

## **AGREEMENT FOR CONTRIBUTIONS OF FUNDS TO THE MILLENNIUM YOUTH ENTERTAINMENT COMPLEX**

This Agreement for Contributions of Funds to the Millennium Youth Entertainment Complex (**Agreement**) is between the City of Austin (**City**), a Texas home rule municipal corporation, and the Austin Rosewood Development Corporation (**Corporation**), a Texas local government corporation (each a **Party** and together, the **Parties**).

### **1. RECITALS**

**A.** In 1995, the City Council of Austin (**City Council**) passed a resolution adopting a community development program in accordance with Local Government Code Chapter 373. The program included the development of what is now known as the Millennium Youth Entertainment Complex (**MYEC**).

**B.** Also in 1995, the City Council approved the creation of the Corporation as a local government corporation pursuant to Texas Transportation Code Chapter 431 for the purpose, among others, of developing and operating the MYEC.

**C.** Effective February 21, 2021, the City and the Corporation entered into a Funding, Operations, and Administrative Agreement (**Operations Agreement**) to document the arrangements for the continued operation and funding of the Property, including each Party's duties regarding operation of the Property. The Operations Agreement is fully incorporated herein.

**D.** The City and the Corporation wish to execute this Agreement to govern the use of donations and grants received by the Corporation for the payment of Operating Expenses.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### **2. DEFINED TERMS**

**Contributed Revenue** means all cash and in-kind donations given to the Corporation in the form of gifts or grants.

**Designated Expenses** means the costs incurred by the Corporation to i) operate, maintain, repair and renovate the Property and ii) subsidize community events at the Property, as approved in advance by the Corporation.

**Effective Date** means the date the last Party signs this Agreement.

**Licenses** means all licenses, concessions or other written agreements, 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 service contracts,

which in any way relate to the design, use, occupancy, operation, maintenance, repair, enjoyment or ownership of the Property.

**Property** means the real estate described in **Exhibit A**, all fixtures and improvements situated thereon, all rights, titles and interests appurtenant thereto, and Licenses, if any, generally referred to as the Millennium Youth Entertainment Complex, located at 1156 Hargrave Street, Austin, Texas 78702.

**Tax Exempt Bond** means a debt security issued by the City, the interest on which is excludable from gross income for federal income tax purposes

### 3. TERM

This Agreement shall commence on the Effective Date and shall end on September 30, 2024, unless extended, suspended, or terminated in accordance with the terms of this Agreement. The Parties, with the respective approval of their governing bodies, may extend this Agreement for up to three additional terms, with the length of each additional term to be agreed to in writing by the Parties. 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 120 days unless otherwise agreed to in writing by the Parties, in order to renew this Agreement.

### 4. PARTY REPRESENTATIVES

The City designates [REDACTED] as its authorized representative to act on the City's behalf with respect to this Agreement (**City Representative**). Partner designates [REDACTED] as its authorized representative to act on its behalf with respect to this Agreement (**Partner Representative**). The contact information for each Party's Representative is provide in Section 12(I) below.

### 5. FUNDRAISING BY THE CORPORATION

- A. The Corporation shall have the exclusive right to use the Property to solicit Contributed Revenue.
- B. Promptly upon receipt of Contributed Revenue in the form of cash, the Corporation shall deposit it in a segregated account or accounts for donations maintained in a federally insured financial institution (**Contributed Revenue Account**). The Corporation shall use the Contributed Revenue exclusively for the payment of, or, in the case of in-kind donations, in support of the payment of, Designated Expenses.
- C. The Contributed Revenue Account shall name the City as the beneficiary and the City Controller shall have the authority to sign on behalf of the City. Upon termination or expiration of this Agreement, the Corporation shall promptly deposit any undeposited Contributed Revenue into the Contributed Revenue Account and the City may assume sole control of the Contributed Revenue Account.

**D.** The Corporation shall establish and maintain books, records, and accounting systems in accordance with GAAP reflecting the revenues and in-kind donations collected and expenses incurred pursuant to this Agreement. Records shall be kept for a period of seven (7) years after the date prepared.

**E.** Not later than six (6) months following the Effective Date and every six (6) months thereafter during the term of this Agreement, the Corporation shall provide to the City Representative a report containing the following information:

- 1) total Contributed Revenue received in the previous six (6) months;
- 2) total Designated Expenses incurred in the previous six (6) months;
- 3) itemized list of the projects funded by Designated Expenses in the previous six (6) months;
- 4) total Contributed Revenue received to date;
- 5) total Designated Expenses incurred to date; and
- 6) total balance of the Contributed Revenue Account.

**F.** The City may conduct audits of the Corporation's records of the revenue and in-kind donations received and Contributed Revenue Account as necessary to ensure compliance with this Agreement and the Corporation agrees to allow the City or authorized City representatives access to such records.

## **6. DONOR RECOGNITION**

**A.** As of the Effective Date of this Agreement, no Tax Exempt Bond funds have been used in connection with the Property. In the event Tax Exempt Bonds are used in connection with the Property in the future, the City will make certain covenants, representations and provisions to assure compliance with the Internal Revenue Code (**IRC**) and any regulations or rulings promulgated by the U.S. Department of the Treasury relating to Tax Exempt Bonds. The Corporation will coordinate its fundraising with the City to ensure that it does not enter into any agreement with a donor that might cause the Tax Exempt Bonds to be rendered taxable through private activity use. Private activity is defined in the IRC to include a private business use: (i) in any activity which constitutes an unrelated trade or business within the meaning of Section 513 of the IRC or (ii) by any person other than a governmental person or an exempt organization described in Section 501(c)(3) of the IRC. The Corporation will cooperate reasonably and in good faith with the City as to matters within its power to assure that the Tax Exempt Bonds satisfy the bond covenants, representations and provisions. Moreover, if the IRC is amended, or regulations or rulings are promulgated which impose additional requirements on the Tax Exempt Bonds, or if it is determined by a court of competent jurisdiction that this Agreement fails to comply with the terms of the IRC, then the City and the Conservancy will renegotiate, in good faith, to amend or replace, this Agreement in order to comply with the additional requirements to the extent necessary to preserve the exemption from federal income taxation of interest on the

Tax Exempt Bonds.

**B.** Subject to applicable laws, zoning and ordinances and to advance written approval by the City as expressed in writing by the City Representative, the Corporation shall have the right to contract for donor recognition for any person, entity, or group making donations of Contributed Revenue. The City's approval of donor recognition shall not be unreasonably withheld or delayed.

**C.** The City has the right to disapprove requested donor recognition due to non-compliance with the Limitations on Recognition below or non-compliance with the Donor Recognition Guidelines attached as **Exhibit B**.

**D.** Donor recognition shall not:

- (i) promote, advertise or relate to alcohol or tobacco products; or
- (ii) promote, advertise or relate to adult-oriented businesses; or
- (iii) be of a cause-oriented nature (*e.g.*, promoting or criticizing a political party, public official or candidate; a political or social cause or movement; or a religion or religious establishment or movement); or
- (iv) include any reference to any proper geographic name, unless such reference (1) is to "Austin" or the "City of Austin" or (2) is part of the proper name of a person or entity selected for recognition; or
- (v) contain requirements for the recognition plaque or materials that are of a material that the City Representative determines is inappropriate.

**D.** Subject to pre-approval in writing by the Parks and Recreation Director, the Corporation shall have the right to offer naming rights to potential donors. Recognition opportunities must be consistent with the City's naming requirements for City facilities found in City Code Section 14-1. Any recognition opportunity to which those provisions apply shall follow the process set forth in City Code.

## **7. LIABILITY AND INDEMNIFICATION**

**A. SO LONG AS THIS AGREEMENT IS IN EFFECT, THE CORPORATION SHALL, TO THE EXTENT ALLOWED BY LAW AND SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTIONS (B) AND (C) BELOW, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE WHICH THE CITY MAY INCUR UNDER OR BY REASON OF THIS AGREEMENT, OR BY REASON OF OR IN DEFENSE OF ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST THE CITY ARISING OUT OF THIS AGREEMENT, EXCLUDING ALL LIABILITIES ARISING FROM THE CITY'S SOLE OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (THE INDEMNIFIED CLAIMS). IF THE CITY INCURS ANY SUCH**

**LIABILITY, LOSS, COST, DAMAGE OR EXPENSE, THE CORPORATION SHALL PROMPTLY UPON REQUEST AND SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTIONS (B) AND (C) BELOW, PAY THE AMOUNT THEREOF, TOGETHER WITH ALL REASONABLE ATTORNEYS' FEES AND INTEREST. TO THE CITY.**

**B.** The Parties acknowledge and agree that the Corporation's liability for an Indemnified Claim is limited to the total amount funded by the City in the fiscal year in which the occurrence giving rise to the Indemnified Claim occurred, plus any insurance proceeds payable to the Corporation in connection with the Indemnified Claim.

**C.** No Director of the Corporation shall be personally liable to the Corporation for any payment under this Agreement or to the City for any Indemnified Claim where such liability arises, in whole or in part, out of an act or omission of the Director in his/her capacity as Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) for any transaction from which the Director received an improper benefit, regardless of whether the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute.

## **8. DEFAULT AND REMEDIES**

**A.** If either Party breaches its obligations under this Agreement, the other Party shall notify the breaching Party in writing of the specific breach(es). The breaching Party shall have thirty (30) calendar days from receipt of the notice in which to cure the breach(es). If the breach cannot be reasonably cured within the 30 calendar days and the breaching Party has diligently pursued such remedy as is reasonably necessary to cure the breach, then the Parties may agree in writing to an extension of the period during which the breach must be cured.

**B.** If the breach is a material breach of the Agreement, and if the breaching Party has not cured it within the required time, then the non-breaching party, at its sole option, has the right to terminate the Agreement. This termination shall be made by sending written notice (the "**Notice of Termination**") to the breaching Party and shall be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.

## **9. DISPUTE RESOLUTION**

**A.** Upon request of either Party, an informal attempt to negotiate a resolution of the dispute shall be made. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days, or such additional time as may be agreed to in writing by the Parties, after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement

signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

**B.** The mediation shall take place in Austin, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, within 60 calendar days of the informal negotiation meeting, or such additional time as may be agreed to in writing by the Parties. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for at least 30 calendar days from the date of the first mediation session. The Parties shall share the costs of mediation equally. If the mediation does not successfully resolve the dispute, each Party is free to pursue other remedies available to them.

## **10. FORCE MAJEURE**

**A.** Each Party to this Agreement agrees to excuse the failure of the other Party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the Party, and which the Party could not use due diligence to avoid or prevent. Events of Force Majeure include:

- i. The total or partial destruction of the Property by any cause, casualty, or unforeseen occurrence;
- ii. The imposition of local, State or federal measures, orders, declarations, travel restrictions, quarantines, or isolation in response to the outbreak of an infectious disease, epidemic or pandemic in the City that involves, includes, or affects the Property or the ability to appropriately deploy employees or contractors;
- iii. Lightning, earthquakes, fires, storms, floods, and landslides;
- iv. An act of terrorism, strike, sabotage, civil disturbance, or disaster declaration;
- v. Circumstances beyond the Party's control that render the Party's performance impossible.

Force Majeure does not include economic or market conditions which affect a Party's cost but not its ability to perform.

**B.** The Party invoking Force Majeure shall give prompt and adequate notice to the other Party of the event by telephone or e-mail, and then the Party must promptly provide written notice of the Force Majeure in the manner required by this Agreement. The Party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a Party's performance is delayed by the event of Force Majeure, the Parties shall mutually agree to a reasonable extension of time to overcome the effect of the event; provided, however, that if a Party is unable to perform for more than 90 days, the non-affected Party shall have the right to terminate this Agreement upon written notice to the affected Party delivered prior to the date that performance resumes.

## **11. NO RECOURSE**

No recourse shall be had against any elected official, director, officer, attorney, agent, or employee of the City, whether in office on the Effective Date of this Agreement or after such date, for any claim based upon this Agreement.

## **12. GENERAL TERMS AND CONDITIONS**

- A.** This Agreement may be amended only by a writing properly executed by each of the Parties. Provided the amendment does not increase the sum, if any, to be paid by the City to an amount in excess of the then-current administrative authority of the City Manager and provided the form of amendment is approved by the City Law Department, the City Manager or the City Manager's designee is authorized to execute any amendment to the Agreement on behalf of the City without further authorization by the City Council.
- B.** This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas. Mandatory venue for any lawsuit arising out of this Agreement shall be in a court located in the City of Austin, Travis County, Texas.
- C.** If a forum 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.
- D.** 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.
- E.** If at any time a Party fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a continuing waiver or estoppel of the right to enforce the Agreement.
- F.** The Corporation acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.
- G.** The Corporation acknowledges that the City has provided notice that the City's payment obligations to the Corporation, if any, are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for the Operations Agreement, this Agreement is void.
- H.** 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.

I. All official communications and notices required to be made under this Agreement shall be deemed made if sent, postage prepaid, to the parties at the addresses listed below:

City Representative:


Corporation Representative:

	, Secretary, or Successor

*[Signature page follows]*





**AUSTIN ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

**CITY LAW DEPARTMENT**

By: \_\_\_\_\_  
Assistant City Attorney

Date: \_\_\_\_\_

**Exhibits:**

- Exhibit A – Legal Description of Property
- Exhibit B – Donor Recognition Guidelines

**EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY**

DR

**EXHIBIT B  
DONOR RECOGNITION GUIDELINES**

DR