

**Funding, Operations and Administrative Agreement Between The Austin Rosewood Community Development Corporation and The City of Austin
Contract Summary and Fact Sheet**

Austin Rosewood Community Development Corporation (ARCDC)

Vendor	Location
Austin Rosewood Community Development Corporation	NA
Frances Jordan, President	
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	Active

Background:

- On August 3, 1995, Council passed a resolution adopting a 195-96-1996 community development program in accordance with Texas Local Government Code Chapter 373.
- The program included the development of the Central City Entertainment Center, currently know as the Millennium Youth Entertainment Complex (MYEC).
- On November 16, 1995, the Council adopted a resolution approving the creation of the Corporation as a local government corporation under Texas Transportation Code Chapter 431, Subchapter D, for the purpose, among others, of developing and operating the MYEC.
- On July 18, 1996, Council adopted an ordinance authorizing the execution and delivery of certain notes and contracts (HUD documents) relating to the \$8,875,000 HUD Section 108/ guaranteed loan to finance the Corporation's construction of the MYEC.
- On April 2, 2009, Council, through Resolution 20090402-015, amended the Corporation's Articles of Incorporation and approved the Corporation's amendment of its bylaws to expand the number of voting Board of Director positions from seven to nine, creating positions 8 and 9.
- On December 14, 2017, Council through Resolution 20171214-026, appointed and reappointed the Corporation's Board of Directors Positions one through nine.
- On or about **July 16, 2016**, the City's and the Corporation's responsibilities on the construction project program phase (to develop and construct the MYEC and to satisfy the provisions of the HUD loan guarantee, Section 108 of the Housing and Community Development Act of 1974 Agreement) were fulfilled, and this Agreement is intended to detail the City's and the Corporation's responsibilities related to the ongoing financial support, operations, and administrative services with respect to MYEC.
- On August 8, 2019, the Council, through Resolution 20190808-068, appointed and reappointed the Corporation's Board of Directors, positions 1,2,3,6,7,8, and 9.
- On January 27. 2021, Council authorized the execution of this agreement.

Contract Description

The purpose of this Agreement is to provide for the operation, management, maintenance of the Property and the Land in order to aid the City by providing a public community, sports, entertainment, convention and exhibition venues and facilities for the benefit of the City and the public. The Corporation shall enter into a Facility Management Agreement with a Facility Manager to operate, manage, and use the Property solely for such purposes. The

Corporation shall not use the Property or the Facilities for any purpose that would result in the interest payable on any bonds or indebtedness issued by the City for the construction or development of the Facilities no longer being exempt from federal income taxation.

Contract Term: This Agreement shall commence on the date first above stated (February 1, 2021) and shall end on September 30, 2024, 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 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. The City's Obligations during the Term are contingent upon the City Council's appropriation of current revenue for each fiscal year during the Term.

Extension #1

Extension #2

Extension #3

Holdover: If the initial term and any authorized period of renewal expire, the Parties agree to hold over under the terms and conditions for a period of time as may be reasonably necessary, not to exceed 120 days unless otherwise agreed to in writing by the Parties.

Contract Expires (Initial Period 9/30/2024)

Public Benefit

To provide a public community, sports, entertainment, convention and exhibition venues and facilities, at an affordable cost, to benefit the surrounding community and all Austin citizens.

Major Contract Deliverables ARCDC

1. To receive an Advance from the City, the Corporation must submit a Billing Package to the City's Contract Manager. These must be no sooner than ten calendar days before October 1st, no sooner than ten calendar days before January 1st, no sooner than ten calendar days before April 1st, and no sooner than ten calendar days before July 1st.
2. Corporation must obtain City's prior written authorization for any of the following to be considered an allowable cost.
 - a. Encumbrance or expenditure during any one-month period which exceeds one-twelfth of any budgeted line item for personnel costs.
 - b. Except in cases of a Bona Fide Emergency, any subcontract in amount greater than \$5000.
 - c. Out-of-town travel, meals, lodging and entertainment, including, but not limited to, fees for attending out-of-town meetings, seminars, or conferences.

- d. Alternations or improvements to the property.
 - e. Any alterations, deletions, or additions to the personnel schedule.
 - f. Costs or fees for temporary employees or services in an amount greater than \$5,000.
 - g. Any fees or payments for consultant services in an amount greater than \$5,000.
 - h. Prior written authorization for these costs will be obtained from the PARD director or, for amounts that exceed the City Manager's authority, from City Council.
3. Corporation must refund any overpayments or 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. Within ten business day of receipt of the notice, the Corporation shall submit to the City a written response to the notice and shall have thirty days from receipt of the notice from the City to refund any excess payments.
4. Corporation unconditionally warrants and represents to the City that the Corporation will satisfy all Legal Requirements necessary to carry out its obligations.
5. Corporate shall operate the property in accordance with policies and procedures based on the attached Operational Guidelines.
6. Corporation may engage in the following activities while operating the property:
 - i. Contract for the development, improvement, construction, operation and maintenance of the property and related fixtures, equipment, facilities, and amenities.
 - ii. Accept and receive from any person gifts of money or other things of value for the purpose of operating, improving, equipping, or promoting the property.
 - iii. Accept and receive funds appropriated by the City for the purpose of operating, improving, equipping, or promoting the Property.
 - iv. Advertise the Property for the purpose of attracting visitors, tourists, residents, and members of the community to the Property.
 - v. Enter into contacts for the purpose of fulfilling its obligations to operate the property.
 - vi. Hold public events consistent with agreement provisions.
7. By no later than October 1 of each year, submit to Assistant City Manager for Director Health and Environment and Culture and Lifelong Learning for document approval. The document must include the plans for the operation of the MYEC for the upcoming fiscal year.

8. Maintain in full effect, insurance policies in the amounts, and on terms approved by the City.
9. Comply with all legal requirements and accessibility requirements.
10. Comply with the Texas Public Information Act.
11. Furnish the City, at least annually, in connection with the submission of the Annual Budget, with a current list of contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the property.
12. Store all required operations materials on the premises and minimize the possibility of loss, theft, or damage.
13. Correct any structural defect in the Property.
14. See Section 4.5 Negative Covenants page 10.
15. Revenue Account – Maintain a special account into which receipts will be deposited and against which checks shall be drawn only for payment of bills for labor and materials incident to the operation of the property.
 - i. Account is limited to funds received pursuant to this agreement, including advances received from the City.
 - ii. Shall be maintained under conditions approved by the City.
16. Corporation shall furnish statements, records, reports, data, and information, as City may request and deem pertinent to matters covered by the agreement.
17. On or before January 1st of each year, provide the City's contract manager with a draft annual budget.
18. Provide a fully executed copy of Annual Budget within 15 calendar day following adoption of Annual Budget.
19. A Performance Report and Budgeted/Actual Variance Report, not less than semiannually, as determined by the City. Agrees to gather information and data relative to all programmatic and financial reporting as of the beginning date of the agreement the following original information and material for the applicable period:
 - i. Cash disbursements and receipts journal.
 - ii. Bank reconciliations.
 - iii. Invoices that support all expenditures.
 - iv. All rentals.
 - v. Documents that support all procurements.
 - vi. Contracts entered into.
 - vii. Program Income
 - viii. Proof of Insurance
 - ix. Any additional information or material the City may request.
20. Allow Office of the City Auditor access to and the right to audit, examine or reproduce, any and all records of Corporation related to performance under this agreement.
21. Enter into or maintain an agreement with a Facility Manager in accordance with this agreement and the Facility Management Agreement. (Maintenance and Operations Agreement between ASM and ARCDC)

22. The Corporation is responsible for all aspects of the Corporation business and conduct in connection with the property.

Major Contract Deliverables **City of Austin**

1. City will make quarterly advances to the Corporation (ASM) not to exceed the amount of the Corporation's Annual Budget. The City will pay within a reasonable time, not to exceed 30 calendar days, following receipt of the Billing Package, as long as all required documentation is included, and the package is complete. The advances will be deposited into a revenue account. (See Section 3.2 Advances Not Required in Certain Circumstances page 6).
2. City will provide written notice to Corporation of any overpayment or error in spending or documentation.
3. City reserves the right to re-appropriate or recapture any such under expended funds.
4. The City and the Corporation will enter into a separate agreement to address Program Income (see Section 3.7 Program Income page 8).
5. Contract Manager provide comments on Annual Budget 14 days following receipt.
6. Perform Administrative Services and provide general oversight of corporate activities to be performed by Corporation.
7. Post notices of Board meetings in compliance with the Texas Open Meeting Act.
8. Make required files with the Texas Secretary of State.
9. To provide such other services as the parties may from time to time agree to in writing.
10. Will be in compliance with all federal, state, and local laws, regulations, and authorities.
11. Will forward notices, requests or reports that are directed to Corporation or materially concern the Corporation, within 72 hours of receipt.
12. City will not receive monetary compensation.

Amendments

- o 5/14/2021 - None at the time of fact sheet creation.