirectly from this Agreement, or the performance of any obligations under this Agreement, is program income. City has final authority to make a determination as to whether such income is program

income or not. Corporation is responsible to City for the repayment of any and all amounts determined by City to be program income, unless otherwise approved in writing by City.

ARTICLE 3

THE CORPORATION'S WARRANTIES AND REPRESENTATIONS

The Corporation unconditionally warrants and represents to City as follows:

Compliance with Legal Requirements. The Corporation will satisfy all applicable legal requirements necessary to carry out its obligations under this Agreement.

ARTICLE 4

THE CORPORATION'S COVENANTS

The Corporation hereby unconditionally covenants with the City as follows:

Section 4.1 Operation of Property. The Corporation will diligently and with continuity operate the Property in accordance with established operational guidelines. Corporation, subject to prior written approval by City, shall at all times have in place a Facility Management Agreement with respect to the Property. Any Facility Management Agreement must be approved, in writing, by the City. Corporation shall monitor the activities of the Facility Manager and report to the City as required by this Agreement.

Section 4.2 Affirmative Covenants. At all times during operation of the Property, the Corporation shall:

- (a) permit the City and its representatives, to enter upon the Land and into the Property to inspect, audit, and perform improvements;
- (b) comply strictly with all Legal Requirements;
- (c) comply with the accessibility provisions of (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., (ii) the Texas Architectural Barriers Act, Ch. 469, Texas Govt. Code, (iii) the Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards.
- (d) comply with the Texas Public Information Act, Ch. 552, Texas Govt. Code and with applicable City record retention policies.
- (e) use all Advances made to it by the City for, and only for, payment of the costs itemized in the Approved Operating Budget and under no circumstances use, directly or indirectly, any portion of such Advances for any other purpose;
- (f) obtain and maintain, in full effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance) and a hazard insurance policy or policies in builder's all risk form with loss payable endorsements acceptable to the City insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, all such insurance policies to be issued by companies, in amounts and on terms approved by the City described in Exhibit C;
- (g) if the City requests, furnish the City with a current list of contractors, subcontractors,

- materialmen, vendors, artisans and laborers performing work on the Property;
- (h) store at the Property, or at other locations approved by the City in writing, all materials acquired or furnished for operation of the Property, but not affixed or incorporated into the Property, in each case under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects; and
 - (i) upon demand of the City correct any structural defect in the Property, and no Advance shall waive the City's right to require compliance with this Section 4.2 with respect to any such defects.
 - (j) Compliance with health, safety, and environmental regulations: The Corporation, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the operation and management of the Property, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern.

Section 4.3 Negative Covenants.

- (a) The Corporation shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto.
- (b) The Corporation shall not create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any Lien on the Property (or any portion thereof). If any such Lien is asserted against the Property (or any portion thereof), the Corporation shall promptly give the City notice thereof. The notice shall specify who is asserting such Lien and shall detail the origin and nature of the underlying claim giving rise to the asserted Lien.
- (c) The Corporation shall not enter into any contract with any party, other than City, for the demolition, construction, reconstruction, rehabilitation, use, maintenance, operation or occupancy of, any portion of the Property for any purpose without first:
 - I. Soliciting bids, requests for qualifications, or requests for proposals in the same manner that the City is required by its policies and laws to obtain goods or services, or construct any improvements; and
 - II. Obtaining City's prior written approval, and, in the case of a contract in excess of \$59,000, receiving City Council approval by resolution adopting at a meeting of the City Council prior to the Corporation entering into the contract.

Section 4.4 Revenue Account

The Corporation shall maintain a special account (the "Revenue Account") into which Receipts (but no other funds) will be depositing and against which checks shall be drawn only for payment of bills for labor and materials incident to the operation of the Property, for payment of any program Income due City under this Agreement, and for other items in the Approved Operating Budget. After a Default, the City may apply funds on deposit in the Revenue Account to the satisfaction of any covenant or condition hereof. The Corporation further covenants that:

- (a) The Revenue Account shall contain only the funds received pursuant to this Agreement and that no other funds shall be mingled with funds in such account. Corporation shall support

all checks and withdrawals from said account with itemized documentation of costs under this Agreement.

- (b) The City shall have a lien upon any balance in the Revenue Account paramount to all other liens, which lien shall secure the repayment of any advance payment made hereunder. Corporation further covenants it will execute any and all security agreements and other documents City determines necessary to evidence said lien.
- (c) Said accounts shall be maintained, under conditions approved by City, in a financial institution, with Federal deposit insurance coverage and the balance, if any, exceeding the Federal deposit insurance coverage shall be collaterally secured.

Section 4.5 Reports, Meetings, Information, and Operating Budget

- (a) At such times and in such form as City may require, and upon reasonable advance notice, Corporation shall furnish such statements, records, reports, data and information, as City may request and deem pertinent to matters covered by the Agreement.
- (b) On or before January 1st of each year during the term of this Agreement, Corporation shall provide City with a proposed Approved Operating Budget for the next following fiscal year, and any proposed amendments to an annual Approved Operating Budget, at least twenty-one (21) calendar days before adoption by Corporation, and any City comments received by Corporation shall be taken into account in adopting the Approved Operating Budget or amendments to the final Approved Operating Budget. If City fails to provide written approval or disapproval within fourteen (14) calendar days following receipt of a proposed final Approved Operating Budget or amendments to an Approved Operating Budget, the proposed budget action will be deemed approved without further City action. Within fifteen (15) calendar days following final adoption of the annual Approved Operating Budget or any amendments to the final annual Approved Operating Budget, Corporation shall provide City a copy of the annual budget or the amendments, as appropriate.
- (c) A Performance Report and Budgeted/Actual Variance Report, in a form required by City, shall be submitted to City by Corporation on a periodic basis, but not less often than semi-annually as determined by City. Corporation agrees to gather information and data relative to all programmatic and financial reporting as of the beginning date specified in Section 2.1, and shall make available to City the following original information and material for the applicable period:
 - a. Cash disbursements and receipts journal;
 - b. Bank reconciliations for all bank accounts described in Section 4.,5 of the Agreement;
 - c. Invoices that support all expenditures;
 - d. All leases entered into with regard to the Property;
 - e. Documents that support all procurements;
 - f. Contracts entered into;
 - g. Program income required to be remitted to City pursuant to section 2.9 (b) of this Agreement;
 - h. Proof of insurance on the Property; and
 - i. Any additional information or material City may reasonably request concerning this Agreement.

Section 4.8 Audit. Corporation grants the City a right to audit as follows:

- (a) Corporation agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all records of Corporation related to the performance under this Agreement. Corporation shall retain all such records for a period of three years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of Corporation are resolved, whichever is longer. Corporation agrees to refund to the City any overpayments disclosed by any such audit.
- (b) Corporation shall include subsection (a) above in all contractor or subcontractor agreements entered into in connection with this Agreement.

Section 4.9 Operation of the Property.

The Corporation shall enter into an agreement with the Facility Manager in accordance with this Agreement and the Facility Management Agreement, to manage the day to day operation of the Property.

**ARTICLE 5
MONITORING**

Section 5.1 Inspection, Monitoring and Evaluation. The City, through its officers, agents or employees, may, at all reasonable times:

- (a) Enter upon the Property and inspect it to confirm that it complies with all requirements of this Agreement;
- (b) Examine, copy and make extracts of, the books, records, accounting data and other documents of the Corporation that relate in any way to the Property, including without limitation, all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over the Corporation or the Property and all the relevant books and records of contractors and subcontractors supplying goods or services for the construction of any capital improvements to the Property. All contracts let or amended by the Corporation or its contractors and subcontractors after the date hereof relating to construction of capital improvements will permit the foregoing inspection rights, except where such rights have been waived by the City in writing.

Section 5.2 The Corporation's Responsibilities. The Corporation is responsible for all aspects of the Corporation's business and conduct in connection with the Property.

**ARTICLE 6
EVENTS OF DEFAULT**

Each of the following shall constitute an Event of Default hereunder:

Section 6.1 Conditions to Advances. If, at any time, the Corporation is unable to satisfy any requirement or cure any circumstance specified in Article 2, the satisfaction or curing of which being

precedent to its right to receive an Advance hereunder, and such inability continues for a period in excess of thirty (30) calendar days.

Section 6.2 Covenant Defaults. If, at any time, the Corporation is unable to satisfy any of its covenants or cure any circumstance specified in Article 4, the satisfaction or curing of which being precedent to its right to continue to satisfy any covenant hereunder, and such inability continues for a period in excess of thirty (30) calendar days

ARTICLE 7 REMEDIES

Section 7.1 Rights, Remedies and Recourses. Upon the happening of any Event of Default, the City may, in addition to any and all other rights, remedies and recourses otherwise available at law or in equity:

- (a) take exclusive possession of the Property;
- (b) operate the Property;
- (c) execute in the Corporation's name all applications, certificates, and other instruments which may be required to operate the Property;
- (d) do any and every act with respect to the operation of the Property which the Corporation may do in its behalf; and
- (e) Employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen, and inspectors as the City may deem desirable to accomplish any of the above purposes.

For these purposes, the Corporation constitutes and appoints the City its true and lawful attorney-in-fact with full power of substitution to take any and all of the above-described action, which power of attorney is coupled with an interest and is irrevocable. All sums expended by the City for any of the above purposes shall be Advances and shall be secured by this Agreement.

Section 7.2 Corporation's Indemnity.

So long as this Agreement is in effect, Corporation, to the extent allowed by law, shall indemnify and hold City harmless from and against all liability, loss, cost, damage or expense which City may incur under or by reason of this Agreement, or for any action taken by City hereunder, or by reason of or in defense of all claims and demands whatsoever which may be asserted against City arising out of this Agreement, including those arising from the joint, concurrent, or comparative negligence of City, but excluding all liabilities arising from City's sole or gross negligence or willful misconduct. If City incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon shall be payable by Corporation to City immediately, without demand.

ARTICLE 8 GENERAL TERMS AND PROVISIONS

Section 8.1 No Waiver. Any failure by the City to insist, or any election by the City not to insist, upon the Corporation's strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of them or of any other term, provision or condition thereof, and the City may at any time thereafter insist upon strict performance by the Corporation of all of them. In specific, no Advance by the City absent the Corporation's strict compliance with Article 2 shall in any way preclude the City from thereafter declaring such failure to comply to be an Event of Default hereunder.

Section 8.2 Modification. This Agreement may not be amended, waived, discharged or terminated orally, but only by an instrument executed by the party against which enforcement of the amendment, waiver, discharge or termination is sought.

Section 8.3 Applicable Law. This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas from time to time in effect.

Section 8.4 Severability. If a court of competent jurisdiction determines that a term or provision of this Agreement is void or unenforceable, the remainder of this Agreement remains effective to the extent permitted by law.

Section 8.5 Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and legal representatives. A party to this Agreement may not assign or transfer its interests under this Agreement.

Section 8.6 Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in-person to the intended addressee. Notice so mailed shall be effective upon its deposit in the custody of the U.S. Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth in this Agreement; however, either party may change its address for notice hereunder to any other location within the continental United States by giving 30-days' prior notice to the other party in the manner set forth hereinabove.

Section 8.7 Headings. The Article and Section entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles and Sections.

Section 8.8 Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Agreement, but only if and to the extent the event or circumstance is not within the control of the party seeking to have its performance obligation excused thereby and which the party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a party's cost but not its ability to perform.

The party invoking Force Majeure shall give timely and adequate notice to the other party, by e-mail or telephone confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. In the event a party's performance of an obligation under this Agreement is delayed due to a Force Majeure event, then the time for completion of the party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not extend the time for performance beyond September 30, 2028. If an event of Force

Majeure affecting Corporation's performance continues for more than 90 days, the City shall have the right to terminate this Agreement upon written notice to Corporation delivered prior to the date that Corporation resumes performance.

EXECUTED as of the date first above written.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: City Manager

AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: President

Attachments:

- Exhibit A Legal Description of Land
- Exhibit B Administrative Agreement
- Exhibit C Insurance Requirements

EXHIBIT A
(Legal Description of Land)

The Land (including any improvements) referred to in this agreement is described as follows:

A tract or parcel of land being all of and known as ROSEWOOD VILLAGE TRACT 1, an addition in Travis County, Texas, according to the map or plat thereof recorded in Book 41, Page 43, Plat Records of Travis County, Texas.

Exhibit B

**AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION
and
CITY OF AUSTIN**

(City Administration)

Date: _____, 2018

THIS AGREEMENT *is* made and entered into by and between the AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government corporation under Subchapter D, Chapter 431, Texas Transportation Code ("Corporation"), and CITY OF AUSTIN, a Texas home rule city and municipal corporation under Chapter 9, Texas Local Government Code ("City")

WHEREAS, on August 3, 1995, the City Council of the City passed a resolution adopting a 1995-1996 community development program (the "Program") in accordance with Chapter 373, Texas Local Government Code, as amended; and

WHEREAS, the Program includes the development and continuing operation of the Millennium Youth Entertainment Complex ("MYEC") on land owned by the City ("Property"); and

WHEREAS, on November 16, 1995, the City Council of the City adopted a resolution approving the creation of the Corporation as a local government corporation under Subchapter D of Chapter 431, Texas Transportation Code, for the purpose, among others, of developing and managing the operation of the Property; and

WHEREAS, the City and the Corporation are authorized to enter into this Agreement pursuant to the provision of Chapter 373, Texas Local Government Code, and Subchapter D of Chapter 431, Texas Transportation Code; and

WHEREAS, on _____, the City Council of the City authorized the execution of a ~~Financing~~ Agreement with this attached Agreement between the City and the Corporation that sets forth the terms by which the City will provide financing to the Corporation to manage the operation of the MYEC; and

WHEREAS, on _____, the Board of Directors of the Corporation adopted a resolution authorizing the execution of this Agreement between the City and the Corporation; and

WHEREAS, the Corporation desires that City provide needed staff and administrative support in carrying out the operations of the Corporation (the "Project"); and

WHEREAS, Corporation desires to reimburse City for its cost of providing such services; and

WHEREAS, the City and Corporation desire to enter into this Agreement to evidence the parties' Agreement for administrative services provided to the MYEC; and

WHEREAS, City has agreed to perform its obligations under this Agreement for the benefit of the Corporation; NOW THEREFORE, the parties hereto, for and in consideration of these promises and mutual obligations herein undertaken, do hereby agree as follows:

SECTION 1 PURPOSE OF AGREEMENT

Corporation agrees to contract with City, and City agrees to monitor the day to day operations of the Corporation, including the management of the operation of the MYEC, provide contract management services and financial management, and provide general oversight of corporate activities that would otherwise be performed by the Corporation ("Services"). Management Services shall be in compliance with the City Procedure Manual for Project Managers. The primary purpose of this Agreement is to describe the City services to be provided to Corporation and to provide for reimbursement by Corporation to City for its costs incurred in carrying out this Agreement.

SECTION 2 TERM OF AGREEMENT

- 2.1 This Agreement shall commence on the date first above stated and shall end on September 30, 2028, unless the parties by mutual consent agree to extend this Agreement for additional one year periods, or unless amended in conformance with Section 15, or suspended or terminated in accordance with other applicable conditions and provisions of this Agreement. The Parks and Recreation Department Director, on behalf of the City, and the Chairperson on behalf of the Corporation, is authorized to extend this Agreement for each additional one-year period, provided the Corporation Board of Directors has appropriated sufficient funds in its budget for the one-year period being extended

SECTION 3 LEGAL AUTHORITY

- 3.1 The parties, individually represent and warrant that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- 3.2 The person(s) executing this Agreement on behalf of City or Corporation, represents and warrants that they have been fully authorized by City or Corporation to execute this Agreement on its behalf and to legally bind City or Corporation to all the terms, performances and provisions of this Agreement

SECTION 4 PERFORMANCE AND COMPLIANCE WITH ALL LAWS

- 4.1 City agrees to perform the Project and to produce reports as necessary until completion of the Project in accordance with the terms and conditions of this Agreement
- 4.2 It is expressly understood that City's performance shall be in material compliance with all federal, state, and local laws, regulations and authorities and that any changes in applicable laws, regulations, or authorities are automatically incorporated herein without specific reference.

SECTION 5 LIABILITY FOR PAYMENT

- 5.1 Notwithstanding any other provision of this Agreement, Corporation's total liability for payment of funds to City under this Agreement shall not exceed ONE DOLLAR AND NO/100 DOLLARS (\$1.00) plus such additional actual cost advanced to City in connection with the Project
- 5.2 It is expressly understood that Corporation is under no obligation to pay any charges to City which do not result directly from the performance of the Project and are not undertaken at Corporation's request.
- 5.3 Corporation's liability for payment is based upon Corporation's acceptance of City's work as satisfactory and complete, as defined by Corporation, which acceptance will not be unreasonably withheld.
- 5.4 In the event initial reports as required to be submitted by *City* pursuant to the Statement of Work, or data as required to be submitted by City pursuant to section 4.1 are deemed by Corporation to be incomplete or unsatisfactory, City agrees to make such revisions or changes as may be required by Corporation and at no additional cost to Corporation.

SECTION 6 MEASURE OF LIABILITY AND PAYMENTS

- 6.1 In consideration of full and satisfactory performance of services hereunder by City, Corporation shall make payments to City in accordance with the method of payment described in section 7 based on the budget incorporated in the Statement of Work ("Budget"), subject to the limitations and provisions set forth in this Agreement.
- 6.2 Corporation is not liable for the payment of any cost or portion thereof with respect to the Project which:
 - 6.2.1 was incurred prior to the beginning date or after the ending date specified in section 2.1, unless specifically authorized in writing by Corporation.
 - 6.2.2 is not incurred in strict accordance with the terms of this Agreement including all exhibits attached hereto.
 - 6.2.3 has not been billed to Corporation within sixty (60) calendar days following billing to City or termination of this Agreement, whichever is sooner.
- 6.3 Corporation shall not be obligated or liable under this Agreement to any party other than City for payment of any monies or for provision of any materials or services.
- 6.4 Upon Corporation's acceptance of Project reports as complete and

satisfactory, City may submit a Billing Package for payment to Corporation in accordance with the terms and conditions of this Agreement and its exhibit(s), if any

- 6.5 Corporation shall make payment to City within a reasonable time, not to exceed thirty (30) calendar days, following receipt of billing, provided it is complete and accompanied by documentation as required in *this* Agreement.

SECTION 7 **PAYMENTS TO CITY** - The City must maintain an accounting of the receipt and disbursement of all funds received under this Agreement.

SECTION 8 **OWNERSHIP OF PROPERTY**

Title of all capital acquisitions, supplies, materials or any other property purchased with funds received under this Agreement and in accordance with the provisions of this Agreement, is vested with Corporation.

SECTION 9 **REPRESENTATIONS AND WARRANTIES**

- 9.1 City represents and warrants that:
- 9.1.1 All information, reports and data previously or subsequently requested by Corporation and furnished to Corporation was complete and accurate as of the date shown on the information, data or report, and since that date have not undergone any significant change without written notice to Corporation.
 - 9.1.2 Any supporting financial statements previously requested by Corporation, and furnished to Corporation, were complete, accurate and fairly reflect the financial condition of City as of the date shown on said report, and the results of the operation for the period covered by the report, and since said date there has been no material change, adverse or otherwise, in the financial condition of City.
 - 9.1.3 None of the provisions of this Agreement contravenes or is in conflict with the authority under which City is doing business or with the provisions of any existing indenture or agreement of City.
 - 9.1.4 City has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement
- 9.2 Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by City with the submission of each Billing Package.

SECTION 10 **RECORD-KEEPING AND INSPECTION**

City shall establish and maintain records sufficiently detailed as to allow authorized persons from Corporation, or any other authorized entity to determine whether activities and work under this Project has been carried out in accordance with applicable rules and requirements and shall render said records immediately available to said entities and persons upon request, with or without prior notice. City shall make available for inspection, audit and/or reproduction by any authorized person or entity records, books, documents, and other evidence pertinent to the costs and expenses of this contract. This includes

such detail as will properly reflect basis of all costs for labor, material, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this Agreement. City must maintain all records related to this Agreement for a period of three years following termination of the Agreement or a longer period, if any, as is required by applicable statute or lawful requirements from the date of *this* Agreement's expiration or termination.

SECTION 11 FUNDING OUT AND TERMINATION

- 11.1 Corporation acknowledges that City's obligations to Corporation are contingent on funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide Corporation notice of the failure of City to make an adequate appropriation for any fiscal year to perform its obligations, or the reduction of any appropriation to an amount insufficient to permit the City to perform its obligations.

- 11.2 Corporation may terminate this Agreement in whole or in part immediately upon written notice to City in the event the source of funds for this Agreement is reduced, suspended, or rescinded.

SECTION 12 TERMINATION AND REMEDIES: CANCELATION

- 12.1 A party may terminate this Agreement if the other fails to cure a material breach which substantially impairs the value of the contract as a whole to the non-breaching party within thirty (30) calendar days of receipt of written notice being given by the other party.

- 12.2 If more than thirty (30) calendar days are required to cure such a material default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted. In the event such default or breach is not cured within the specified time, the Agreement may be terminated upon thirty (30) calendar days written notification.

SECTION 13 ASSIGNMENTS

City shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company or other financial institution without the prior written approval of Corporation.

SECTION 14 CHANGES AND AMENDMENTS

No addition to, deletion from, or substitution for any condition of this Agreement as described herein shall be made without the prior written approval of Corporation and City. Changes shall be effective upon execution by both parties hereto of a written amendment to the Agreement in such form and format as Corporation may deem appropriate. Corporation reserves the right to have any additional terms and conditions incorporated into the Agreement provided an authorized modification to the contract is mutually agreed upon and duly executed by both parties.

SECTION 15 NON-WAIVER OF PROVISIONS

Forbearance by Corporation with respect to any provisions of this Agreement shall in no way constitute a waiver of any of Corporation's rights or privileges hereunder.

SECTION 16 SURVIVAL OF CONTRACT PROVISIONS

The provisions of this Agreement that pertain to the payment of accounts receivable to Corporation, the reversion of any of City's assets to Corporation, the ownership of any property after termination, the submission of audited financial statements to Corporation, the insurance coverage, the Corporation's rights following termination, and the enforcement of these provisions shall survive the expiration of this Agreement until three years following the suspension or termination of this Agreement. Notwithstanding the foregoing, City must comply with all the obligations imposed above until such obligations are completed in full.

SECTION 17 SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, that holding 1) shall not invalidate the remainder of this Agreement, 2) shall be limited to the specific parts of the Agreement described in that holding, and 3) shall not affect the validity of this Agreement in any way or in any other instance. The provisions of this Agreement are intended to be severable for this purpose. All other provisions shall remain in full force and effect.

SECTION 18 CHOICE OF LAW AND VENUE

This Agreement is to be governed by the Laws of the State of Texas. Venue and jurisdiction of any litigation, or right of cause of action under or in connection with this Agreement shall be exclusively in Travis County, Texas.

SECTION 19 ENTIRE AGREEMENT

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the parties respecting the subject matter hereof. The terms and conditions set forth in this Agreement constitute the entire agreement between the parties and any oral representations on the part of either party, its representatives or assigns, shall have no force or effect whatsoever. This Agreement shall be binding upon the parties, their successors, and assigns.

SECTION 20 NOTICES

All notices or communication between the parties to this Agreement shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, return receipt requested, as follows:

Notice or communication to City shall be directed to:

Kimberly McNeely (or successor), Acting Director
Parks & Recreation Department
200 South Lamar Blvd.
Austin, Travis County, Texas 78704
Attn: Millennium Youth Entertainment Center

Notice or communication to Corporation, shall be directed to:

_____ (or successor), Chairperson
AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION
200 South Lamar Blvd.
Austin, Travis County, Texas 78704
Attn: MYEC Project Manager

or addressed in such other way as either party may from time-to-time designate in writing dispatched as provided in this section 21.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first above stated.

Corporation:

By: _____
Name: _____
Title: President

City:

By: _____
Name: _____
Title: City Manager

APPROVED AS TO FORM:

Assistant City Attorney