

**PUBLISHING AND ROYALTY AGREEMENT BETWEEN
ARCADIA PUBLISHING, INC., AND THE CITY OF AUSTIN FOR USE OF
PHOTOGRAPHS IN ROSEWOOD BOOK**

This Publishing and Royalty Agreement is entered into this ____ day of _____, 2012, by and between Arcadia Publishing, Inc., a South Carolina corporation with its principal office at 420 Wando Park Boulevard, Mt. Pleasant, South Carolina 29464 (Publisher), and the City of Austin, a Texas home-rule municipal corporation, through the Austin History Center (City).

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

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

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

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

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

4. Digital Images

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

5. Limited Purpose of License

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

6. Credits

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

7. Copyright Ownership

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

8. Copyright Notice

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

9. Compensation to City

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

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

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

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

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

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

Arcadia Publishing, Inc.
Attn: Katie Kellett, Director of Publishing
420 Wando Park Boulevard
Mt. Pleasant, South Carolina 29464

Facsimile Number: 843-853-0044

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

Facsimile Number: 512-974-7483

With copy to:

Brenda Branch, Director
Austin Library Department
City of Austin
P.O. Box 2287
Austin, Texas 78768

Facsimile Number: 512- 974-7403

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

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

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

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

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

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

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

ARCADIA PUBLISHING, INC.

BY: _____

Katie Kellett, Director of Publishing

DATE: _____

CITY OF AUSTIN

BY: _____

Printed Name: Brenda Branch, Director, Austin Public Library

DATE: _____

EXHIBIT A

PHOTOGRAPHS – ROSEWOOD BOOK

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

| Arcadia Photo # | AHC Image # | Call # | Description |
|------------------------|--------------------|--|--------------------------------------|
| 5 | PICB 09565 | AF-Biography, Madison, Henry Green; Madison, Louise | Henry G. Madison |
| 7 | PICA 18079 | AF-Streets S5700 (5) Named Streets -- Martin Luther King, Jr. Blvd. | MLK |
| 11 | PICA 18783 | AF-Parks & Recreation Dept. - Austin Rosewood Recreation Center P1400 (10) | Rosewood Recreation Ctr |
| 13 | PICA 24215 | AF-Parks P1200 (23) Rosewood | Kids Swimming |
| 14 | PICA 24201 | AF-Parks P1200 (23) Rosewood | Kids in a Circle |
| 15 | PICA 24205 | AF-Parks & Recreation Dept. - Austin Rosewood Recreation Center P1400 (10) | Tap Dance Student |
| 16 | PICA 24212 | AF-Parks P1200 (23) Rosewood | Bandstand |
| 21 | PICA 24210 | AF-Parks & Recreation Dept. - Austin Rosewood Recreation Center P1400 (10) | Doris Miller Under Construction |
| 23 | PICA 05483 | AF-African-Americans Emancipation Day A1300 (9) | Covered Wagon |
| 24 | PICA 05476 | AF-African-Americans Emancipation Day A1300 (9) | People in their Best for Juneteenth |
| 25 | PICA 05482 | AF-African-Americans Emancipation Day A1300 (9) | Gentleman at Juneteenth Big Mustache |
| 26 | PICA 05481 | AF-African-Americans Emancipation Day A1300 (9) | Band at Juneteenth |
| 27 | PICA 05484 | AF-African-Americans Emancipation Day A1300 (9) | Buffalo Soldiers |
| 28 | PICA 05477 | AF-African-Americans Emancipation Day A1300 (9) | Big Picnic Tent |
| 59 | PICA 20860 | AF-Public Schools-High Schools-Anderson P8620 General | Anderson all Wood 2 Story |
| 60 | PICA 20861 | AF-Public Schools-High Schools-Anderson P8620 General | Teachers |
| 61 | PICA 20629 | AF-Public Schools-High Schools-Anderson P8620 General | Football Field Lights |
| 64 | C03735 | AF Public Schools – High Schools – Anderson P8620 General | Anderson High School |
| 65 | C02689 | AF Public Schools – High Schools – Anderson P8620 General | Classroom |
| 72 | AR 2001-002 | AR 2001-002 Box 2; Yellow Jacket Citizen | Yellow Jacket Citizen Band Club (at |

| | | | |
|-----|------------------------------|--|--|
| | Box 2 | Band Club Box 2 #1 | bus) |
| 73 | PICA 29927 | AF-Public Schools-High Schools-Anderson P8620 General | Drum Majorettes |
| 74 | AR 2001-002 | AR 2001-002; Yellow Jacket Stadium Page 7 90% | Scoreboard |
| 80 | AR 2007.017, Box 1 folder 27 | OH Houston Campaign Card AR 2007-017, card front and back—two shots: front. Elliott OH & Thelma, papers, 1925 - 2007 Archives Workroom; African-Americans; Huston-Tillitson Box 1 folder 27 card | OH Houston Campaign Card Front of Card |
| 81 | AR 2007.017, Box 1 folder 27 | OH Houston Campaign Card AR 2007-017, card front and back—two shots: back; Elliott OH & Thelma, papers, 1925 - 2007 Archives Workroom; African-Americans; Huston-Tillitson Box 1 folder 27 card | OH Houston Campaign Card Back of Card |
| 91 | C06234 | AF Street Railroads S5600 (1) Austin Street Railway Company | Streetcar |
| 92 | PICA 02354 | AF-Streets S5700 (5) Named Streets - Rosewood Avenue | View of Rosewood at Chestnut |
| 93 | AR2001-052-15/7 | AR2001-052-15/7 Harlem Theater | Harlem Theater |
| 94 | AR 2001-002 9/9 | AR 2001-002 9/9 | A Touch of Class at Victory Grill |
| 100 | A 325.26 Br | A 325.26 Br J.M. Brewer, A pictorial and historical souvenir of Negro life in Austin, Texas, 1950 – 51 - Front Cover | Front Cover Page Brewer's Souvenir |
| 103 | PICA 28987 | AF-Hospitals-Holy Cross H2720 General | Holy Cross Hospital |
| 104 | AR 2001 – 002 15/7 | O. C. Houston AR 2001 – 002 15/7, Houston, O.C. | OC Houston |
| 130 | PICA 30405 | AF-African-Americans A1300 General | Early Baptism in Colorado |
| 149 | PICB 12153 | AF-Biography Durst, Albert Lavada, Sr. | Rev. Durst |
| 150 | PICB 10766 | Book A 427.09 He AA | Dr. Hepcat Book Cover |
| 151 | PICA 19327 | AF-Biography Dewitty, Arthur - 1968 | Arthur B. DeWitty |
| 154 | AR 2007.017 Box 2 folder 23 | AR 2007.017; Elliott OH & Thelma, papers, 1925 - 2007 Archives Workroom; African-Americans; Huston-Tillitson; photograph of unknown, then Thelma and OH | OH and Thelma Elliott |
| 155 | PICA 17167 | AF-Biography Overton, Volma | Volma Overton |
| 159 | PICB 17221 | AF-Biography Urdy, Charles | Dr. Charles Urdy |
| 160 | A 352.2WHAA | Pictorial History of Black Policemen; Pages not numbered: near the end; states "Police Officer Cathy Ellison 1978" | Cathy Ellison |
| 172 | AR.2001.002 9/5 | AR-2001-002 Turner, Dorothy 100% Dorothy Turner | Dorothy Turner and two Brown Berets |
| 184 | PICA 34458 | AF-Housing Projects Austin Housing Authority (1) H4510 | Slum before Urban Renewal |

| | | | |
|-----|---------------------------|---|------------------------------------|
| 185 | AR.2000.019 | AR.2000.019 Houston, Ora Elliott Scrapbook 1 of 2- Project Enable Photographs P 24 Clean-up Booker T. Washington; No number: has sign reading "Clean-up Booker T Washington Parents Club Enable" | Booker T Parents Club Sign |
| 186 | AR.2000.019 | AR.2000.019 Houston, Ora Elliott Scrapbook 1 of 2- Project Enable Photographs P 24 Clean-up Booker T. Washington; No number; has three boys picking up straw and putting in boxes | Children Volunteers |
| 189 | AS 6/27/69 71717-71727 | AF-Shopping Centers 32300(15)Austin American Statesman 6/27/69 71717-71727 | Entitled "Rosewood Center to Open" |
| 191 | AR 2001-002 4/10 | AR.2001.002 Page 6 45%? Thomas Henderson; Jeff Cannon | Thomas Henderson |

EXHIBIT B
ROYALTY EXHIBIT

Publisher shall pay City a royalty equal to two percent (2%) of the Net Sales, as described below.

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

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

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

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

PUBLISHER
ARCADIA PUBLISHING, INC.

By: _____
Printed Name: Katie Kellett
Title: Director of Publishing
Date: _____

CITY
CITY OF AUSTIN

By: _____
Brenda Branch, Director
Austin Public Library
Date: _____