

INTERLOCAL COOPERATION AGREEMENT AMONG THE AUSTIN ECONOMIC DEVELOPMENT CORPORATION, THE CITY OF AUSTIN, TEXAS, AND THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION, PROVIDING THE TERMS PURSUANT TO WHICH THE AUSTIN ECONOMIC DEVELOPMENT CORPORATION WILL ACT ON BEHALF OF THE CITY IN FURTHERANCE OF ITS AUTHORIZED PURPOSES; AND OTHER RELATED MATTERS

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This Interlocal Cooperation Agreement (the “*Agreement*”) is made to be effective as of the ____ day of _____, 2021 by and among the Austin Economic Development Corporation, local government corporation (the “*AEDC*”) of the State of Texas (the “*State*”), the City of Austin, Texas, a home rule municipality and political subdivision of the State (the “*City*”), and the Austin Industrial Development Corporation, a Texas industrial development corporation (“*AIDC*”). The AEDC, the City and AIDC may be referred to individually as a *Party* or collectively as the *Parties*.

RECITALS

- A. Subchapter D, Chapter 431, Texas Transportation (*Chapter 431*), authorizes the creation of local government corporations to aid and act on behalf of local governments.
- B. The City created the AEDC under the provisions of Chapter 431 and the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, for the purposes of aiding and assisting the City by engaging in socially beneficial real estate development, and economic development, including, for example: (i) development of the South Central Waterfront District (as more fully described below); (ii) fostering, supporting and preserving of the City’s creative communities, local creative talent, culture and cultural organizations, iconic small and minority-owned businesses and establishments, including the development of a Cultural Trust (as more fully described below); (iii) leveraging investments and assets of the City for economic development, affordable housing and job creation/retention among other community priorities; (iv) addressing affordability and equity issues impacting the City’s residents, neighborhoods and small businesses; and (v) the promotion of job growth, business growth, increasing the tax base within the City of Austin, and the generation of resources for the City.
- C. Section 791.003(4)(B), Texas Government Code, provides that a “local government corporation created under Subchapter D, Chapter 431, Transportation Code,” such as the AEDC, is a “local government” for purposes of the Interlocal Cooperation Act, which Act has been codified as Chapter 791, as amended, Texas Government Code (“*Interlocal Cooperation Act*” or “*Chapter 791*”).
- D. Section 791.003(4)(A), Texas Government Code, provides that a municipality, such as the City, is a “local government” for purposes of the Interlocal Cooperation Act.
- E. Section 791.003(5), Texas Government Code, provides that a political subdivision includes any corporate entity organized under state law and Section 791.003(4)(A) includes a political subdivision in the definition of “local government.” The AIDC was created under the Texas Development Corporation Act of 1979, now codified as Chapter 501, Texas Local Government Code (*Chapter 501*). Therefore, the AIDC is also a “local government” for purposes of the Interlocal Cooperation Act.

- F. Section 791.011(a), as amended, Texas Government Code, provides that “[a] local government may contract or agree with another local government...to perform governmental functions and services in accordance with [the Interlocal Cooperation Act].”
- G. Due to the joint and mutual interests held by the Parties, including the purposes for which the AEDC was organized as described in Article IV of the AEDC’s Articles of Incorporation, the Parties desire to enter into this Agreement to memorialize the terms pursuant to which the AEDC may operate and act on behalf of the City in performing various services and completing various projects on behalf of the City in furtherance of the AEDC’s authorized purposes in an expeditious and efficient manner, in cooperation with the other governmental entities and private persons in such a manner as to benefit the City.
- H. The terms of each project or service approved by the City and to be accepted by the AEDC (each, a “*Project*” and, collectively, the “*Projects*”) shall be evidenced in an addendum substantially in the form attached to Exhibit A (“*Addendum*”), which shall be attached to this Agreement as an exhibit and incorporated into this Agreement for all purposes and each Addendum shall be subject to the terms and conditions of this Agreement.
- I. This Agreement shall constitute an interlocal cooperation agreement as authorized pursuant to the provisions of Chapter 791.
- J. The adoption of this Agreement is found and determined to be in the best interest of the residents of the City and in furtherance of municipal public purposes.

ACCORDINGLY, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

SECTION 1: DEFINITION AND USE OF TERMS. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, all references in this Agreement to designated *Sections*, *Schedules*, *Exhibits*, and other subdivisions are to the designated Sections, Schedules, Exhibits, and other subdivisions of this Agreement as originally adopted. If a defined term is used in an Addendum, the defined term will have the same meaning as it has in this Agreement. Terms not otherwise defined in this Agreement have the meanings in the AEDC’s Articles of Incorporation or Bylaws.

SECTION 2: REPRESENTATIONS.

2.1 Representations of the AEDC. The AEDC represents to the City and AIDC that:

(a) The AEDC is a public, nonprofit corporation organized under the laws of the State and is duly qualified and authorized to carry out the purposes of Chapter 431 and to accomplish any governmental purpose of the City, as contemplated by the AEDC’s Articles of Incorporation and this Agreement.

(b) The AEDC has the power, authority, and legal right to enter into and perform under this Agreement and the execution, delivery, and performance have been duly authorized.

(c) This Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the AEDC enforceable in accordance with its terms.

(d) To the extent AEDC is paying for the performance of governmental functions or services those payments are from current revenue available to AEDC.

2.2 Representations of City. City represents to the AEDC and AIDC that:

(a) The City is a political subdivision and a home rule municipality under the laws of the State and is duly qualified and authorized to carry out the governmental functions and operations as contemplated by this Agreement.

(b) The City has the power, authority, and legal right to enter into and perform under this Agreement and the execution, delivery, and performance have been duly authorized.

(c) This Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the City enforceable in accordance with its terms.

(d) To the extent the City is paying for the performance of governmental functions or services those payments are from current revenues available to the City.

2.3 Representations of AIDC. AIDC represents to the City and AEDC that:

(a) AIDC is a public, industrial development corporation organized under the laws of the State and is duly qualified and authorized to carry out the purposes of Chapter 501, as contemplated by AIDC's Articles of Incorporation and this Agreement.

(b) AIDC has the power, authority, and legal right to enter into and perform under this Agreement and the execution, delivery, and performance have been duly authorized.

(c) This Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of AIDC enforceable in accordance with its terms.

(d) AIDC is included as a party to this Agreement only for purposes of Section 6.4(C) (relating to the management and administrative services to be provided by the AEDC) and Section 6.7(b) (relating to the payment of the fees and costs of the AEDC).

(e) To the extent AIDC is paying for the performance of governmental functions or services those payments are from current revenues available to AIDC.

SECTION 3: FINDINGS. Each of the Parties find that entering into this Agreement for the purposes in this Agreement is for the benefit of the residents of the City.

SECTION 4: AGREEMENT OF THE PARTIES. Pursuant to the terms of this Agreement, the AEDC will identify and, upon approval of Council, pursue Projects and Services

for the benefit of the City and AIDC from time to time. The City agrees, as part of its annual budget process, to appropriate funds for the AEDC's operations and purposes in accordance with Section 6.7 below.

SECTION 5: TERM OF THIS AGREEMENT. The term of this Agreement shall commence on the date first written above and shall continue for a period of the earlier of ten years or until the AEDC is dissolved or notice of termination is given to the City. Prior to the expiration of the ten year term, the Parties may agree to renew the term of this Agreement for an additional fifteen years. Either Party may terminate this Agreement by giving 30 days' advance written notice to the other Party. The payment obligations within this Agreement survive termination if the work which forms the basis of the request for payment has been completed and documented to the City's satisfaction, has not paid for in full prior to the termination date.

SECTION 6: PROJECTS AND SERVICES.

6.1 Organization and Operation of the AEDC

(a) *Powers and Purpose of the AEDC.* The AEDC is a local government corporation organized by the City under Chapter 431, Subchapter D of the Texas Transportation Code, as amended (the "Act"), to aid and act on behalf of the City as provided for in the Act and to carry out its authorized purposes as set forth in the AEDC's Bylaws. The AEDC has the authority to enter into Interlocal Agreements with other government entities, as set forth in the Interlocal Cooperation Act. As the City has established the AEDC, such Interlocal Agreements may only be for services and projects that are consistent with and not in conflict with the purposes of the City. Nothing in this Agreement shall limit the powers otherwise granted to the AEDC by or pursuant to the terms of the Act; including, without limitation, transacting with other local governments, political subdivisions, state or federal agencies, or with private persons, in furtherance of the AEDC's authorized purposes pursuant to the AEDC's Articles of Incorporation so long as those transactions are consistent with and not in conflict with the purposes of the City. The AEDC will provide the City Manager or the City Manager's designee with a substantially final copy of any interlocal agreement that AEDC intends to enter into, even if the City is not a party. The City shall have 30 days to review and provide to the AEDC any concerns related to City issues. The AEDC shall have 15 days to address these concerns. The City will respond to any proposed changes and/or AEDC's response regarding the City's issues within 15 days of receipt. The City must affirmatively respond and advise the AEDC regarding whether the City issues have been addressed before the AEDC will execute the interlocal agreement.

(b) *Organization and Governance.* The Parties agree and acknowledge that the AEDC shall be operated and governed as an independent not-for-profit corporation in accordance with its Articles of Incorporation and Bylaws and notwithstanding anything in this Agreement to the contrary, the affairs of the AEDC shall be managed and conducted by the Board of Directors and Officers of the AEDC is as provided for in the AEDC's Articles and Incorporation and Bylaws. The AEDC may form one or more Committees as provided in the AEDC's Bylaws for purposes of fulfilling its obligations under this Agreement.

6.2 Services of the AEDC. The City may retain the AEDC to perform the services described in this Section so long as the services have been procured in accordance with applicable Texas procurement statutes as follows:

(a) *Real Estate Transactional Services.* The AEDC may provide brokerage and transactional services to the City for the disposal, lease, or licensing of real property owned by the City, or for the acquisition or leasing of real property for the City, as may be agreed upon by the Parties from time to time pursuant to a Transactional Services Addendum. Such Services may include, without limitation, highest and best use analyses, land valuation analyses, marketing and solicitation services, and brokerage services. For each such transaction, the AEDC shall be paid as set forth in contracts for such services. The AEDC will be required to obtain any necessary licenses and certifications, including but not limited to a Texas Real Estate Broker's License prior to performing such services.

(b) *Real Estate Management and Administration.* The AEDC may be responsible for the administration, management (including lease management or qualified management agreements), operation and/or maintenance of properties owned or controlled by the City or AEDC, as may be agreed upon by the Parties from time to time pursuant to a Real Estate Management Addendum. Such Services may include management and administration of: (i) the Cultural Trust (as defined below) or any component of this Trust, (ii) public facilities and venues, (iii) community development projects, (iv) economic development and revitalization developments including commercial and retail spaces, (v) affordable housing, (vi) public infrastructure, (vii) facilities to address homelessness, and (viii) parks, greenbelts and open spaces.

(c) *Public Development.* To the greatest extent permitted by law, the AEDC may also perform services such as planning, facilitation, advocacy, promotion, negotiation, financing, development, and/or redevelopment of Projects as may be agreed upon by the Parties pursuant to a Public Development Addendum and any contracts that are legally required to perform such services. Such public development services may include those services, transactions and endeavors more fully described in Section 6.3 below.

(d) *Additional Services.* The AEDC may be responsible for the performance of consulting, technical advisory or other professional services (including the delivery of studies, reports, assessments, data analysis, legal analysis, strategic planning, and making recommendations), administration of economic development or grant programs, and such other services as shall be necessary or convenient for the management, administration, oversight, planning and implementation of any Projects, or which may otherwise be necessary, useful or desirable to lessen the burdens of government and to serve the public purposes and functions of the City; including those services identified in Section 6.4(b) below, or as may be agreed upon by the Parties from time to time pursuant to an Additional Services Addendum and any required contracts.

6.3 Proposed Projects. The Parties agree that AEDC will identify, pursue, accept, and undertake certain development projects on behalf of the City in furtherance of the AEDC's authorized purposes as described in Article IV of the AEDC's Articles of Incorporation. Such Projects may generally include, but are not limited to: (i) identifying, negotiating, purchasing, leasing, renting, managing, and selling both real and personal property, (ii) promoting, developing,

encouraging and maintaining employment, commerce and economic development projects in the City (including public-private partnerships and private-led development); (ii) addressing issues such as reducing homelessness through increasing affordable housing and workforce housing; (iii) creative and cultural trusts, public facilities and venues; or (iv) projects which may be necessary, useful or desirable to lessen the burdens of government and to serve the public purposes and functions of the City (“*Proposed Project*”). The City may engage the AEDC to perform those Services for the benefit and on behalf of the City pertaining to the South Central Waterfront District Project and the Cultural Trust Project. The AEDC will work with the City to identify any additional Proposed Projects to be considered for approval by the City. Such Proposed Projects shall be included in the AEDC’s Annual Report submitted to the City for approval pursuant to the terms of this Agreement.

After Council has approved a Proposed Project, the City and the AEDC shall mutually identify the Services to be performed by the AEDC with respect to such Proposed Project in an Addendum in accordance with Section 6.2 of this Agreement. Additionally, any approved Proposed Project Addendum may, to the fullest extent permitted by law, identify and authorize other transactions and endeavors to be pursued by the AEDC as may be necessary, desirable or useful and in the City’s interests including the following:

(a) *Development of City Property.* The City may lease, convey, or otherwise dispose of property or property interests owned or controlled by the City to the AEDC in accordance with applicable law, for the development of any Project.

(b) *Additional Agreements with the AEDC.* The City and the AEDC may enter into development agreements, grant agreements, or other contracts as may be necessary or convenient for the Parties in accordance with applicable law, to carry out the development of any Project.

(c) *Third Party Agreements.* The AEDC may, subject to the requirements of this Agreement and applicable law, enter into one or more development agreements, construction contracts, professional services agreements, grant agreements, interlocal agreements, leases, instruments of indebtedness, or other contracts, with respect to the pursuit or fulfillment of any Project with corporations, firms, associations, trusts, institutions, foundations, other political subdivisions, state agencies, or other governmental entities. The Parties agree that these Third Party Agreement will always be consistent with City purposes and development requirements.

(d) *Conveyance and Acquisition of Property and Property Interests.* The AEDC may acquire interests in real property or improvements from third parties (including fee simple, leasehold interests, licenses, use rights, or condominium interests). It is the responsibility of the AEDC to ensure that any such interests are consistent with City purposes and development requirements, as well as the AEDC’s purposes as state in the AEDC’s Articles of Incorporation and Bylaws (including any amendments approved by Council). Notice shall be provided to the City Manager or his designee 30 days before the anticipated closing date. The City Manager or their designee may object if there are concerns relating to City purposes.

(e) *Special Districts.* Working cooperatively with the City and consistent with City development plans, and only with City Council approval, the AEDC may facilitate the formation, repurposing, or expansion of public improvement districts, planned unit developments, tax

increment reinvestment zones, or other special districts with the City, or other local governments, or by special legislation only if approved by the City, in connection with incentivizing or financing the development and operation of any Project (“*Special Districts*”). Subject to any applicable Federal and State laws, City Code, ordinances, resolutions, and policies of the City, the Parties will work cooperatively in the (i) the formation, repurposing, or expansion of any Special Districts; and (ii) in the preparation and approval of any financing plans, special assessment plans, development plans, reimbursement agreements, or development agreements related to these Projects.

(f) *Entitlements.* To the extent permitted under the constitution and laws of the State of Texas, and City Code, Ordinances, and policies, the City may coordinate with the AEDC with respect to the processing of any applications and issuance of any permits, licenses, authorizations or other entitlements required from the City for the development of any Project. Subject to the approval of Council, the City may waive fees associated with the development, construction, and completion of any Project. To the extent that such fee waivers are approved by Council after fees have been paid, any such fees previously paid by the AEDC may be reimbursed by the City.

6.4 Initial Projects Services of the AEDC. (a) *South Central Waterfront District Project and Cultural Trust Project.* The City approves (i) Addendum No. 1 - South Central Waterfront District Project, (ii) Addendum No. 2 - Cultural Trust Project, and (iii) Addendum No. 3 - Cultural Trust City Facilities Project. Each Addendum is incorporated and made a part of this Agreement.

(b) *Austin Regeneration Fund.* The AEDC will work with the City to assist in carrying out the economic development programs and objectives of the City for promoting the private investment of capital to achieve inclusive outcomes that deter displacement in low-income communities through the use of new market tax credits program administered by the United States Department of the Treasury. The parties may later agree that the AEDC may manage these programs directly or through the Austin Regeneration Fund, a Texas nonprofit corporation organized and controlled by the City. The Parties will contract via an Addendum to this Agreement for specific Projects or services.

(c) *Additional Services.* As of the Effective Date, the City authorizes and directs the AEDC to perform, and the AEDC accepts, the Services described in this Section 6.4

(i) **AIDC Management.** The AEDC shall provide management services and administrative services for the operation of the AIDC as set forth in subparagraph (ii) below.

(ii) **Administrative Services.** The AEDC shall maintain sufficient staff and administrative resources as necessary for the AEDC to manage its affairs and the statutorily authorized operations of AIDC in compliance with all applicable laws, and for the performance of the Industrial Development purposes for which the AIDC has been established by Council. To the extent those services require licensure, the AEDC will ensure that the staff is properly licensed before providing these services.

(iii) **Public Pipeline.** The AEDC shall develop and maintain a database of properties within the greater Austin region owned or controlled by the City and any other political subdivisions or agencies of the State (the “*Public Pipeline*”), for the purposes of identifying inclusive growth projects and other opportunities for strategic partnerships and efficient land utilization among such governmental entities. The Public Pipeline shall be updated by the AEDC on an annual basis.

(iv) **Private Pipeline.** The AEDC shall proactively pursue and explore projects or properties within the greater Austin region where public resources may be leveraged to facilitate private-led development and public-private partnerships in a manner that achieves the municipal purposes for which the AEDC was established by Council.

6.5 Objectives and Priorities. The Parties agree and acknowledge that the AEDC was formed by the City to accomplish the holistic goals of the City related to inclusive growth and economic development. Accordingly the Projects and Services undertaken by the AEDC shall generally be for the achievement of the following principal objectives and priorities of the City (the “*Principal Objectives*”):

(a) The creation, redevelopment, and revitalization of healthy, vibrant, resilient, diverse and inclusive neighborhoods and communities;

(b) Addressing gentrification, urban displacement, equity, and residential affordability challenges, including through the development of affordable housing and workforce housing;

(c) Fostering, supporting and preserving of the City’s creative communities, local creative talent, culture and cultural organizations, iconic small and minority-owned businesses and establishments;

(d) The proactive and innovative development and expansion of infrastructure, communities, public facilities, and other socially beneficial real estate projects; and

(e) Increasing the tax base within the City of Austin, and generating revenues and other resources for the City through the promotion of job growth and business growth.

In addition to the Principal Objectives set forth above, the City may identify additional objectives and priorities with respect to any Project or other Services undertaken by the AEDC.

6.6 Annual Report to the City. The President of the Board of the AEDC shall make an annual report (the “*Annual Report*”) and other reports regarding the operations and finances of the AEDC to Council, and shall make supplemental reports from time to time as required by the City Manager and Council. The Annual Report shall be submitted to City on or before February 15 of each Fiscal Year and shall include, at a minimum, the following:

(a) **Project Summary.** An executive summary of the Projects described in the Annual Report for the prior year and a status update of each such Project, including a discussion on the successes (and/or failures) of such Projects;

(b) **Budget Summary.** An annual budget for the AEDC, including:

- (i) A two year historical and five year projects income statement;
- (ii) A balance sheet for the first day and last day of the previous Fiscal Year; and
- (iii) Any requests for additional monies in the coming year;

(c) **Real Estate Transactions.** A report summarizing the results of any real property transactional services performed by the AEDC during such fiscal year.

(d) **Real Estate Management and Administration.** An executive summary of all real estate managed by the AEDC on behalf of the City, including for each property, the occupancy rate, lease, and operating revenues and expenses compared to the budget for the prior year, a capital expenditure and progress report, and an operating budget for the following fiscal year. An operating budget showing two years of history and five years of projection;

(i) A capital budget including sources and uses, with notation as to any sources of public funding, and a progress report on capital work; and

(ii) A narrative description of the public purpose contemplated by the City when disposing of the property (or the management of such property) to AEDC. A report indicating progress toward achieving the public purpose contemplated, including any relevant quantitative metrics such as job creation/retention, sustainability, commercial affordability, residential affordability, transportation access, cultural preservation, small business and music preservation, and Diversity Inclusion & Equity;

(e) **Special Program Services.** A report on any Projects, special programs, or services undertaken by the AEDC on behalf of the City. For each program or services, the report will provide (i) a general description of the program or services contracted for by the City;

(i) a budget indicating all sources and uses of funds for the Project, program, or service; and

(ii) a summary for the services provided, with a comparison to actual expenditures showing any variances from the budget for these services; and (iii) a narrative description of the possible impacts of ending the program, and any potential for expanding or extending the program, with the AEDC's recommendations regarding the same.

(f) **Inclusive Growth Report.** An inclusive growth report on the City and how the AEDC has contributed to the achievement of the Principal Objectives, including improvements in economic growth, social equity, cultural vitality, and environmental sustainability.

(g) **Proposed Projects or Services.** A presentation of any potential new Projects or Services (“Proposed Projects”) for consideration by the City for the subsequent Fiscal Year and

the AEDC shall include the Proposed Projects in the Annual Report for presentation to and consideration and approval by the City, including the following:

(i) A description of the expected economic impacts and public benefits, and other outcomes of the Proposed Project, and how the Proposed Project may work to achieve the Primary Objectives;

(ii) If applicable, a preliminary feasibility analysis, plan of finance (if applicable), and timeline for the Proposed Project, including a general description of material assumptions;

(iii) A summary of any community participation and input gathered with respect to the Proposed Project;

(iv) The AEDC's recommendations for further feasibility studies, economic studies, or other analysis necessary or advisable for purposes of determining the efficacy, value, feasibility or public benefits of the Proposed Project;

(v) A summary of proposed scope of Services to be provided by the AEDC, and their associated cost to the City for the next Fiscal Year, and if the Proposed Project is a multi-year project, a preliminary summary of the Services and their estimated cost to the City for the ensuing three Fiscal Years;

(vi) A description of any proposed delegations of authority to City officials or to the AEDC to pursue the Proposed Project, if approved, and the terms pursuant to which such authorized officials may act, and such other terms that would be instructive to the authorized officials in carrying out their duties in pursuing a Proposed Project. Proposed Projects that were identified in the Annual Report for the previous Fiscal Year, but not yet commenced or completed shall not automatically carry-over to the subsequent Fiscal Year and shall be explicitly listed as a Proposed Project in the Annual Report for the upcoming Fiscal Year.

6.7 Budget and Finance.

(a) **Generally.** The information pertaining to the AEDC's finances, including the AEDC's Fiscal Year, annual budget, maintenance of books and records, etc., is as provided for in the AEDC's Bylaws.

(b) **Appropriations.** The City may, as part of its annual budget process, appropriate funds for the AEDC's operations and for Projects to be undertaken by the AEDC, after review of, and based on, the AEDC Budget and Annual Report presented to the City. The City Manager will review, and if appropriate, recommend to Council, funding for the AEDC as requested by the AEDC in the AEDC's proposed budget or in any Addendum, including each Annual Addendum, as set forth in Section 6.7(d) below.

The Parties agree that the fees, costs and expenses of the AEDC for its Services for the first three years of this Agreement are projected as set forth below. An itemized schedule of the fees, costs

and expenses of the AEDC for Fiscal Year 2021 is attached as Exhibit B. Payment will be made as annually approved by Council (or as may be approved by Council pursuant to a mid-year budget amendment if needed). The City Manager, or the manager’s designee, is responsible for reviewing invoices and records of work performed by the AEDC prior to providing payment as noted below. If payment is to be made from the AIDC, the Board of the AIDC must approve the payment, and the City Manager, or the Manager’s designee is responsible for reviewing invoices and records of work performed by the AEDC prior to providing payment as noted below. Payment beyond Fiscal Year 2021-2022 is subject to annual appropriation as required by law.

Fiscal Year	Amount Payable by the City	Amount Payable by AIDC
2021	\$700,000	\$200,000
2022	\$700,000	-
2023	\$700,000	-

(c) **City Administrative Support.** In consideration of the Projects to be provided by the AEDC, the City may provide certain administrative support services and accommodations to the AEDC as may be necessary or convenient for the operation of the AEDC; including City staff support and office space, meeting space, and office equipment as necessary to enable AEDC to carry out its municipal purposes described in this Agreement or in the Addenda (“*City Administrative Support*”). Such administrative support shall be generally described in each Annual Addendum approved by the City.

(d) **AEDC Budget.** No later than February 15 of each year, the AEDC shall provide to the City Manager or the City Manager’s designee and to AIDC a proposed written Budget and Addendum for the next ensuing Fiscal Year (the “*Annual Addendum*”). Such proposed Annual Addendum shall include the information detailed under the Annual Report, above; including the following:

(i) Any additions or updates to active and ongoing Projects or Services previously approved by the City.

(ii) A line item budget detailing the fees, costs, and expenses of the AEDC payable by the City or AIDC for such Fiscal Year as compensation for ongoing Services to be performed by the AEDC, substantially in the form attached as Exhibit B.

(iii) As AEDC enters into contract with third parties using City or AIDC funds that have been appropriated by the City or AIDC, AEDC shall be responsible for ensuring compliance with all applicable laws relating to such agreements, including the procurement of these contracts. The AEDC shall provide all information it has regarding these contracts at the time it submits its proposed budget to the City.

(iv) A description of the City's Administrative Support being requested from the City for the next ensuing Fiscal Year.

The Annual Addendum shall also include such exhibits and appendices as may be reasonably necessary to evidence the scope, progress, timelines, budgets and other details of each Project identified in the Annual Addendum.

(e) *Annual Audit.*

(i) *AEDC's Audit.* During the term of this Agreement, AEDC shall obtain an annual audit of financial statements prepared in accordance with accounting principles generally accepted in the United States of America. The audit shall be completed by an independent auditing firm and shall include an examination of the separate account maintained to receive and disburse funds and any other City resources provided by the City to AEDC pursuant to this Agreement. A copy of the financial statement and independent auditor's report shall be provided to the City at the completion and AEDC's review of the audit.

(ii) *City's Audit.* The City or its authorized representative, shall at all reasonable times, on 10 business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of AEDC directly related to the funds, and other City support including administrative support, provided to AEDC under this Agreement, to determine the accuracy of reports made under this Agreement and ensure that the City's resources are being used for municipal purposes. The cost and expenses incurred by the City shall be the sole responsibility of and borne by the City. Those records shall be maintained by AEDC for a period of four years after the termination of the initial Term of this Agreement and any applicable extension period, or a period longer than four years if the City provides the AEDC with notice of litigation or another reason for the need to maintain such records in excess of four years, and shall be made available for inspection and audit by the City or its agents at AEDC's place of business.

(iii) *Dispute Findings.* Either AEDC or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within 30 days of receiving the results of an audit. The Party electing to dispute audit results shall, within 30 days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

(iv) *Scope.* Though the AEDC is organized and shall be operated solely to carry out the purposes of Chapter 431 and to accomplish any governmental purpose of the City, as described in the AEDC's Articles of Incorporation, the City recognizes that AEDC may provide certain services to various entities and organizations unaffiliated with the City if the provision of such services accomplishes a governmental purpose of the City. Based on the foregoing, any audits, reports, or information requested by the City shall include the funding, staff, and assets provided to AEDC by the City under the terms and conditions of this

Agreement and in furtherance of any Project or by any other entity or organization with whom the AEDC provides services. The AEDC shall not be obligated to provide any audits, reports, or information related to the third parties which are excepted from disclosure pursuant to the provisions of Chapter 552, as amended, of the Texas Government Code, unless disclosure is required by other law.

(f) ***Investment of Funds.*** The AEDC shall invest public funds on deposit only in investments that are authorized by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended.

SECTION 7: REAL ESTATE

7.1 Construction Standards and Liens. Any Project involving construction must be constructed in accordance with the following construction standards:

(a) Construction must be performed in a good and workmanlike manner in accordance with the applicable approved drawings, specifications, project manuals and/or plans at the end of the construction document phase (“*Final Plans*”).

(b) Construction must be completed using good industry practice for the type of work in question.

(c) The materials and workmanship must be of a quality greater than or at least equal to the standards set out in the Final Plans.

(d) All construction must be designed and constructed in compliance with all applicable building codes, ordinances, and other laws or regulations of governmental authority having jurisdiction over the construction.

(e) The work must also comply with the City’s MBE/WBE program requirements and Wage Compliance Program for construction projects.

(f) The work must comply with the Americans with Disabilities Act requirements applicable to municipally owned and operated facilities.

(g) No construction or work may be commenced until all licenses, permits, and authorizations required of all governmental authorities having jurisdiction (including the City) necessary to commence construction have been obtained.

(h) AEDC shall be responsible for the payment of any fees associated with any required licenses, permits and authorizations, unless these fees are City fees and are waived by Council.

7.2 Construction of Projects. To the extent that any Project or component is funded from City funds or which the City is designated as the “owner” for purposes of construction (each a “*City Public Works Project*”), each such City Public Works Project shall be performed in accordance with the then-existing construction standards of the City and in accordance with all applicable laws governing the construction of such Project; including insurance requirements, payment and performance bond requirements, building codes, prevailing wage and wage

compliance program requirements, using City contract documents, and following the City's M/WBE program, as well as all other worker protection and environmental requirements of the City. Any Project solely funded with funds that are not the City's shall comply with all applicable laws governing the construction of such Project, and shall also comply with requirements set out in each Addendum applicable to the Project.

7.3 Naming and Sponsorship. AEDC shall have the sole right to contract for and grant sponsorships, advertising space and naming rights for areas, events, programs, and advertising panels involving the Projects, subject to applicable laws, zoning and ordinances, and subject to the advance written approval by the City of said sponsorships, advertising and naming rights, which approval shall not be unreasonably withheld or delayed. Sponsorships, advertising and/or naming rights involving the Projects shall not promote, advertise or relate to alcohol or tobacco products or companies or be of a non-commercial or 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) and shall not include any reference to any proper geographic name, unless such reference (i) is to "Austin" or the "City of Austin" or (ii) is part of the proper name of a person or entity selected as a sponsor pursuant to this Section. Any such sponsorship agreements entered into by AEDC shall be ratified or assumed by Council at its election or otherwise terminate upon any termination or expiration of this Agreement, pursuant to which AEDC ceases to own or manage such Project. No rights or privileges shall be granted by AEDC in exchange for naming and sponsorship that would impair the tax-exempt status of any tax-exempt bonds issued by the City or the AEDC.

7.4 Independent Contractor. The AEDC and the City covenant and agree that the AEDC is an independent contractor and not an officer, agent, servant or employee of City; that the AEDC shall have control of and right to control, in its sole discretion, the details of the work performed and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and the AEDC; that the doctrine of *respondeat superior* shall not apply as between City and the AEDC, its officers, agents, employees, contractors, subcontractors and AEDC, and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and the AEDC. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the AEDC under this Agreement and that the AEDC has no authority to bind the City.

7.5 Right to Hire Third Parties. The AEDC specifically reserves the right to hire third parties to perform any or all of the Services and other undertakings contemplated for the benefit of the City as described in this Agreement; provided (a) funds are available and budgeted, (a) any agreement with such third parties complies with the City's Living Wage Program, and (b) any such retained parties possess the requisite licenses and/or permits necessary in order the provide the applicable trades or services.

7.6 Records.

(a) The AEDC and its subcontractors, if any, shall take commercially reasonable care in their maintenance of all documents, papers, and records, and other evidence pertaining to the

Services and Projects, and funding provided for in this Agreement, and shall make such documents available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in this Agreement.

(b) The AEDC shall retain any and all documents produced as a result of services or funding provided under this Agreement for a period of four years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided under this Agreement, the AEDC shall retain the records until the resolution of such litigation or other such questions.

(c) AEDC is required to make any information created or exchanged with the City pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City. No information made available to the City by the AEDC shall be construed as a waiver any right of third parties to receive prior notice and submit briefings to the Office of the Texas Attorney General prior to the release of such information to the public, in the manner provided by the Texas Public Information Act.

7.7 Procurement and Competitive Bidding. In the expenditure of funds provided under this Agreement, the AEDC shall follow State requirements applicable to the City under the Texas Government Code, as amended, and the Texas Local Government Code, as amended, unless an exception under such statute applies. In addition, AEDC shall implement City policy and procedures in expending such funds to include veteran outreach and local preference policies of the City, living wage, and the City's MBE/WBE Procurement Program.

7.8 Insurance.

(a) ***Certificate of Insurance.*** Prior to the commencement of any work under this Agreement, AEDC shall furnish an original completed certificate(s) of insurance to the City's Economic Development Department, the City's Risk Management Office, and the City Attorney's Office, which shall be clearly labeled "Austin Economic Development Corporation Professional Services" in the Description of Operations block of the Certificate. The original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown on the certificates, containing all required information referenced or indicated on the certificates. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to AEDC and the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City's Economic Development Department, the City's Risk Management Office and the City Attorney's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

(b) ***Right to Review.*** The City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and to make reasonable modifications of the insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this

Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk. Should such modifications increase the cost of the insurance, the Parties can determine how that increase is to be paid.

(c) **Financial Integrity.** The AEDC’s financial integrity is of interest to the City; therefore, subject to the AEDC’s right to maintain reasonable deductibles in such amounts as are approved by the City, the AEDC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension, at AEDC’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the types and amounts set forth in the following table.

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers’ Compensation 2. Employers’ Liability	Statutory \$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

(d) **Copies.** The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits required by this Agreement, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties or the underwriter of any such policies). So long as this Agreement is in effect, AEDC shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided in this Section within 10 days of the requested change. AEDC shall pay any costs incurred resulting from said changes.

(e) **Required Provisions.** AEDC agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain the following required provisions:

(i) name the City and its officers, employees, volunteers, and elected representatives as additional insureds; list the operations and activities of, or on behalf of, the named insured to be performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

(ii) provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and

(iii) workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

(f) Cancellation/Non-Renewal. When there is a cancellation, non-renewal, or material change in coverage which is not made pursuant to a request by the City, AEDC shall notify the City of such and shall give such notices not less than 30 days prior to the change, if AEDC knows of said change in advance, or 10 days after the change, if AEDC did not have actual knowledge of the change in advance. Such notice must be accompanied by a replacement or addendum to the certificate of insurance. All notices shall be given to the City at the following address:

City of Austin
Economic Development Department
301 W. 2nd Street
Austin, Texas 78701

City of Austin
City Attorney's Office
301 W. 2nd Street, 4th Floor
Austin, Texas 78701

(g) Failure to Maintain. In addition to any other remedies the City may have upon AEDC's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time required, the City shall have the right to order AEDC to stop work, and withhold any payment(s) which become due to AEDC until AEDC demonstrates compliance with the requirements of this Agreement.

(h) Responsibility of AEDC. Nothing contained in this Agreement shall be construed as limiting in any way the extent to which AEDC may be held responsible for payments of damages to persons or property resulting from AEDC's or its subcontractors' performance of the work covered under this Agreement.

(i) Primary Insurance. It is agreed that AEDC's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

7.9 Other Revenues of the AEDC. Any contributions, revenues, compensation or other funds received by the AEDC from other persons, including charitable donations or payments received from other governmental entities, shall belong exclusively to the AEDC and shall not constitute funds of the City. Nothing in this Agreement shall limit the AEDC's authority to use any of its funds for any lawful purpose in accordance with its Articles of Incorporation and Bylaws.

The Parties may agree, by an Addendum or in a separate written agreement, to establish one or more fundraising campaigns, charitable programs or trusts, to raise funds exclusively for one or more Projects as may be approved by the City; including, by way of example, the Cultural Trust Program. Any such funds shall be set aside from the AEDC's general funds for such appointed purpose as required by law. If fundraising is for a Project funded (or to be funded) by the City with tax-exempt public financing, the AEDC must have the fundraising approved in advance by the City Attorney who will review the fundraising proposals with outside bond counsel.

7.10 Miscellaneous. AEDC agrees to follow all other applicable State and federal law not otherwise explicitly described in this Agreement, as well as City Code and applicable requirements for any Projects approved by Council.

SECTION 8: BONDS AND OTHER FINANCING.

8.1 Bond Covenant. The City and AEDC understand and acknowledge that the City may, in its sole discretion, finance certain contributions to the AEDC or Projects with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes ("*Tax Exempt Bonds*") and, in connection with the Tax Exempt Bonds, the City will make certain covenants, representations and provisions to assure compliance with the applicable provisions of the Internal Revenue Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto relating to Tax Exempt Bonds. AEDC agrees to take, or refrain from, actions to ensure the Tax Exempt Bonds satisfy such covenants, representations and provisions. In particular, but not by way of limitation, AEDC will not use or permit the property financed with Tax Exempt Bond Funds to be used (i) in any activity which constitutes an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code or (ii) by any person other than a governmental person or an exempt organization described in Section 501(c)(3) of the Internal Revenue Code. Moreover, if the Internal Revenue Code is amended, or regulations or rulings are hereafter promulgated which impose additional requirements applicable to the Tax Exempt Bonds or if it is determined by a court of applicable jurisdiction that this Agreement fails to comply with the terms of the Internal Revenue Code, then the City and AEDC agree to renegotiate, in good faith, to amend or replace this Agreement in order to comply with the additional requirements only to the extent necessary to preserve the exemption from federal income taxation of interest on the Tax Exempt Bonds.

8.2 Financing Limitation. Any third party financing obtained by AEDC, shall not be secured by any part of the City or any guarantee, obligation or agreement of the City. The AEDC covenants and agrees not to permit the encumbrance, whether voluntary or involuntary, on any part of the City, for any purpose whatsoever. The Parties agree that, as a condition to making any loan to AEDC, as permitted in this Agreement, any third-party lender may require reasonable assurances from the City with respect to their satisfaction of their respective funding obligations under this Agreement, and the City agrees to provide, to the extent permitted under applicable law, such reasonable assurances as may be so requested, provided that the same does not increase their respective obligations or liabilities under this Agreement.

8.3 Use of City's Hotel Occupancy Tax Revenues. To the extent that funds made available to the AEDC include revenues collected from the City's imposition of its Hotel Occupancy Tax ("*HOT*"), the AEDC agrees that such funds shall only be used in the manner and

for the purposes set forth in Chapter 351, Texas Tax Code, as amended (“*Chapter 351*”). The City will expressly identify any funds paid over or entrusted to the AEDC by the City that constitute HOT proceeds as and when such amounts are so paid or appropriated. The AEDC agrees as follows:

(a) HOT shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry as permitted by Section 351.101(a), Texas Tax Code, as amended. That revenue may not be used for the general revenue purposes or general governmental operations of a municipality;

(b) The City, through this Agreement is delegating the management or supervision of programs and activities funded with HOT revenue from the tax authorized by Chapter 351. The City must approve in advance in writing any portion of the annual budget of the AEDC for any expenditures funded with HOT. Such approvals may be provided in writing at the time of the proposed expenditure.

(c) Council is further requiring the AEDC to make periodic reports to Council at least quarterly listing the expenditures made from HOT;

(d) The AEDC must maintain revenue from HOT in a separate account established for that purpose and may not commingle that revenue with any other money. The City will delegate specific programs and activities funded with HOT only by specific contract with specific deliverables relating to the allowable uses of HOT under Chapter 351;

(e) The approval by Council of the annual budget of the AEDC creates a fiduciary duty in the AEDC with respect to the revenue from HOT;

(f) The AEDC shall maintain complete and accurate financial records of each expenditure of HOT revenue made by the AEDC and, on request of Council or a representative of the City Manager, shall make the records available for inspection and review to Council or the City Manager’s representative;

(g) HOT revenue spent for a purpose authorized by an agreement with the City may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under Section 351.101(a) of Chapter 351;

(h) If the AEDC conducts an activity authorized under Chapter 351 or conducts other activities that are not authorized under that provision of the Texas Tax Code, the portion of the total administrative costs of the AEDC paid for with HOT revenue may not exceed the portion of those administrative costs actually incurred in conducting the authorized activities; and

(i) HOT revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry and the performance of the person’s job in an efficient and professional manner.

SECTION 9: INDEMNITY.

9.1 AEDC Indemnification of the City. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE AEDC SHALL FULLY INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE CITY, ITS PAST, PRESENT AND FUTURE COUNCIL MEMBERS, OFFICERS AND EACH OF ITS RESPECTIVE AGENTS AND EMPLOYEES, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, FINES, PENALTIES, LOSSES, LIENS, CAUSES OF ACTION, COSTS, AND EXPENSES (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM (IN WHOLE OR IN PART), (1) THE PERFORMANCE, FAILURE TO PERFORM, OR IMPROPER PERFORMANCE OF ANY SERVICES OR WORK WITHIN THE SCOPE OF THIS AGREEMENT, (2) THIS AGREEMENT, OR (3) ANY ACT OR OMISSION OF THE CITY AND EACH OF ITS RESPECTIVE AGENTS INCLUDING COUNCIL MEMBERS, OFFICERS, ATTORNEYS, AND EMPLOYEES, AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CITY. CITY SHALL PROMPTLY ADVISE THE AEDC IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION AS TO WHICH THIS INDEMNIFICATION MAY APPLY, AND THE AEDC, AT ITS EXPENSE, SHALL REIMBURSE CITY ON DEMAND ANY AND ALL COSTS AS DESCRIBED HEREIN EXPENDED IN CONNECTION WITH SUCH MATTER. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

9.2 Non-Transferable. The provisions of this INDEMNITY are solely for the benefit of the parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The AEDC shall advise the City in writing within three business days of any claim or demand against the City or the AEDC known to the AEDC related to or arising out of the AEDC's activities under this Agreement and shall see to the investigation and defense of such claim or demand at the AEDC's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving the AEDC of any of its obligations under this Section.

9.3 Waiver of Attorneys' Fees. In consideration of the execution of this Agreement and in consideration of the City's waiver of its right to attorney's fees, AEDC knowingly and intentionally waives its right to attorney's fees under Section 271.153, Texas Local Government Code, as amended, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement.

SECTION 10: NON-DISCRIMINATION. As part of the consideration for this Agreement, AEDC covenants and agrees that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or sexual orientation, or gender identity, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any Project. AEDC agrees to comply with City Code Title 5 (*Civil Rights*) as that Code applies to any actions of the AEDC. AEDC agrees to post, in conspicuous places available to employees and applicants for employment, notices stating the contents of this non-discrimination section of this

Agreement. AEDC covenants and agrees that this section shall be binding on any successors and assigns of AEDC to this Agreement.

SECTION 11: AMENDMENT. This Agreement, including any Addendum, may be amended, modified, revised or changed by written instrument executed by all the Parties.

SECTION 12: ADDRESSES AND NOTICE. Unless otherwise provided, any notice, request, or report, (*Notice*) provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner described shall be conclusively deemed to be effective, unless otherwise stated, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties hereto shall, until changed as hereinafter provided, be as follows:

A. If to the AEDC, to:

Austin Economic Development Corporation
Attn: President/CEO
301 W. 2nd Street
Austin, Texas 78701
Email: [Insert]

With a copy to:

[Corporation's General Counsel]
Attn: [Name]
[Address]
Austin, Texas [78701]
Email: [Insert]

B. If to the City, to:

City of Austin
Attn: City Manager
301 W. 2nd Street
Austin, Texas 78701
Email: [Insert]

With a copy to:

City of Austin
Attn: City Attorney
301 W. 2nd Street
Austin, Texas 78701

Email: [Insert]

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least 10 days' written notice to the other Parties.

SECTION 13: COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

SECTION 14: ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.

SECTION 15: CAPTIONS. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection.

SECTION 16: INCORPORATION OF PREAMBLE AND RECITALS. The recitals contained in the preamble are found to be true, and such recitals are made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the respective governing body of each Party.

SECTION 17: INCONSISTENT PROVISIONS. All prior ordinances, orders or resolutions, or parts, which are in conflict or inconsistent with any provision of this Agreement are repealed to the extent of such conflict, and the provisions of this Agreement shall be and remain controlling as to the matters provided in this Agreement. In the event of a conflict with the AEDC's Articles of Incorporation, the Articles of Incorporation shall control. In the event of a conflict with the AEDC's Bylaws, the Bylaws shall control.

SECTION 18: GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 19: VENUE. Venue for any action to enforce or construe this Agreement shall be in the state courts seated in Travis County, Texas.

SECTION 20: CITY APPROPRIATIONS. AEDC acknowledges that the City has provided notice that the City's payment obligations to AEDC are payable only from 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 AEDC notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.

SECTION 21: SEVERABILITY. If any provision of this Agreement or the application to any person or circumstance shall be held to be invalid, the remainder of this Agreement and the application of such provision to other persons and circumstances shall

nevertheless be valid, and the Parties declare that this Agreement would have been enacted without such invalid provision.

SECTION 22: CONSTRUCTION. References are gender neutral. This Agreement and all the terms and provisions shall be constructed to effectuate the purposes set forth and to sustain the validity of this Agreement.

SECTION 23: COMPLIANCE WITH TEXAS OPEN MEETINGS ACT. It is officially found, determined, and declared that the meeting of each of the governing body of the Parties at which this Agreement was adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Agreement, was given, all as required by Chapter 551, as amended, Texas Government Code.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date and year last written below.

AUSTIN ECONOMIC DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

CITY OF AUSTIN, TEXAS

City Manager

DATE: _____

Approved as to Form:

Assistant City Attorney

ATTEST:

City Clerk

(CITY SEAL)

AUSTIN INDUSTRIAL DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

EXHIBIT A

Form of Addendum

(appears on immediately following page)

Exhibit A

ADDENDUM NO. _____

[PROJECT OR SERVICES DESCRIPTION]

This Addendum No. ___ (*Addendum*) pertains to the [Description of Project/Services] (the “[*Project/Services*]”) and is entered into between the City of Austin, Texas (the “*City*”) and the Austin Economic Development Corporation (the “*AEDC*”), effective [Month] [Day], [Year], pursuant to the Interlocal Cooperation Agreement entered into by and among the AEDC, the City and the Austin Industrial Development Corporation on [Month] [Day], [Year] (the “*Interlocal Agreement*”). The City and the AEDC may be referred to individually as a *Party* or collectively as the *Parties*. Terms not otherwise defined have the meanings ascribed to them in the Interlocal Agreement.

1. Description of the [Project/Services].

[For Transactional., Management or Additional Services:]

The City authorizes and directs the AEDC to perform, and the AEDC accepts, the following Services:

[List and describe the Services to be performed by the AEDC here.]

[For Public Development Projects:]

The City authorizes and directs the AEDC to proceed with the [pursuit, planning, facilitation, advocacy, promotion, negotiation, financing, development, and/or redevelopment] of *[Provide a description of Services to be performed by the AEDC here. A more detailed description of the Project may be provided by reference to an exhibit.]* Such development services shall include the following undertakings of the AEDC:

[List and describe any specific authorities, undertakings to be performed by the AEDC in connection with the Project. This may include assisting with the establishment of special districts, operating or managing special districts, the acquisition of property or property interests, entering into transactions with third parties, guiding and assisting with land use or regulatory matters, etc.]

[If the Project involves the disposition of property or property interests from the City to the AEDC, include the following: The Parties intend that the City will [lease/convey] the property described in Exhibit [___] attached to this Addendum for the development of the Project by the AEDC by [EXPECTED CLOSING DATE] [subject to the satisfaction of the following conditions].]

2. Public Purposes and Priorities. *[Note: this section may not apply to more traditional real estate services such as property management or brokerage services, and may be removed in such cases.]*

Reference is made to the Principal Objectives described in Section 6.5 of the Interlocal Agreement. The City has determined that the [Project/Services] described in this Addendum is for the accomplishment of one or more of the Principal Objectives, including *[describe specific*

objectives to be achieved]. [The City may elect to describe any additional specific objectives to be achieved by the Project/undertaking here.] The AEDC agrees to act in a manner consistent with the objectives and priorities described in this Addendum and to provide an update to the City in its Annual Report describing the manner, progress and extent to which such objectives have been achieved.

3. AEDC Fees, Costs, and Expenses.

[If the AEDC will receive fees or be compensated for its costs and expenses for the Project or Services , they should be described here. This may include brokerage fees or commissions for transactional services, management fees for the management or operation of City property, or fixed fees for specific undertakings such as reports or studies. For Projects, the City may agree to pay development fees to the AEDC. For any recurring costs, or multi-year payments, it should be noted that payments beyond the current fiscal year remains subject to appropriation.]

This Addendum may be amended, modified, revised, or changed by written instrument executed by all Parties.

This Addendum shall be attached to the Interlocal Agreement as an exhibit and incorporated into the Interlocal Agreement for all purposes. Additionally, this Addendum shall be subject to the terms and conditions of the Interlocal Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Addendum to be effective as of the last date and year written below.

AUSTIN ECONOMIC DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

CITY OF AUSTIN, TEXAS

City Manager

DATE: _____

ATTEST:

City Clerk

(CITY SEAL)

EXHIBIT B

Fiscal Year 2021

Approved Fees, Cost and Expenses of the AEDC

ADDENDUM NO. 1

SOUTH CENTRAL WATERFRONT DISTRICT PROJECT

This Addendum No. 1 (this “*Addendum*”) pertains to the South Central Waterfront District Development Project and related services (the (“*Project*”) and is entered into between the City of Austin, Texas (the “*City*”) and the Austin Economic Development Corporation (the “*AEDC*”), effective [Month] [Day], 2021, pursuant to the Interlocal Cooperation Agreement entered into by and among the AEDC, the City and the Austin Industrial Development Corporation on [Month] [Day], 2021 (the “*Interlocal Agreement*”). The City and the AEDC may be referred to individually as a *Party* or collectively as the *Parties*. Terms not otherwise defined have the meanings ascribed to them in the Interlocal Agreement.

1. **Description of the Project.**

The City authorizes and directs the AEDC to proceed with the pursuit, planning, facilitation, advocacy, promotion, negotiation, financing, development, and/or redevelopment of the South Central Waterfront District, as more fully described in Resolution No. 20190808-072 adopted by the City (the “South Central Waterfront District Project”). Such undertakings shall include, without limitation, the following:

(a) ***TIRZ Establishment.*** The AEDC shall assist and advise the city with respect to the formation of a tax increment reinvestment zone for (the “SCWD TIRZ”), including: (i) the preparation of a preliminary reinvestment zone financing plan and such other economic and financial analysis as required by the city’s tax increment financing policy; and (ii) the administration of notices and public hearings, and compliance with other legal and regulatory requirements, for the establishment of the SCWD TIRZ.

(b) ***TIRZ Administration.*** Following the establishment of the SCWD TIRZ by Council, the AEDC shall assist and advise the city with respect to the operation of the SCWD TIRZ, including: (i) community and stakeholder engagement; (ii) identifying and pursuing partnerships with other taxing jurisdictions, landowners, and developers as necessary or convenient in connection with identifying additional sources of funding and development; (iii) the preparation of a tax increment project plan and financing plan for approval by the City; (iv) the issuance of bonds, certificates, notes and other instruments of indebtedness as permitted by law; and (v) the ongoing management the implementation of the SCWD project plan and financing plan on behalf of the city, as provided in section 311.010(f) of the Texas Tax Code.

(c) ***Land Use and Planning.*** The AEDC shall assist and advise the City with respect to land use and planning matters, including the preparation and implementation of an updated regulating plan for the South Central Waterfront District in coordination with the SCWD TIRZ development plan.

(d) ***Vision Framework Plan.*** The AEDC shall be responsible for the implementation of the South Central Waterfront vision framework plan on behalf of the City, including (i) the procurement, implementation and execution of both public and private development projects and public-private partnerships within the South Central Waterfront District; (ii) obtaining necessary public approvals; (iii) championing city-building public infrastructure to support development; and (iv) identifying and implementing other incentives and funding tools necessary to achieve the aspirations of the South Central Waterfront vision.

(e) ***Further Agreements.*** To the extent that any further authority, entitlements or other powers are necessary or convenient for the AEDC to perform its services with respect to the South Central Waterfront District project, the parties may enter into such additional contracts and agreements as may be permitted by law, such as development agreements, option agreements, purchase and sale agreements, ground leases, facilities leases, subleases, condominium regimes, management contracts, grant agreements, incentive agreements, and cooperation agreements.

2. Public Purposes and Priorities.

The Parties reference the Principal Objectives described in Section 6.5 of the Interlocal Agreement. The City has determined that the South Central Waterfront District Project is for the accomplishment of one or more of the Principal Objectives, including the proactive and innovative development and expansion of infrastructure, communities, public facilities, and other socially beneficial real estate projects; and increasing the tax base within the City of Austin, and generating revenues and other resources for the City through the promotion of job growth and business growth. The AEDC agrees to act in a manner consistent with the objectives and priorities described in this Addendum and to provide an update to the City in its Annual Report describing the manner, progress and extent to which such objectives have been achieved.

3. AEDC Fees, Costs, and Expenses.

The AEDC's compensation for the performance of its undertakings described in this Addendum for fiscal year 2021 are included in the budget approved by the City and AIDC and attached as Exhibit B to the Interlocal Agreement. The Parties anticipate that additional fees, costs and expenses will be incurred by the AEDC in the 2022 and 2023 fiscal years in connection with this project, such amounts will be agreed upon and included in the 2022 and 2023 Annual Addendums in accordance with Section 6.7 of the Interlocal Agreement and must be approved annually by Council prior to being approved to be paid.

The Parties further agree that the AEDC and the City may enter into further or supplemental agreements or transactions relating to the South Central Waterfront District Project, and such transactions may include compensation or payment to the AEDC if additional work is performed for the City by the AEDC.

This Addendum may be amended, modified, revised, or changed by written instrument executed by all Parties.

This Addendum shall be attached to the Interlocal Agreement as an exhibit and incorporated into the Interlocal Agreement for all purposes. Additionally, this Addendum shall be subject to the terms and conditions of the Interlocal Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Addendum No. 1 to be effective as of the last date and year written below.

AUSTIN ECONOMIC DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

CITY OF AUSTIN, TEXAS

City Manager

DATE: _____

ATTEST:

City Clerk

(CITY SEAL)

ADDENDUM NO. 2

CULTURAL TRUST PROJECT

This Addendum No. 2 (this “*Addendum*”) pertains to the Cultural Trust Development Project and related services (the “*Project*”) and is entered into between the City of Austin, Texas (the “*City*”) and the Austin Economic Development Corporation (the “*AEDC*”), effective [Month] [Day], 2021, pursuant to the Interlocal Cooperation Agreement entered into by and among the AEDC, the City and the Austin Industrial Development Corporation on [Month] [Day], 2021 (the “*Interlocal Agreement*”). The City and the AEDC may be referred to individually as a *Party* or collectively as the *Parties*. Terms not otherwise defined have the meanings ascribed to them in the Interlocal Agreement.

1. **Description of the Project.**

The City authorizes and directs the AEDC to proceed with the pursuit, planning, assessment, promotion, procurement, acquisition, development, construction and operation of creative spaces and facilities as part of a cultural trust to support the preservation of creative space for the benefit of the public, supporting artists and organization of the arts, the preservation of historic and iconic cultural buildings and spaces for creative and cultural uses, and the overall promotion of creative and cultural arts within the City (the “*Cultural Trust Project*”). Such undertakings shall include, without limitation, the following:

(a) ***Creative and Cultural Facilities.*** The AEDC may identify land, interests, and facilities to be utilized as creative and cultural spaces throughout the City, including (i) creative and cultural spaces for non-profits, small and iconic businesses, and creative community organizations and enterprises, including for-lease spaces and shared collaborative spaces, for short-term, long-term, and permanent use; (ii) iconic establishments, venues, and historic buildings and structures; and (iii) galleries, studios, performing arts centers, concert halls, and other public venues and spaces for the promotion, exhibition, showcasing, celebration, and preservation of creative and cultural arts (collectively, “*Creative and Cultural Facilities*”).

(b) ***Establishment of Cultural Trust.*** To the extent the facilities are not funded with City tax-exempt bond proceeds, the AEDC may procure, acquire, develop, construct, own, operate, manage and preserve Creative and Cultural Facilities for the benefit of the City’s creative and cultural community and for the general benefit of the public (collectively, the “*Cultural Trust*”). The AEDC, in its own name and utilizing its own funds, is empowered to transact with third parties to establish the Cultural Trust, including entering into purchase and sale agreements, lease agreements, development agreements, construction contracts, management and operating agreements, or such other agreements as may be necessary or convenient for the development, operation and maintenance of the Cultural Trust. The AEDC shall also engage with regional partners, including, but not limited to the Austin Independent School District, for the potential adaptation of facilities as Creative and

Cultural Trust Facilities. The AEDC shall comply with all legal requirements relating to the source of funds for any such agreements and legal requirements relating to any financings for such facilities. These requirements include the requirements relating to the use of Hotel Occupancy Tax for historic facilities or programs for art and music.

(c) ***Cultural Trust Financing Program.*** The AEDC may establish a credit program for the financing of the Cultural Trust, and, subject to Section 7 of this Addendum and subsequent Council approval, may be authorized to incur indebtedness (including the issuance of public securities) and to the extent such properties do not include City owned or City financed facilities, the AEDC may be authorized to mortgage, pledge and collaterally assign all or any portion of the Cultural Trust, together with any revenues from the Cultural Trust, as security for such indebtedness.

(d) ***Hotel Occupancy Tax (“HOT”) Funds.*** The City has appropriated HOT funds for Iconic Venues to be utilized by the AEDC. These funds must be administered in accordance with the requirements of Section 8.3 of the Interlocal Agreement. As of the effective date of the Interlocal Agreement, these funds are in an initial amount of \$2.4 million. The work contemplated to be completed using these funds is set forth in Resolution 20201203-046.

(e) ***Further Agreements.*** To the extent that any further authority, entitlements or other powers are necessary or convenient for the AEDC to perform its services with respect to the Cultural Trust Project, the Parties may enter into such additional contracts and agreements as may be permitted by law, such as development agreements, option agreements, purchase and sale agreements, ground leases, facilities leases, subleases, condominium regimes, management contracts, grant agreements, incentive agreements, and cooperation agreements.

2. Public Purposes and Priorities.

Reference is made to the Principal Objectives described in Section 6.5 of the Interlocal Agreement. The City has determined that the Cultural Trust Project is for the accomplishment of one or more of the Principal Objectives; and to enhance accessibility for underrepresented communities in order to achieve equity and diversity in program outcomes. The AEDC agrees to act in a manner consistent with the objectives and priorities and to provide an update to the City in its Annual Report describing the manner, progress and extent to which such objectives have been achieved.

3. AEDC Fees, Costs, and Expenses.

The AEDC’s compensation for the performance of its undertakings described in this Addendum for fiscal year 2021 are included in the budget approved by the City and AIDC and attached as Exhibit B to the Interlocal Agreement. The Parties anticipate that additional fees, costs and expenses will be incurred by the AEDC in the 2022 and 2023 fiscal years in connection with

the undertakings and such amounts will be submitted to council for approval as part of each annual budget. The AEDC shall not incur expenses in anticipation of funding by council.

The Parties further agree that the AEDC and the City may enter into further or supplemental agreements or transactions relating to the Cultural Trust Project, and such transactions may include compensation or payment to the AEDC as approved by council.

This Addendum may be amended, modified, revised, or changed by written instrument executed by all Parties.

This Addendum shall be attached to the Interlocal Agreement as an exhibit and incorporated into the Interlocal Agreement for all purposes. Additionally, this Addendum shall be subject to the terms and conditions of the Interlocal Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Addendum No. 2 to be effective as of the last date and year written below.

AUSTIN ECONOMIC DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

CITY OF AUSTIN, TEXAS

City Manager

DATE: _____

ATTEST:

City Clerk

(CITY SEAL)

ADDENDUM NO. 3

CULTURAL TRUST CITY FACILITIES PROJECT

This Addendum No. 3 (this “*Addendum*”) pertains to the Cultural Trust City Facilities Project and related services (the “*Project*”) and is entered into between the City of Austin, Texas (the “*City*”) and the Austin Economic Development Corporation (the “*AEDC*”), effective [Month] [Day], 2021, pursuant to the Interlocal Cooperation Agreement entered into by and among the AEDC, the City and the Austin Industrial Development Corporation on [Month] [Day], 2021 (the “*Interlocal Agreement*”). The City and the AEDC may be referred to individually as a *Party* or collectively as the *Parties*. Terms not otherwise defined have the meanings ascribed to them in the Interlocal Agreement.

1. Description of the Project.

The City desires to utilize \$12,000,000 from the proceeds of the general obligation bond approved by voters in the November 2018 election for the acquisition of land and interests for cultural and creative arts facilities (the “*CFB Proceeds*”) for the acquisition and/or construction of Creative and Cultural Facilities in accordance with the bond proposition approved by the voters and in accordance with the resolutions from council creating the contract with the voters with respect to these funds. These documents include: Resolution 20180809-061. Resolution 20180628-027, and Ordinance No. 20180809-113. These facilities constructed with these funds may be consistent only with the non-economic development purposes of the Cultural Trust, as more fully described in Addendum No 2 relating to the Cultural Trust Project. Accordingly, the City contracts with the AEDC to identify land or buildings to be acquired or land on which buildings would be constructed by the AEDC on behalf of the City with the CFB Proceeds, subject, however to the approval of the City Attorney in consultation with the City’s outside bond counsel (the “*City Facilities*”) and approval by Council to ensure use and operation of the facilities within the legal framework for these funds.

The City Facilities shall be owned by the City, but, if such lease is reviewed and approved by the City’s General Obligation Bond and Tax Counsel (City’s bond and tax counsel) may be leased to the AEDC to be used for the Cultural Trust and operated for the exclusive benefit of the City. If a lease is not approved by the City’s bond and tax counsel, the facilities can be operated by the AEDC pursuant to a qualified management agreement approved by the City’s bond and tax counsel. The City Facilities shall at all times be dedicated to the creation, exhibition, or preservation of art and creative expression, and no portion of the City Facilities shall be used for private or economic development purposes. The facilities shall further be operated and managed in accordance with the contract with the voters as it relates to these facilities. The facilities shall also be operated and managed so as not to impair the tax exempt status of the bonds issued for the facilities. Without the prior consent of Council, the AEDC may not convey, mortgage or otherwise transfer its rights to the City Facilities.

2. Public Purposes and Priorities.

Reference is made to the Principal Objectives described in Section 6.5 of the Interlocal Agreement. The City has determined that the Cultural Trust City Facilities Project funded with City tax-exempt bond funds is for the accomplishment of one or more of the Principal Objectives. The AEDC agrees to act in a manner consistent with the objectives and priorities described and to provide an update to the City in its Annual Report describing the manner, progress and extent to which such objectives have been achieved.

3. AEDC Fees, Costs, and Expenses.

The AEDC's compensation for the performance of its undertakings described in this Addendum for fiscal year 2021 must be reviewed and approved by bond counsel before being approved by Council to ensure that the compensation does not impair the tax-exempt status of the bonds.

This Addendum may be amended, modified, revised, or changed by written instrument executed by all Parties.

This Addendum shall be attached to the Interlocal Agreement as an exhibit and incorporated into the Interlocal Agreement for all purposes. Additionally, this Addendum shall be subject to the terms and conditions of the Interlocal Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Addendum No. 3 to be effective as of the last date and year written below.

AUSTIN ECONOMIC DEVELOPMENT
CORPORATION

President/CEO

DATE: _____

ATTEST:

Secretary

[(SEAL OF THE CORPORATION)]

CITY OF AUSTIN, TEXAS

City Manager

DATE: _____

ATTEST:

City Clerk

(CITY SEAL)