

GRANT AGREEMENT

Between

THE CITY OF AUSTIN

And

MUELLER LOCAL GOVERNMENT CORPORATION

This Grant Agreement ("**Agreement**") is entered into by and between the City of Austin ("**CITY**"), a Texas home-rule municipal corporation, and Mueller Local Government Corporation ("**CORPORATION**"), a Texas local government corporation created by the CITY under Subchapter D of Chapter 431 of the Texas Transportation Code. CITY and CORPORATION are hereinafter sometimes referred to individually as a "party," or collectively as the "parties."

WHEREAS:

- 1) Section 52-a of Article III of the Texas Constitution authorizes the Texas Legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state; and
- 2) Chapter 380, Texas Local Government Code ("Chapter 380") provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and
- 3) The CITY has established, pursuant to Resolution Nos. 030612-15 and 050113-52, a program to provide for economic development grants to promote and foster economic development in the CITY; and
- 4) The CITY has determined the redevelopment of property within the CITY formerly known as the Robert Mueller Municipal Airport ("**MUELLER**") is in the best interests of the CITY, and will promote economic development and stimulate business and commercial activity within the CITY; and
- 5) In connection with the redevelopment of MUELLER, the CITY entered into a Master Development Agreement with Catellus Austin, LLC, ("**Catellus**") effective as of December 2, 2004 (the "**Development Agreement**"); and
- 6) Under the Development Agreement, the CITY agreed to issue debt to finance certain MUELLER redevelopment costs described in the Development

Agreement and defined as the "**Public Finance Reimbursable Project Costs**" either directly or through the auspices of a local government corporation to be created by the CITY; and

- 7) Pursuant to Resolution No. 041202-60, adopted by the Austin City Council on December 2, 2004, the CITY authorized the creation of the CORPORATION for the purpose of financing infrastructure projects at MUELLER, in furtherance of the economic development objectives for MUELLER as described in the Development Agreement; and
- 8) Pursuant to Ordinance No. 041216-83, adopted by the Austin City Council on December 16, 2004, the CITY authorized the creation of Tax Increment Financing Reinvestment Zone Number Sixteen, City of Austin, Texas ("TIRZ SIXTEEN") pursuant to Chapter 311, Texas Tax Code, and approved a preliminary reinvestment zone financing plan for TIRZ SIXTEEN; and
- 9) Pursuant to Resolution No. _____, adopted by the Austin City Council on _____, 2009, the CITY approved the final project and financing plan for TIRZ SIXTEEN (the "**Plan**"), and in connection with such action, approved the execution and delivery of a Tri-Party Agreement by and among the CITY, the CORPORATION, and TIRZ SIXTEEN (the "**Tri-Party Agreement**"); and
- 10) Under the terms of the Tri-Party Agreement, the CITY agrees to contribute to the CORPORATION tax increment revenues generated by the CITY from taxation of property within the boundaries of TIRZ SIXTEEN; and
- 11) The CORPORATION is proposing to issue bonds in one or more series, secured by the tax increments made available by the CITY to the CORPORATION under the terms of the Tri-Party Agreement for the purpose of financing "Project Costs" under the Plan to fund Public Finance Reimbursement Project Costs with respect to the redevelopment of MUELLER (the "**Bonds**") and is seeking from the CITY financial assistance, in the form of a grant, to provide additional funding if the tax increments and other funds of TIRZ Sixteen are insufficient to enable the timely payment of debt service on and other costs related to such Bonds issued for the benefit of the CITY in connection with the redevelopment of MUELLER, in accordance with the terms of the Development Agreement; and
- 12) Pursuant to Resolution No. 20060427-003 adopted by the City on April 27, 2006, in furtherance of the objectives of the CITY as set forth in Resolution Nos. 030612-15 and 050113-52, the City established a program under the authority granted to the CITY by Chapter 380 for the redevelopment of MUELLER, and authorized the issuance of the grant described in this Agreement.

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

1.0 AUTHORITY

The parties are authorized to enter into this Agreement under the Constitution and laws of the State of Texas, including specifically Chapter 380 of the Texas Local Government Code and Chapter 431 of the Texas Transportation Code.

2.0 TERM

This Agreement shall be effective as of the date the last party to sign executes this Agreement, and shall remain in force and effect until the date bonds or other obligations issued or incurred by TIRZ Sixteen are no longer outstanding, but no later than December 31, 2045, subject to the respective termination rights of the parties.

3.0 CORPORATION OBLIGATIONS

- 3.1 Subject to applicable laws and to the extent current financial market conditions permit, CORPORATION shall take all reasonably necessary or appropriate action to issue the Bonds in an aggregate principal amount not less than \$10,000,000, nor more than \$35,000,000 in bonds to finance the Project Costs under the Plan that qualify as Public Finance Reimbursable Project Costs under the Development Agreement. The proceeds of the Bonds cannot be used to pay the Developer Return, Base Developer Return or Base Developer Return Shortfall (as such terms are defined in the Development Agreement). The Bonds may be issued in one or more series.
- 3.2 CORPORATION shall deposit the net proceeds (following payment of issuance costs) of the Bonds into the "Project Improvements Fund" or other account(s) required under any indenture, security agreement or other agreement with bond trustees, underwriters, and other interested parties, that the CORPORATION enters into in order to issue the Bonds, or that secures the payment of debt service on the Bonds ("**Bond Documents**"). CORPORATION shall maintain a separate numbered account for the receipt and disbursement of all funds received from the CITY under this Agreement and any interest income resulting therefrom. No other funds shall be mingled with funds in such account. Said account 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.
- 3.3 Using Tax Increments contributed by the CITY under the Tri-Party Agreement, and Grant Funds provided by the CITY under this Agreement, subject to the provisions of Section 4.3 hereof, and other funds available to the CORPORATION, if any, the CORPORATION shall timely pay the debt service on the Bonds and the on-going expenses of administration of the CORPORATION.

- 3.4 The CORPORATION shall fully, faithfully, and timely perform each of its legally binding obligations under the Bond Documents.
- 3.5 During the term of this Agreement, the CORPORATION shall remain in good standing, preserve its legal authority and right to do business in the State of Texas, maintain its existence as a local government CORPORATION under Chapter 431 of the Texas Transportation Code, shall not dissolve or otherwise dispose of all or any material part of its assets, and shall not combine, consolidate with, or merge into another entity without the prior written consent of the CITY.
- 3.6 The CORPORATION shall provide the CITY with a simultaneous copy of all reports, statements, notices, audits, certificates, budgets, and other documents the CORPORATION is required to provide to an indenture trustee or purchaser of the Bonds under the Bond Documents including, without limitation, disbursement requests made under the terms of the Bond Documents evidencing payment of Project Costs that qualify as Public Finance Reimbursable Project Costs under the Development Agreement. In addition to the foregoing, at such times and in such form as CITY may require, and upon reasonable advance notice, CORPORATION shall furnish the CITY with such other statements, records, reports, data and information, as CITY may reasonably request pertinent to matters covered by this Agreement.
- 3.7 CORPORATION shall properly, accurately and completely maintain detailed and accurate records and other supporting documentation related to its obligations under this Agreement for three years following the date of termination of this Agreement. Such records shall include financial statements kept in accordance with generally accepted accounting principles, and will be made available for audit, inspection and/or copying by CITY or its designee at all reasonable times and upon reasonable notice. CORPORATION shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with CORPORATION's authority, and that financial records are reliable for the purposes of preparing financial statements. CORPORATION shall deliver to the CITY a copy of all financial statements of the CORPORATION issued during, or covering periods included in, the term of this Agreement.

4.0 CITY OBLIGATIONS

- 4.1 Subject to the provisions of Section 4.3, on March 1, 2010, and on March 1 of each year thereafter throughout the term of this Agreement, the CITY shall grant to the CORPORATION an amount of money ("**Grant Funds**") equal to the difference between (i) the amounts of Contract Tax Increments (as defined in the Bond Documents) on deposit with the CORPORATION

and held in the “Pledged Revenue Fund” established by the Bond Documents and (ii) the annual debt service on the Bonds to be paid during the twelve month period following each March 1, commencing October 1 and ending on September 30. The Grant Funds shall be used by the CORPORATION to pay debt service on the Bonds and for no other purpose without the prior written consent of the CITY. The Grant Funds, if any, may be disbursed to the CORPORATION on such date or dates as may be required under the Bond Documents.

- 4.2 It is the intent of the CITY that the Grant Funds shall constitute a current expense of the City, and that any appropriation of funds by the City to provide Grant Funds shall come from the CITY’s general revenues. The CITY is under no obligation to appropriate funds hereunder.

4.3 Payments Subject to Future Appropriation.

4.3.1 Except as otherwise provided in Section 4.2 hereof, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues. All payments or expenditures made by the CITY under this Agreement are subject to the CITY’s appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

4.3.2 Expenditures under this Agreement shall be made solely from annual appropriations from the general funds of the CITY, subject to any applicable limitations or procedural requirements.

4.3.3 If the CITY does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, (a) the CITY shall give CORPORATION written notice thereof, and (b) the CITY shall not be liable to the CORPORATION for such payments or expenditures, and either party, in its sole discretion, shall have the right but not the obligation to terminate this Economic Development Agreement upon sixty (60) days prior written notice to the other party.

5.0 **DEFAULT AND TERMINATION.**

- 5.1 Default by CORPORATION. Each of the following shall be deemed to be an event of default (“CORPORATION Default”):

5.1.1 The CORPORATION fails to perform any material obligation required to be performed by it under this Agreement and such failure continues for thirty (30) days after receipt of written notice from the CITY; provided, however if the alleged default is curable, but not curable within such 30 day period, an Event of Default shall not be deemed to occur, if the CORPORATION commences to cure

the failure within the 30 day period and diligently pursues the cure to a successful conclusion;

5.1.2. Any express representation or warranty made by the CORPORATION herein or any statement or representations made in any written certificate, statement or opinion delivered to CITY pursuant to this Agreement shall prove to have been materially incorrect as of the date made; or

5.1.3 CORPORATION shall admit in writing its inability to pay its debts generally as they become due, make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for the appointment of any receiver or trustee thereof or of any substantial part of its property or commence any proceedings under any arrangement, readjustment of debt, or statute of any jurisdiction, whether now or hereafter in effect; or there is commenced against CORPORATION any such proceeding which is not dismissed within sixty (60) days.

5.2 CITY's Remedies. Upon the occurrence of an Event of Default, the CITY may at any time thereafter, and upon ten days' prior written notice to CORPORATION take any or all of the following action:

5.2.1 Suspend or terminate payment of the Grant Funds in whole or in part;

5.2.2 Terminate this Agreement in whole or in part; and

5.2.3 Take such other action and exercise any remedy available to the CITY at law or in equity for breach of this Agreement by CORPORATION; all such remedies being cumulative.

5.3 Default by CITY. Each of the following shall be deemed to be an event of default ("CITY Default"):

5.3.1 The CITY fails to perform any material obligation required to be performed by it under this Agreement and such failure continues for thirty (30) days after receipt of written notice from the CORPORATION; provided, however if the alleged default is curable, but not curable within such 30 day period, an Event of Default shall not be deemed to occur, if the CITY commences to cure the failure within the 30 day period and diligently pursues the cure to a successful conclusion;

5.3.2. Any express representation or warranty made by the CITY herein or any statement or representations made in any written certificate, statement or opinion delivered to CORPORATION pursuant to this

Agreement shall prove to have been incorrect as of the date made;
or

5.3.3 The CITY shall file a petition in bankruptcy, be adjudicated insolvent or bankrupt, or there is commenced against the CITY any such proceeding which is not dismissed within sixty (60) days.

5.4 CORPORATION's Remedies. Upon the occurrence of an Event of Default, the CORPORATION may at any time thereafter, and upon ten days' prior written notice to CITY take any or all of the following action:

5.4.1 Terminate this Agreement in whole or in part; and

5.4.2 Take such other action and exercise any remedy available to the CORPORATION at law or in equity for breach of this Agreement by CITY; all such remedies being cumulative.

6.0 INDEMNITY AND CLAIMS.

6.1 Indemnity. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AND WITH FULL RESERVATION OF ALL DEFENSES AND IMMUNITIES AVAILABLE UNDER LAW, CORPORATION SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS") ASSERTED AGAINST THE CITY, TO THE EXTENT ARISING OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, (COLLECTIVELY THE "INDEMNIFYING PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTIES, OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY AN INDEMNIFYING PARTY IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

The CITY shall give CORPORATION written notice of a Claim asserted against an Indemnified Party. CORPORATION shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right, but not the obligation, to participate in the defense of any claim or litigation with attorneys of their own selection without relieving CORPORATION of any obligations hereunder.

6.2 If a claim, demand, suit, or other action ("Claim") is made or brought by any person against CORPORATION arising out of or concerning the redevelopment of MUELLER or this Agreement, CORPORATION shall

give written notice thereof to the CITY within five (5) business days after being notified of such Claim. Such notice shall enclose a true copy of all written Claims. If the Claim is not written, or the information is not discernable from the written Claim, CORPORATION shall state the date of notification of any Claim, the names and addresses of the person asserting such Claim or that instituted or threatened to institute any type of action or proceeding, the basis of such Claim, action, or proceeding, and the name of any person against whom such Claim is being made. CORPORATION shall give notice to the City Attorney, Austin City Hall, 301 W 2nd Street, Austin, Texas 78701.

7.0 NOTICES

- 7.1 Any notice necessary under this Agreement shall be in writing and shall be considered delivered three (3) days after mailing if sent certified mail, return receipt requested, or when received, if sent by prepaid courier, express mail or personal delivery, to the following addresses:

If to CORPORATION:

MUELLER LOCAL GOVERNMENT CORPORATION
c/o City of Austin Economic Growth and Redevelopment Office
P. O. Box 1088
Austin, Texas 78767-1088
Attn: President

If to CITY:

City of Austin
P. O. Box 1088
Austin, Texas 78767-1088
Attn: City Manager

With a copy to:

City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-1088

- 7.2 A party may change its notice address by written notice to the other party given in accordance with this section.

8.0 GENERAL PROVISIONS

- 8.1 Compliance with the Law. CORPORATION shall comply with all applicable laws, ordinances, codes, and regulations of local, state, and federal governments.
- 8.2 Mutual Assistance. CITY and CORPORATION shall do those things commercially reasonable, necessary or appropriate to carry out the terms and

provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

- 8.3 Adequate Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.
- 8.4 Authority. Each of the parties warrant and represent to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party.
- 8.5 Economic Development Program. The CITY represents that it is entering into this Agreement as an economic development program to promote and foster economic development in the CITY pursuant to Resolution Nos. 030612-15 and 050113-52, and Resolution No. 20060427-003 adopted on April 27, 2006 authorizing the City Manager to negotiate and execute an agreement with CORPORATION to facilitate the economic development of MUELLER.
- 8.6 Jurisdiction and Venue. Any disputes arising in connection with these terms will be governed by the laws of the State of Texas. Venue for any dispute arising under this Agreement shall be in Travis County, Texas.
- 8.7 Assignment. The CORPORATION may not assign or transfer this Agreement in whole or in part without the prior written consent of CITY, which the CITY may grant, deny or condition in its absolute discretion. However, CORPORATION may assign this Agreement for security purposes to a bond trustee in accordance with the terms of the Bond Documents without the consent of the CITY.
- 8.8 Entire Agreement. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the CITY and CORPORATION.
- 8.9 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, and their respective successors and authorized assigns.
- 8.10 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement, which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.11 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives in Austin, Travis County, Texas.

MUELLER LOCAL GOVERNMENT CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney