

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (this "MOU")), dated as of [signing date], 2021 and made effective as of the date this MOU is approved by City Council (the "Effective Date"), by and between **THE AUSTIN ECONOMIC DEVELOPMENT CORPORATION**, a Texas local government corporation (the "AEDC"), and **THE URBAN RENEWAL AGENCY OF THE CITY OF AUSTIN**, a Texas urban renewal agency (the "URA"). AEDC and URA are each referred to herein individually as a "Party" and collectively as the "Parties".

BACKGROUND:

A. On October 1, 2019, the City of Austin (the "City") and the URA entered into an "Agreement Concerning Implementation of East 11th and 12th Streets Urban Renewal Plan" (as amended, the "URA Agreement"). The URA Agreement discusses the coordination and implementation of the East 11th and 12th Streets Urban Renewal Plan prepared by the URA and approved by the City pursuant to Chapter 374 of the Texas Local Government Code (the "UR Plan").

B. As a component of the UR Plan, the City transferred two parcels of land within the redevelopment area known as Block 16 and Block 18, totaling approximately 2.05 acres, as more fully described in EXHIBIT A attached hereto (the "Land"), and the URA has agreed to undertake the redevelopment of the Land in a manner that supports the goals of the UR Plan (the "Project").

C. Public input activities regarding the Land have taken place continuously over the past twenty (20) years. As such, numerous planning documents incorporating public input have been introduced, such as the 1999 Central East Austin Master Plan, the 2001 Central East Austin Neighborhood Plan, a 2009 RFP that was the product of a public engagement process, and the 2012 East 11th-12th Street Development Strategy plan. More recently, in January 2019, the URA accumulated the years of public input and began identifying development priorities for the Land. These priorities included (i) project creativity and need, (ii) additional affordable housing, (iii) community parking, (iv) incorporation of the African American Cultural & Heritage Facility or the Historic Victory Grill, (v) minority and women owned businesses, (vi) green building, and (vii) other public benefits (the "Development Priorities").

D. At the recommendation of the AEDC and the URA, the City has approved an "Addendum No. 4 (East 11th and 12th Street Neighborhood Renewal Project)" (the "Addendum") pursuant to the Interlocal Cooperation Agreement entered into by and among the AEDC, the City and the Austin Industrial Development Corporation June 10th, 2021 (the "Interlocal Agreement"). The Addendum authorizes the AEDC to aid and act on behalf of the City by providing assistance and services with respect to the redevelopment of the Land be achieved through a long-term master lease, ground lease, or public-private partnership transaction to be agreed upon pursuant to a competitive solicitation process. This process is most likely to result in the highest and best use of the Land as modified by the Development Priorities and the priorities set forth in the UR Plan.

ACCORDINGLY, in order to accomplish the foregoing purposes, the Parties hereby agree as follows:

Section 1 General Description of the Project. The Parties intend to pursue the redevelopment of the Land in a manner that supports the goals of the UR Plan through one or more real estate transactions with one or more public or private development partners to be identified and selected pursuant to a competitive solicitation process as more fully described in this MOU. The Project will be transacted to accomplish the purposes of the UR Plan in accordance with the terms of the URA Agreement, and increased priority goals of diversity, equity and inclusion from community engagement through developer selection, and construction. The redevelopment of the Land may be achieved through a master lease, ground lease,

or public-private partnership transaction to be agreed upon pursuant to a competitive solicitation process. Unless otherwise agreed upon, fee title to the Land will remain with URA for the entire term of the transaction.

Section 2 Solicitation Process and Contents. The AEDC will be primarily responsible for supporting the URA with preparing, issuing, and administering a solicitation for Project (the "Solicitation"). The Solicitation may take the form of a RFP, and will fully describe the Project's objectives and the criteria whereby respondents will be evaluated.

- (a) *Contents of the Solicitation.* The Solicitation will contemplate, among other things, the following:
 - (i) The Solicitation will identify priorities and objectives for the redevelopment of the Land, s, for the accomplishment of the UR Plan, including any contemplated or potential public and private uses.
 - (ii) The Solicitation will list the potential sources of funding for the Project, as more fully described in Section 5; however, respondents will be asked to submit their proposal for the sources and uses of funds in achieving the development of the Project, including any private sources of funding and financing.
 - (iii) The Solicitation will include the key assumptions and conditions for the redevelopment of the Land, such as encumbrances, entitlements, land use and permitting, environmental conditions, utilities, ad valorem tax treatment, and the availability of sales and use tax exemptions.
 - (iv) The Solicitation will identify any public and community interest requirements applicable to the Project and respondents, such as prevailing wage requirements, utilization of women and minority-owned businesses, and applicable State law requirements.
 - (v) The Solicitation will provide for a selection of one or more proposals that provides the best overall value to the URA and the City. The Solicitation will clearly list the key terms and evaluation criteria by which respondents will be evaluated, including: (a) the manner in which the proposal achieves the URA's objectives and priorities, (b) the overall transactional and financing structure for the Project, (c) key contract terms such as revenue sharing, rent, and lease terms, (d) commitments and obligations (if any) expected from the URA and the City, (e) the pro forma development budget; and (f) prior experience, general qualifications, references, and financial capacity of the respondent and other key transaction parties; (g) commitment to diversity, equity and inclusion both in: (1) populations served by the completed development and (2) the composition of the respondent's team; and (h) adherence to Project requirements.
 - (vi) The Solicitation will otherwise comply with applicable State laws, including Chapter 374 of the Texas Local Government Code, as amended.
- (b) *Timeline.* The Parties will endeavor to pursue the Solicitation, negotiations, and execution of definitive documents for the Project in a diligent and timely manner in accordance with the timeline set forth below:

(i) *Anticipated Schedule:*

Dates (from the Effective Date)	Project Phase
Weeks 1 through 12 (3 months)	Establish Project Plan: Project planning, outreach manager hired, consultants secured
Weeks 12 through 24 (3 months)	Pre Development : Market research, market outreach, community engagement, feasibility, site diligence, draft Solicitation
Week _24 through 36	Release Solicitation (RFP) : includes solicitation distribution, technical assistance to respondents
Weeks 36 through 48 (3 months)	Evaluation and pre-selection activities—technical analysis, facilitating committee review, and scoring.
Weeks 48 through 72 (6 months)	Estimated Transaction negotiation
Week 76 through 88 (3 months)	URA, AEDC and City approval and financial close (" <u>Closing</u> ")

- (ii) Milestone Evaluation: The schedule outlined above constitutes the expected scope and timeline based on conditions known currently about the project (as of the Effective Date). Adherence to these milestones is dependent on regular communication between the Parties, and accountability to the respective roles and responsibilities of each Party. At the conclusion of each phase, the Parties will discuss the upcoming phases and timeline in detail to confirm roles/responsibilities and confirm timeline and performance expectations. The final two phases, Transaction negotiation and approvals will be as much determined by external parties, their timelines and processes, as it will be driven by the Parties desire to conclude this process efficiently.

Section 3 Possible Sources of Funding. The Parties understand that the precise sources and uses of funds for the Project will be dependent upon a number of conditions and factors that will not be fully known until the completion of negotiations with the selected respondent(s). However, the Parties agree to evaluate the potential use of the following sources of funds for the Project:

- (i) Legally available funds and revenues of the URA from existing and future operations;
- (ii) The Housing Trust Fund;
- (iii) Low income housing tax credits through the Texas Department of Housing & Community Affairs, if eligible;
- (iv) Funds available through the Cultural Trust Project administered by the AEDC; and
- (v) Financing secured by or payable from income-generating portions of the Project, such as private debt, private equity, or revenue bonds.
- (vi) Other funds made available after the execution of this MOU including but not limited: private philanthropy, additional public funds, contributions from potential tenants, and others as applicable.

Section 4 Roles and Responsibilities of the Parties. The AEDC and the URA each agree to assume and undertake their respective roles and responsibilities relating to the Project as set forth below:

- (a) *Project Plan:* The AEDC will provide a detailed timeline at the commencement of the project, that will include the activities of various employees, consultants, and stakeholders, and includes the review and deliberation time by the URA that will be necessary to meet the timeline as proposed above.
- (b) *Market Research and Community Engagement, Pre-Development Feasibility* The AEDC shall be primarily responsible for conducting market research, pre-release outreach, and community engagement for the Project. The AEDC will prepare a summary of its findings and conclusions to the URA for their timely review and action where necessary, and this effort will be communicated to the consultants hired to support the pre development feasibility. AEDC will conduct community engagement to help shape and finalize project feasibility and expectations for the site, which will be provided in the solicitation draft. Pre-Development feasibility will help direct all community input and program recommendations into template 'test fit' feasible scenarios with related financial proformas/expectations. URA will participate in the process, as directed by the Designated Representative, and will also review and approve any final documents to be included in the Solicitation.
- (c) *Administration of the Solicitation.*
 - (i) AEDC. The AEDC shall be primarily responsible for the preparation, issuance, and administration of the Solicitation, providing technical assistance to respondents, conducting stakeholder interviews and due diligence, and providing summaries to URA for the evaluation of responses. The AEDC will provide a draft Solicitation to the URA's Designated Representative with sufficient time for review. The AEDC shall not issue the Solicitation without the prior approval of URA's Designated Representative. The AEDC will advise and coordinate the review and scoring of responses with the URA evaluation committee, including the review of responses for compliance with qualifications outlined in the Solicitation, providing financial and technical analysis, and administering the scoring process to be undertaken by the URA evaluation committee.
 - (ii) URA. The URA will provide relevant information, data, reports and documentation relating to the Land and the Project in connection with the preparation of the Solicitation. The URA will be responsible for ensuring that the Solicitation conforms to the UR Plan in all material respects. The URA will review and approve the draft Solicitation within a reasonable timeframe to maintain overall project schedule. The URA Designated Representative will designate the members of the evaluation committee for the review and scoring of responses. The evaluation committee shall consist of no more than six members comprised of: (A) three members of the URA board of directors (the "URB"); (B) two members recommended by the AEDC having transactional, technical and/or financial expertise relevant to the Project; and (C) one member of the general public representing the interests of the community in which the Project will be located.
- (d) *Transaction Negotiations and Approval.*
 - (i) AEDC. The AEDC shall be primarily responsible for supporting URA with conducting negotiations with selected respondents and coordinating the preparation of interim and definitive agreements and ancillary documents for the Project (the "Transaction Documents"). AEDC will consult with the URA's Designated Representative to define key

terms and parameters for negotiations. The AEDC will be responsible for coordinating applicable review and approval of substantially final Transaction Documents with City staff, and for coordinating the presentation of the substantially final Transaction Documents for approval by URB and City Council.

- (ii) URA. The URA will participate in the development of the Solicitation, the selection process, all negotiations for the Project, and will independently review all Transaction Documents to which the URA is a party or a beneficiary. The URA will be responsible for ensuring that the Transaction Documents do not conflict with the UR Plan in all material respects. The URA Designated Representative will be responsible for coordinating the presentation of the substantially final Transaction Documents for approval by the URB.
- (e) *Asset Management*. Except as may otherwise be limited by applicable law and the Transaction Documents, the AEDC shall be the provider of asset management services for any components of the Project requiring asset management services, including both privately owned components of the Project as well as components owned or operated by or for the benefit of the City or the URA. In each case, such services shall be more clearly defined in the Transaction Documents to be approved by the URB.

Section 5 Collaborative Process.

- (a) *Collaboration of the Parties; Cooperation of the URA*. The Parties agree to work in a collaborative manner to timely achieve Closing. The Parties agree to work cooperatively and diligently to procure and pursue the development of the Project in accordance with the terms of this MOU.
- (b) *Designated Representatives*. For ease of communication and accountability, each of the AEDC and the URB shall identify a primary point-of-contact for purposes of coordinating all aspects of the Project (each such person being a "Designated Representative"). The Designated Representatives shall participate in regularly scheduled planning and progress meetings relating to the Project, and will coordinate all communication, requests, reviews, and approvals relating to such matters.
- (c) *Partnership Workgroup*: In order to build the collaborative relationship between the Parties, it is anticipated that a working group between Parties will meet monthly. The Designated Representative will name two individuals from each Board of Directors who will meet with AEDC staff on a monthly basis. Each party will be able to bring additional technical or community advisory representatives to these working group meetings if related to particular agenda topics.
- (d) *Access to the Land*. In connection with the transactions contemplated herein, the URB hereby grants unto AEDC a limited, non-exclusive license to enter upon the Land, for purposes of conducting certain on-site investigations and visits. The AEDC shall provide URB's Designated Representative with reasonable advance written notice prior to accessing the Land. As a condition to entering upon the Land, the AEDC agrees to maintain, and to cause any of its agents, representatives or permittees performing any activities on the Land to maintain, commercial general liability insurance from an insurer qualified to do business in the State of Texas and having an A.M. Best Rating of A-VII or better, with limits of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

Section 6 Transaction Costs; Compensation of AEDC.

- (a) *Payment of Transaction Costs*. Unless otherwise agreed, all transaction and closing costs, including the AEDC Transaction Fee (defined below), will be paid by the selected respondent at Closing

from financing proceeds and/or any other available sources of funds. The AEDC shall not be responsible for providing any funds to pay closing costs or other transaction costs for the Project.

- (b) *AEDC Fees.* In consideration for providing its services contemplated herein, the URA agrees to cause the selected respondent to pay to the AEDC, a one-time transaction fee which shall be payable and contingent upon Closing (the "AEDC Transaction Fee"). The terms and conditions for the payment of the AEDC Transaction Fee shall be mutually agreed upon by the parties at the time of property solicitation, memorialized as an addendum to this agreement, as a percentage of the development cost of the project, and in line with market standards. This fee requirement will be clearly expressed in the Solicitation.
- (c) Additionally, the Transaction Documents shall provide that the AEDC shall receive an annual asset management fee for the management of any components of the Project owned or operated by or for the benefit of the City or the URA (the "AEDC Asset Management Fee"). The terms and conditions for the payment of the AEDC Asset Management Fee shall be mutually agreed upon by the parties in the Transaction Documents, and is currently estimated at 3% of effective gross income of the project.

Section 7 State Law Matters. The Parties expressly agree that following provisions shall control over any conflicting provisions contained in this MOU.

- (a) *Obligations Subject to Appropriation.* Any payment obligations of either Party under this MOU may be subject to appropriation from year to year in accordance with State law. If either Party fails to pay any amount hereunder due to an event of non-appropriation by its governing body, the non-defaulting Party's sole and exclusive remedy for such payment default shall be the termination of this MOU, and the defaulting Party shall not be liable to non-defaulting Party for any money damages arising out of any event of non-appropriation.
- (b) *Confidentiality.* To the fullest extent permitted by law, the Parties agree to maintain confidentiality with respect to any documentation, materials, or work product received or exchanged by the Parties in connection with the transactions contemplated in this MOU ("Confidential Information"); subject, however, to Chapter 552 of the Texas Government Code, as amended (the "Texas Public Information Act"). If either Party receives a request for release of any Confidential Information pursuant to the Texas Public Information Act, such Party shall notify the other Party and give the other Party the opportunity to submit briefings to the Office of the Texas Attorney General in the manner provided by the Texas Public Information Act.
- (c) *No Violation of Prevailing Law.* Neither Party shall be required to perform any act or refrain from performing any act under this MOU if that performance or non-performance would constitute a violation of the constitution or laws of the State.
- (d) *Governmental Purpose Statement.* The AEDC is entering into this MOU in its capacity a public, nonprofit corporation organized by the City to accomplish the governmental purposes of the City pursuant to Chapter 431 of the Texas Transportation Code, as amended and in accordance with the AEDC's articles of incorporation and the Interlocal Agreement.

Section 8 Term of Agreement; Effect of Termination.

- (a) *Term and Termination.* This MOU shall commence on the Effective Date and remain in effect until terminated as follows (the "Term");

- (i) The Parties may agree in writing to terminate this MOU at any time by mutual consent.
 - (ii) If any Party shall have breached or defaulted on their obligations under this MOU, including schedule or performance obligations up until the selection of the recommended developer, the non-defaulting Party may deliver notice of termination to the defaulting Party specifying the nature of such breach, whereupon this MOU shall automatically terminate if the non-defaulting Party fails to cure such breach or default within 90 days after receipt of such notice, without evidence of diligently pursuing cure within that period.
 - (iii) This MOU will automatically terminate upon Closing without any further action of the Parties, whereupon the Transaction Documents shall control.
- (b) *Effect of Termination.* Upon termination of this Agreement as set forth in Section 8(a) above, the Parties rights and obligations hereunder shall cease, except as provided further below. Upon termination of this MOU, each Party shall have an equal right to use any and all plans, documentation, reports, findings and other work product produced by either or both the Parties pursuant to the terms of this MOU (collectively, "Work Product"); provided, however, that to the extent that any such Work Product was produced or administered by the AEDC, the URA's right to use such Work Product shall be conditioned upon the URA's payment and/or reimbursement of the transaction costs incurred by AEDC for the production of such Work Product in an amount not to exceed budget expended according to Interlocal Agreement Addendum 4. This obligation of the URA to pay or reimburse AEDC for its transaction costs as a condition to the use of any Work Product produced or administered by AEDC shall survive termination of this Agreement.

Section 9 General Provisions.

- (a) *Notices.* Any notice, demand, statement, request or consent made hereunder shall be in writing and may be personally served or sent by mail or courier service and shall be deemed to have been given when delivered by mail or by courier service to the addresses set forth below. Notices delivered by email to the Parties' designated representatives shall also be deemed to have been delivered only if receipt is acknowledged in writing by the recipient.

To AEDC: The Austin Economic Development Corporation
Attn: President/CEO
301 W. 2nd Street
Austin, Texas 78701
Email: david@austinedc.org

With copy to: Winstead PC
Attn: Jeff Nydegger
401 Congress Ave., Ste. 2100
Austin, Texas 78701
Email: jnydegger@winstead.com

To URA: The Urban Renewal Agency of the City of Austin
Attn: [_____]
[_____]
[_____]
Email: [_____]

With copy to: [_____]
Attn: [_____]
[_____]
[_____]
Email: [_____]

- (b) Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Texas without reference to choice of law principles thereof, and all claims relating to or arising from this MOU, or the breach of the provisions hereof, whether sounding in tort, contract or otherwise, shall likewise be governed by, construed and enforced in accordance with the laws of the State (without regard to choice of laws or conflict of laws rules).
- (c) Binding Effect, Successors and Assigns. This MOU shall be binding upon and shall inure to the exclusive benefit of, Parties and their respective successors and assigns. There are no third party beneficiaries to this MOU. Neither party may assign any part or all of its rights, interests or obligations under this MOU without the prior written consent of the other Party, and any assignment made by either Party without the prior written consent of the other Party shall be null, void and of no force or effect.
- (d) Severability. If any agreement, condition, covenant or term hereof or any application hereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all agreements, conditions, covenants and terms hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- (e) Entire Agreement; Amendment. This MOU represents the final, entire agreement among the Parties and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the Parties hereto. There are no unwritten oral agreements among the parties hereto. The provisions hereof may be amended or waived only by an instrument in writing signed by the Parties.
- (f) Counterparts; e-Signatures. This MOU may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this MOU to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or via via DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

The undersigned have signed and delivered this Memorandum of Understanding to be effective as of the Effective Date.

AEDC:

**THE AUSTIN ECONOMIC DEVELOPMENT
CORPORATION**
a Texas local government corporation

By: _____
President/CEO

URA:

THE URBAN RENEWAL AGENCY OF THE CITY OF AUSTIN
a Texas urban renewal agency

By: _____
{Obligee Rep}, {Obligee Rep Title}