

**AGREEMENT FOR DEVELOPMENT AND CONSTRUCTION
OF NEW CULTURAL FACILITIES
BY
THE AUSTIN FILM SOCIETY
FOR PUBLIC USE
FUNDED IN PART WITH BOND FUNDS**

7/22, 2014

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- Exhibit “B” Concept Plan**
- Exhibit “C” Project Budget**
- Exhibit “D” Insurance and Bond Requirements**
- Exhibit “E” Milestone Deliverables**

**AGREEMENT FOR DEVELOPMENT AND CONSTRUCTION
OF NEW CULTURAL FACILITIES
BY FILM SOCIETY OF AUSTIN, INC.
FOR PUBLIC USE
FUNDED IN PART WITH BOND FUNDS**

This Agreement for Development and Construction of New Cultural Facilities for Public Use Funded in Part with Bond Funds (this "**Agreement**") is dated effective as of the last date signed by the Parties. This Agreement is between the **CITY OF AUSTIN**, a Texas home rule city and municipal corporation (the "**City**"), and **FILM SOCIETY OF AUSTIN, INC.**, a Texas non-profit corporation, doing business as The Austin Film Society ("**Austin Film Society**").

RECITALS

Pursuant to the Lease Agreement dated July 22, 2009 and amended by the Lease Premises Reconfiguration Amendment dated March 1, 2013 (as amended, the "**Lease**"), between the City, as Landlord, and Austin Film Society, as Tenant, Austin Film Society occupies and operates that portion of the (i) former Robert Mueller Municipal Airport and (ii) former National Guard Armory adjacent to East 51st Street, as shown on **Exhibit "A"** attached (collectively, the "**Property**"), as a studio complex for multi-media productions and for educational and job training purposes. In accordance with the Lease and with the City's prior written consent, Austin Film Society may construct Improvements on the Property. Austin Film Society must pay for all costs and expenses associated with construction of the Improvements subject to such contribution as may be made by the City under separate agreements between the City and Austin Film Society. This Agreement is intended by the Parties to govern Austin Film Society's use of City Bond Funds, as that term is defined below, for construction of Improvements on the Property.

Pursuant to City Ordinance No. 20120817-00 passed on August 17, 2012, the Austin City Council approved a special bond election to consider the issuance of general obligation bonds, the proceeds of which would be used for various projects, including the public purposes of planning, designing, engineering, acquiring, constructing, renovating, improving and equipping library, museum and cultural arts facilities ("**Proposition 18**").

Proposition 18 was approved by the voters of the City on November 6, 2012. The voter-approved Bond Funds are referred to in this Agreement as "**Bond Funds**".

Austin Film Society is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("**IRC**") that is exempt from federal income taxes under Section 501(a) of the IRC.

The City and Austin Film Society (sometimes referred to collectively as the "**Parties**" and singly as "**Party**") wish to execute this Agreement to govern the

distribution of the City's disbursement of the Bond Funds to construct the Improvements.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**Article 1.
DEFINED TERMS**

1.1. **"A/E"** means the entity hired by Austin Film Society to provide professional architectural and engineering services.

1.2. **"A/E Professional Services"** will consist of services provided in accordance with the proposal accepted by Austin Film Society in accordance with the procedures set out in this Agreement.

1.3. **"Approved Team"** means the team of professionals assembled by Austin Film Society prior to the Effective Date to work on the design of the Improvements. No bond funds will be used to pay for any costs associated with the Approved Team. That team, for which such services are not subject to the selection process of Section 1.1 of this Agreement, consists of:

Cultural Entity:	Austin Film Society
Consultant:	Espero, LLC

1.4. **"Austin Film Society PM"** means the entity hired by Austin Film Society to provide project management services.

1.5. **"Austin Film Society PM Services"** will consist of services provided by the Austin Film Society PM in accordance with the proposal accepted by Austin Film Society and the procedures set out in this Agreement.

1.6. **"Bond Funds"** means the \$5,400,000.00 from the 2012 general obligation bond issuance.

1.7. **"CCRI"** means a City Contribution Reimbursement Item being any portion of the Improvements in the Concept Plan and identified in **Exhibit "B"** to this Agreement. Other Improvements can be added to the CCRI if approved in writing by the City prior to construction or by Change Order. Unless a change is submitted to the City and approved by the City prior to construction or by Change Order approved by the City during construction and pursuant to Section 2.9 of this Agreement, only those Improvements described in the Exhibits to this Agreement are eligible for reimbursement.

1.8. **“Change Order”** means a change in the contract executed by and between Austin Film Society and the Contractor for construction related services as contemplated in this Agreement.

1.9. **“City Contribution”** means periodic (but not more than once a month) disbursements by the City of Bond Funds to be used by Austin Film Society solely with respect to the programming/planning, design and construction of cultural facilities for public use in furtherance of Proposition 18. All disbursements of the City Contribution will be disbursed at the City’s option: (i) by the City’s check delivered to Austin Film Society; (ii) by the City’s wire transfer to a federally insured account directed by Austin Film Society; or (iii) by direct or joint check payment to any or all persons or entities entitled to payment for Work performed on, or materials delivered to, or services performed in connection with such disbursement, in the event a claim has been filed or a dispute has occurred with a subcontractor providing labor, services or materials to the Improvements.

1.10. **“City PM”** means the individual designated by the City as a project manager to act on behalf of the City with respect to the day-to-day administration of this Agreement. The City PM will: (i) act as a single point of contact to facilitate communication between the Parties; (ii) schedule project development meetings between the Parties to discuss the Improvements only on an as-needed basis; and (iii) act as a conflict resolution facilitator in connection with the matters arising under this Agreement. The City further agrees to grant the City PM the maximum authority allowed by City policy and regulations and by State and Federal law to approve Change Orders and make other decisions with respect to the design and construction of the Improvements, without the necessity of approval from other City representatives.

1.11. **“Concept Plan”** means the documents attached as **Exhibit “B”**.

1.12. **“Contractor”** means the entity hired by Austin Film Society to provide the construction services for the construction of the Improvements.

1.13. **“Contractor Services”** will consist of services provided in accordance with the construction contract proposal accepted by Austin Film Society in accordance with the procedures set out in this Agreement.

1.14. **“Contract Documents”** means the approved Progress Documents at the end of the construction document phase, plus addenda and Change Orders issued and approved.

1.15. **“Effective Date”** means the last date this Agreement is signed by Austin Film Society and the City.

1.16. **“Exhibits”** means the following Exhibits attached to this Agreement:

Exhibit “A”	The Property
Exhibit “B”	Concept Plan
Exhibit “C”	Project Budget
Exhibit “D”	Insurance and Bond Requirements
Exhibit “E”	Milestone Deliverables

1.17. **“Improvements”** means all the Work to be completed pursuant to this Agreement.

1.18. **“Milestone Deliverables”** means those contract deliverables from the Project Team delivered at critical times during the design and construction phases and more particularly described in Exhibit “E”.

1.19. **“Progress Documents”** means drawings, project manual and an updated statement of probable construction costs submitted to the City’s PM at the completion of each Milestone Deliverable.

1.20. **“Project Team”** means the Approved Team, the Austin Film Society PM, the City PM, the A/E, and the Contractor hired by Austin Film Society for design and construction of the Improvements.

1.21. **“Property”** means the property leased to Austin Film Society by the City. The Property is described in Exhibit “A” attached.

1.22. **“Record Documents”** means Contract Documents, project manual, addenda, Change Orders, change directives, field orders and written interpretations and clarifications that show a complete set of “as-builts”, including all changes made during construction.

1.23. **“SME”** means a subject matter expert, which expert may be an individual or organization hired by Austin Film Society to advise the Project Team on specialized design decisions. For example, an SME may be an end user such as a grip or a director of photography.

1.24. **“Work”** means the entire completed construction, or the various separate identifiable parts, required to be furnished under the Contract Documents.

Article 2. DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS

2.1. **Austin Film Society PM Contract Procurement and Management.** The City shall procure the Project Manager Services in accordance with all applicable laws. Austin Film Society shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the Austin Film

Society PM short list, and (iii) the final selection of the Austin Film Society PM. The City shall have final approval of the selection of the Austin Film Society PM. Austin Film Society shall be responsible for the negotiation of the Project Manager contract. The City shall have the right to review and participate in the negotiations with the Austin Film Society PM. The City has the right to review and approve the Austin Film Society PM contract prior to final execution. Upon completion of the contract, Austin Film Society shall provide a copy of the final Austin Film Society PM contract to the City for its approval, which approval shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the Austin Film Society PM contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.2. A/E Contract Procurement and Management. The City shall procure the A/E Professional Services in accordance with all applicable laws. Austin Film Society shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the A/E short list, and (iii) the final selection made of the A/E. The City shall have the final approval of the selection of the A/E. Austin Film Society shall be responsible for the negotiation of the A/E contract. The City shall have the right to review and participate in the negotiations with the A/E. Austin Film Society shall use the City's standard professional services agreement in contracting with the A/E. Upon completion of the A/E contract, Austin Film Society shall provide a copy of the final A/E contract to the City for its approval, which shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the A/E contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.3. Contractor Contract Procurement and Management. Austin Film Society shall procure the Contractor Services in accordance with all applicable laws. The City shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the Contractor short list and (iii) the final selection of the Contractor. Austin Film Society shall be responsible for the negotiation of the Contractor contract. The City shall have the right to review and participate in the negotiations with the Contractor. Austin Film Society shall use the City's standard construction agreement in contracting with the Contractor. Upon completion of the Contractor contract, Austin Film Society shall provide a copy of the final Contractor contract to the City for its approval, which shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the Contractor contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.4. SME Contracts Procurement and Management. Austin Film Society shall procure the SMEs' services in accordance with all applicable laws. The City shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the SME short lists, and (iii) the final selection of the SMEs. Austin Film Society shall be responsible for the negotiation of the SME contracts. Upon completion of the SME contracts, Austin Film Society shall

provide a copy of the final SME contracts to the City for its approval, which approval shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the SME contracts by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.5. **Assignment.** The A/E, the Contractor, the SME and the Austin Film Society PM contracts (the "**Professional Agreements**") between Austin Film Society and these identified professionals are each subject to the following default and assignment provision: In the event of a material default of Austin Film Society of its obligations under each of the Professional Agreements, the City may, but is not required to, assume the rights and responsibilities of Austin Film Society. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, legal representatives and assigns; provided however, Austin Film Society may not transfer its rights or obligations under this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Notwithstanding anything to the contrary in this Agreement, Austin Film Society may with the prior approval of the City, which shall not be unreasonably withheld, collaterally pledge the Professional Agreements to any lender who provides Austin Film Society its working line of credit as contemplated in this Agreement, provided, to the extent the lender exercises its rights under its collateral security and pledge agreements, the lender or its affiliates or approved assignee agree to perform or assume the obligations of Austin Film Society under the Lease and this Agreement, and in such case the City will hold a second and inferior collateral assignment. The lender's prior security interest shall contain provisions that the lender shall comply with all laws applicable to the Improvements.

2.6. **Wage Rates/Prevailing Wage.** Austin Film Society, in its administration of procurements, must comply with, and will require its Contractor, who must require its subcontractors supplying construction labor or materials for the Work, to comply with the City's prevailing wage requirements, set forth in Resolution No. 20080605-047, throughout solicitation of any construction contract or procurement of services relating to the construction of the Improvements pursuant to this Agreement. The City has adopted the general prevailing rate of per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the Work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of public buildings. The rates to be paid by the City in these projects are the rates in effect for Travis County, Texas at the time the City advertises these projects for bid. Such resolution adopts the same wages for public-private projects such as this one in which the City is a participant. Additionally, Austin Film Society must comply with the requirements of Resolution 20110728-106 regarding worker safety training.

2.7. City Certified Minority-Owned and Women-Owned Enterprises and Local Small Business Participation.

2.7.1. General. Austin Film Society shall comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City's Code and Program Rules for minority-owned and women-owned enterprises ("M/WBEs"), referred to as the "**M/WBE Program**", in the purchase of commodities in connection with and design and construction of the Improvements (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is Austin Film Society's responsibility to contact the City's Small and Minority Business Resources Department ("**SMBR**") to ensure Austin Film Society is complying with the current and applicable ordinances and rules.

2.7.2. Informational Meeting. Before Austin Film Society expends money subject to the requirements of this Section 2.7, but in any event not less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise Austin Film Society of all available resources to assist with compliance.

2.7.3. Supplies/Commodities. In an effort to further stimulate and positively impact the local economy, Austin Film Society shall use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and services purchased by Austin Film Society exclusively for use in the construction of the Improvements funded with City bond funds. To assist in recruiting efforts, Austin Film Society is required to contact SMBR for a list of available City certified minority-owned, women-owned and local small businesses prior to procuring supplies.

2.7.4. Supplier Diversity Policy. Within ninety (90) days after the Effective Date, Austin Film Society shall submit to the City a reasonable supplier diversity policy which will not conflict with the M/WBE Program regarding Austin Film Society's procurement of materials and services to be used at the facilities funded with City bond funds which may be reasonably modified from time to time by Austin Film Society, provided the policy and all modifications are approved by SMBR.

2.7.5. Threshold Amount. Austin Film Society agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, and for which there are qualified local certified M/WBE suppliers providing competitive prices and with sufficient financial resources in light of the

particular materials and services to be supplied. The City Manager's purchasing authority is \$57,000.00 for 2013, and may increase or decrease per the formula in the City Charter. The City shall advise Austin Film Society annually of any changes to this threshold amount, or Austin Film Society may contact the City at any time for such information.

2.7.6. Existing Contracts. This Section 2.7 shall not apply to valid contracts Austin Film Society has in existence on the Effective Date of this Agreement for the procurement of supplies.

2.7.7. Non-Compliance. Failure to comply with this obligation shall be considered a breach of this Agreement. Should SMBR determine that Austin Film Society has failed to satisfy its obligation under this Section 2.7, the dispute resolution sections of this Agreement shall apply. With respect to any individual procurement of materials or services for which the cost is less than the amount established above, Austin Film Society is encouraged, but not required, to adhere to the requirements of this Section 2.7. Austin Film Society shall maintain and provide documentation of its efforts to comply with this Section 2.7 to SMBR as part of its monthly reports identified below.

2.7.8. Design And Construction. Austin Film Society shall comply with the applicable standards and principles of the M/WBE Program in the design and construction of its facilities constructed with City bond funds, including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. SMBR will work with Austin Film Society to provide it information regarding compliance with the current and applicable ordinances and rules. With respect to any design or construction projects for the facilities constructed with City bond funds, including, but not limited to, leasehold improvements, Austin Film Society, the A/E and the Contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program. Before advertising a bid for any portion of the design or construction work, Austin Film Society shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director of SMBR shall be based on the proposed size, type and scope of work to be undertaken by Austin Film Society and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the Work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project M/WBE participation goals as provided in Section 2-9A-19 of the City Code (Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction), as it may subsequently be amended. The Director of SMBR shall have ten (10) business days from receipt of a bid package from Austin Film Society in order to evaluate and determine the required level for utilization of

M/WBE project or phase-specific goals or subgoals, if any, and shall notify Austin Film Society in writing of the Director of SMBR's determination.

2.7.9. Outreach. In an effort to meet the gender and ethnic-specific M/WBE utilization goals, Austin Film Society shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. Austin Film Society may seek the assistance of SMBR in these outreach efforts as described below.

2.7.10. Documentation. For any year of the construction of the Improvements in which Austin Film Society, the A/E and the Contractor fail to meet each of the goals or subgoals established by the Director of SMBR, Austin Film Society, the A/E and the Contractor must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. Austin Film Society shall submit documentation demonstrating its own, the A/E's and the Contractor's good faith efforts to meet the goals as is required below. If Austin Film Society provides documentation to SMBR evidencing its own and it's A/E's and the Contractor's good faith efforts, Austin Film Society shall be deemed in compliance with these paragraphs. Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require Austin Film Society to modify, nullify or abrogate any contracts that it has entered into before the Effective Date of this Agreement.

2.7.11. Assistance. Austin Film Society shall apprise SMBR when Austin Film Society desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals established for the purchase of commodities and supplies procured for the design and construction of the Improvements. This assistance may include providing a list of certified M/WBE firms from which Austin Film Society may solicit or cause the A/E or its Contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings and assisting Austin Film Society, it's A/E or the Contractor in soliciting M/WBE firms to provide bids. Austin Film Society is not required to solicit participation during a period in which Austin Film Society is not engaged in designing or constructing the Improvements, but rather, Austin Film Society is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director of SMBR into its development process as and when such process exists in connection with the design and construction of the Improvements.

2.7.12. Reports. Austin Film Society shall provide monthly reports to SMBR no later than the tenth (10th) day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and supplies for the construction of the Improvements;

and (iii) a summary of Austin Film Society's efforts to implement the standards and principles of the City's M/WBE Program. SMBR shall provide the forms to be used by Austin Film Society in submitting such reports. If SMBR does not provide forms, Austin Film Society may make reasonable efforts to report its information in a readable format for use by SMBR. These reasonable efforts will constitute compliance with this reporting requirement.

2.7.13. Compliance Determination. Within thirty (30) days of receipt of Austin Film Society's final monthly report (as is required under Section 2.72.7.11 above for the preceding year, January 1st through December 31st (the "**SMBR Compliance Period**"), SMBR shall determine whether Austin Film Society is in compliance with the requirements of this Section 2.7. Should SMBR determine that Austin Film Society (or its architect or general contractor), has not complied with the obligations of this Section 2.7, SMBR shall report such information to the Austin City Council.

2.8. LEED Certification Objective. Austin Film Society shall take steps to insure that its design and construction comply with City requirements relating to Leadership in Energy and Environmental Design (LEED) green building rating system. Austin Film Society will endeavor to achieve the LEED Silver certification for the Improvements.

2.9. Design Review, Approval and Authorized Changes. The Property is governed by the Lease which by reference makes the Property subject to the Mueller Master Community Covenant and the Design Guidelines (the "**Guidelines**"), as amended from time to time. As set out in the Lease and the Guidelines, Austin Film Society must submit required improvements to the New Construction Council established by the Guidelines for approval. The parties agree that improvements built on the Property are subject to the restrictions set out in the Lease and the Guidelines. At completion of each Milestone Deliverable, Austin Film Society shall submit to the City's PM one half-size set of drawings, the project manual and an updated statement of probable construction costs for the City's review and confirmation that such Progress Documents conform to the Concept Plan and any previously approved Progress Documents. The City's PM shall advise Austin Film Society within ten (10) business days after receipt of the Progress Documents if any portion or component of the Progress Documents materially differs with the Concept Plan and any previously approved Progress Documents, the Project Budget or violates a provision of this Agreement and shall provide a detail of the reasons why the Progress Documents do not conform to the Concept Plan and any previously approved Progress Documents, or do not conform to the Project Budget or violate this Agreement. If Austin Film Society is so advised, Austin Film Society shall immediately revise the Progress Documents to comply with the Concept Plan and any previously approved Progress Documents, the Project Budget and/or this Agreement. The City PM is not responsible for obtaining any building permit or certificate of occupancy for the Property. Austin Film Society shall not commence construction until Austin Film Society has obtained the confirmation required above for Progress Documents and all required governmental permits for the identified

scope of the Work. No Change Order to the Contract Documents may be made without the prior written consent of the City's PM, which consent shall not be unreasonably withheld or delayed. All other revisions to the Contract Documents prior to the construction phase shall be approved by the City as long as they materially conform to the Concept Plan or any previously approved Progress Documents, the Project Budget and this Agreement. Approval of Progress Documents whether final or not under this Section 2.9 does not constitute approval by the City, or any City department, of the Progress Documents or any component of the Progress Documents in the City's regulatory capacity.

2.10. Ownership of Contract Documents. Subject to the legal interests of the A/E and any production professionals, if any, all of the Progress Documents and Contract Documents, any addendum, Change Orders and all other architectural/engineering studies, reports or other materials in any way relating to the construction of the Improvements at the Property (the "**Identified Documents**"), shall be co-owned by Austin Film Society and the City. Subject to the legal interests of the A/E and any production professionals, ownership of the Identified Documents vests solely in the City at the termination of the Lease, no matter how such termination occurs. Austin Film Society, whether from Bond Funds or other sources, is solely responsible for the payment of all fees and expenses in connection with the preparation and use of the Identified Documents. At Final Completion, Austin Film Society shall ensure that the City has its own copy of the Identified Documents and the Record Documents. During the term of this Agreement, the City shall be entitled to additional copies of the Identified Documents at any time and from time to time if the City pays reproduction costs.

2.11. Art In Public Places. Austin Film Society shall comply with the City of Austin Art in Public Places ("**AIPP**") requirement in connection with the Improvements. The AIPP budget will be One Hundred Four Thousand and No/100 Dollars (\$104,000.00). The AIPP budget includes the artist's contract and the AIPP staff's project management required to manage the AIPP process.

2.12. Permits and Fees. Responsibility for obtaining permits and for paying fees associated with the permits is the responsibility and duty of Austin Film Society. Fees for permits are not reimbursable as CCRI.

2.13. Zoning, Site Plan and Building Permits. Austin Film Society is responsible for ensuring that appropriate zoning, site plan and building permit approvals have been obtained during appropriate times in the design and construction process. Austin Film Society is also responsible for compliance with the zoning, site plan and building permits during the design, construction and operation of the Improvements.

2.14. Construction Time of Performance. Austin Film Society shall diligently pursue completion of the Improvements and shall Substantially Complete the Improvements no later than five (5) years after the date construction begins. "**Substantially Complete**" means the Improvements are finally completed, but for minor

items of punch list work that can be completed in not more than one hundred twenty (120) calendar days, that do not interfere with Austin Film Society's use of the Property, and that do not interfere with Austin Film Society's ability to obtain a certificate of occupancy for the Property. Austin Film Society shall complete work on the punch list items no later than one hundred twenty (120) calendar days after it identifies the items for the punch list ("**Final Completion**"). The City shall extend the dates set out in this Section 2.14 for good cause and for events of Force Majeure.

2.15. Construction Standards and Liens. All CCRI must be constructed in accordance with the following construction standards:

2.15.1. Construction must be performed in a good and workmanlike manner in accordance with the Contract Documents.

2.15.2. Construction must be completed using good industry practice for the type of Work in question.

2.15.3. The materials and workmanship must be of a quality greater than or at least equal to the standards set out in the Contract Documents.

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

2.15.5. The Work must also comply with the City's M/WBE program requirements for construction projects.

2.15.6. The Work must comply with the Americans with Disabilities Act requirements applicable to municipally owned and operated facilities.

2.15.7. No construction or Work may be commenced until all licenses, permits and authorizations required of all governmental authorities having jurisdiction necessary to commence construction have been obtained.

2.15.8. Austin Film Society shall have obtained and shall maintain in effect the insurance coverage required by this Agreement and the Lease with respect to the Improvements.

2.15.9. After commencement, the construction or Work being performed must be prosecuted within the time schedules and deadlines under this Agreement.

2.15.10. Austin Film Society shall have no right, authority or power to bind the City or any interest of the City in the Property for labor, materials or any

other charge or expense incurred in construction of any Improvements or other Work done on the Property.

2.15.11. Austin Film Society shall take no action to render the City liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection with any Work performed on the Property and Austin Film Society shall in no way be considered as the agent of the City in the construction, erection or operation of any Improvements made on the Property.

2.15.12. If any liens or Claims for labor or materials supplied or claim to have been supplied to the Property are filed, Austin Film Society shall promptly pay or bond such liens to the City's reasonable satisfaction or otherwise obtain the release or discharge of the lien or Claim.

2.15.13. If during construction Austin Film Society damages any property of the City, Austin Film Society shall be responsible for such damage and shall repair it at Austin Film Society's sole cost and expense. This provision is not intended to limit Austin Film Society's right to seek repair of damage, or payment to repair damage, from a person or entity hired by it to complete construction, if the damage was caused by that person or an agent of the entity. However, Austin Film Society is ultimately responsible for taking the necessary steps to insure that the repair is completed in accordance with applicable codes and standards and paid for from funds that are not Bond Funds or any other City funds.

2.16. **Ownership of Improvements.** Title to all the Improvements located on the Property is and shall remain vested in the City immediately upon the attachment of the Improvement to the Property or to another Improvement located on the Property subject to the rights of Austin Film Society under the Lease.

2.17. **Assignment of Warranties and Guaranties.** To the extent assignable, upon termination of the Lease all warranties and guaranties obtained by Austin Film Society shall be automatically assigned to the City.

Article 3. PROJECT DEVELOPMENT COSTS

3.1. **Project Budget.** The Project Budget for the Improvements is attached as **Exhibit "C"** and is approved by the City.

3.2. **Budget Changes.** Austin Film Society may not increase the Project Budget without the City's prior written consent. Austin Film Society may shift allocations to budget line items without changing the total Project Budget; provided however, Austin Film Society will provide the City with a copy of the amended Project Budget in such case for its review and approval. Austin Film Society may not decrease the Project Budget in a way that results in a material diminution in value of the Improvements

without approval of the City. Review by the City shall be completed within two (2) weeks of any submittal under this Section 3.2 and approval of the change will not be unreasonably withheld.

3.3. CCRI.

3.3.1. Conditions Precedent to Disbursement. The City's obligation to contribute the City Contribution will be subject to the satisfaction of the following conditions:

3.3.1.1. Austin Film Society is not in material default of any of its obligation under the Lease and this Agreement and, if any such material default did occur, the default has been cured, and no event or circumstance exist which with the passage of time or giving of notice would constitute an event of material default by Austin Film Society under the terms of the Lease and this Agreement.

3.3.1.2. To the extent that any portion of the City Contribution will be used to construct an Improvement under the Lease, Austin Film Society has satisfied the conditions precedent under the Lease for the design and construction of such Improvement, the Improvement complies with the use of the Property conditions in the Lease, and it complies with the conditions of this Agreement.

3.3.1.3. At least thirty (30) calendar days before the date of the requested disbursement of the City Contribution, Austin Film Society shall deliver to the City PM the following:

3.3.1.3.1. A pay request approved by Austin Film Society and its Project Manager or other form of invoice from Austin Film Society evidencing the reimbursement amount due;

3.3.1.3.2. For services under the Professional Agreements, copies of invoices from all professional services firms of Austin Film Society or the Contractor for services rendered to the Property with respect to each CCRI;

3.3.1.3.3. Other than for the services under the Professional Agreements, records satisfactorily documenting to the City that, with respect to any fees to be paid by the City Contribution, Austin Film Society has selected the applicable payee through a process approved by the City;

3.3.1.3.4. For construction services performed or materials delivered:

3.3.1.3.4.1. The supporting application for payment in the form reasonably approved by the City, showing the schedule of values, by trade, percentage of completion of the CCRI detailing the portion of Work completed and the portion not completed as of the date of the application for payment, updated progress schedule and the City's Subcontract Supplier Awards Expenditure Report, and if requested by the City, copies of invoices from the Contractor for services and labor rendered and materials delivered to the Property with respect to the CCRI.

3.3.1.3.5. For all construction services regardless of how performed:

3.3.1.3.5.1. No later than final payment for the construction services, executed conditional mechanic's lien releases from the Contractor (along with unconditional mechanics lien releases with respect to payments made pursuant to Austin Film Society's prior submission under this Agreement) in recordable form; and

3.3.1.3.5.2. Records satisfactorily documenting to the City that Austin Film Society has complied with Chapter 271 Subchapter H of the *Texas Local Government Code* relating to alternative project delivery methods.

3.3.1.4. For all requested disbursements of the City Contribution, any and all other information reasonably requested by the City, which has not been previously provided.

3.4. Austin Film Society Covenants.

3.4.1. Budget Requirements. The Project Budget attached to this Agreement is on a form approved by the City. Any changes shall be subject to the terms of Section 3.2 above.

3.4.2. Contribution Requirements. Austin Film Society and the City understand and agree that the Property and the uses of the Property are subject to the Lease and the Parties agree this Agreement shall not remove any rights and privileges Austin Film Society may have under the Lease.

3.4.3. Milestone Deliverables. Austin Film Society shall, during the course of the design phase and the construction phase, deliver either by mail or hand delivery to the City PM the Milestone Deliverables.

3.4.4. Financing. If a contractual commitment includes financing, that financing will be on terms and conditions acceptable to Austin Film Society and

reasonably acceptable to the City. The City agrees that, subject to all terms and conditions of the Lease, Austin Film Society may assign or pledge its leasehold interest under the Lease whereby such lender or such lender's affiliate or approved assignee shall have as a remedy, but not the obligation, to assume the obligations of Austin Film Society under the Lease, and this Agreement and such right shall be approved by the City so long as the City has an assignment of such interest inferior to such lender. The contractual commitments may include a combination of Austin Film Society financing, cash, and pledges, reasonably acceptable to and confirmed by City, all of which are available and restricted for the purpose of payment of construction costs. Austin Film Society shall identify any additional sources of revenue to repay any financing for the Improvements.

3.4.5. Construction Accounts. Before the commencement of construction, Austin Film Society shall establish a separate, segregated series of construction accounts (the "**Construction Accounts**") at one or more federally insured financial institutions of Austin Film Society's choosing. The Construction Accounts may be maintained by Austin Film Society at the financial institution, if any, that serves as trustee for any other financing maintained by Austin Film Society. The Construction Accounts may be used only for the purpose of the deposit and withdrawal of construction funds, including Bond Funds, and the deposit and withdrawal of funds for debt service on Austin Film Society's financing of the CCRI. No other funds may be commingled in the Construction Accounts. Austin Film Society shall furnish to the City satisfactory information on the Construction Accounts, including the amounts on deposit prior to commencement of planning and design of the CCRI. Austin Film Society shall furnish, at the City's request, at any reasonable time, any additional information as the City may request regarding the Construction Accounts until completion of the CCRI.

3.4.6. Bond Covenant. The City and Austin Film Society understand and acknowledge that the City may finance the City Contribution with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes (the "**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 IRC and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto relating to Tax Exempt Bonds. Austin Film Society 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, Austin Film Society will not use or permit the City Contribution, or 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 IRC or (ii) by any person other than a governmental person or an exempt organization described in Section 501(c)(3) of the IRC. Moreover, if the IRC 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 IRC, then the City and Austin Film Society 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.

Article 4.
OPERATIONS AND MAINTENANCE

4.1. Austin Film Society Responsibilities. Austin Film Society has the obligation to operate and maintain the Property in accordance with the terms and conditions of the Lease.

4.2. City Responsibilities. The City's obligation, if any, to operate and maintain the Property is also only in accordance with the terms and conditions of the Lease.

4.2.1. Naming and Sponsorship. Austin Film Society shall have the sole right to contract for and grant sponsorships, advertising space and naming rights for areas, events, programs and advertising panels within the Property 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 disapproval shall only be for the violation of such name or sponsorship of the IRC or the provisions below and such approval shall not be unreasonably withheld or delayed. The City Manager or his designee shall review and approve naming inside the facilities. The City Manager will bring the Austin Film Society's requests for naming for the outside of buildings or other structures to the Austin City Council for the Austin City Council's approval. Sponsorships, advertising and/or naming rights involving the Property shall not:

4.2.1.1. promote, advertise or relate to alcohol or tobacco products or companies; or

4.2.1.2. be of a non-commercial 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

4.2.1.3. 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 4.2.1.

4.2.1.4. Any such sponsorship agreements entered into by Austin Film Society shall be ratified or assumed by the City at its election or otherwise terminate upon any termination or expiration of the Lease (as may be

subsequently renewed or extended), pursuant to which Austin Film Society ceases to occupy and use the Property.

4.2.1.5. If the named portion of the facility/campus is destroyed or severely damaged, or Austin Film Society determines it will not maintain the facility, or determines that the facility will be renovated, replaced, relocated or significantly modified or upgraded, then Austin Film Society shall consult with the donor, if available, and the City, and come to a mutually agreeable decision with regard to the naming.

4.2.1.6. If the donor fails to timely fulfill its gift commitment, or if the donor, any of its affiliated entities, or any of their respective principals are involved in any type of material ethical violation as approved by a court of law or administrative hearing or criminal convictions, or Austin Film Society reasonably and in good faith determines that circumstances have changed such that donor's public image, products or services conflicts with the purposes or mission of Austin Film Society, then Austin Film Society may remove the naming from the facility, and Austin Film Society shall provide in its future donor contracts that it shall have no further obligation or liability to the donor and shall not be required to return any portion of the gift already paid. If the issue is a legal or ethical violation as noted in the preceding sentence, the City may direct Austin Film Society to remove the name.

4.2.1.7. No rights or privileges shall be granted by Austin Film Society in exchange for naming and sponsorship that would impair the tax-exempt status, if any, of the Bond Funds used for the CCRI or other portions of the facilities.

4.2.1.8. The naming of the facility as a whole must be done in accordance with City Code unless City Code requirements are specifically waived by the Austin City Council. Signs containing names must comply with applicable City requirements regarding signage.

Article 5. INSURANCE AND INDEMNITY

5.1. Austin Film Society and its Consultants' and Contractors' Insurance and Bonding. Austin Film Society shall require that any firms under the Professional Agreements maintain the insurance and bonds required by the City and listed in **Exhibit "D"** attached to this Agreement and the Lease. If any additional insurance or bonds are required by Federal or State law or by local ordinance, Austin Film Society shall also require the persons and firms hired by it for design and construction of the CCRI under the Professional Agreements to have that insurance and bonding in place throughout their Work on the CCRI. In the event of any material defects in design, materials or workmanship resulting from the Work of the A/E, Austin Film Society PM, the Contractor or any other construction professionals occurs, Austin Film Society agrees, if advised by

its legal counsel, to pursue any causes of action it may have against the appropriate party, or at the option and request of the City, assign to the City such cause of action, subject to any superior rights Austin Film Society's lender may have.

5.2. Indemnity – Patent or Copyright. Austin Film Society shall provide in its Professional Agreement with the Contractor that the Contractor shall protect, hold harmless and indemnify Austin Film Society and the City from and against all Claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent or copyright that arise out of any of the Work performed by the Contractor or used by the Contractor, or by the City, or Austin Film Society at the direction of the Contractor of any article or material to be constructed pursuant to this Agreement. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Austin Film Society shall promptly notify the Contractor and the Contractor shall be given full opportunity to negotiate a settlement. The Contractor does not warrant against infringement by reason of Austin Film Society's or the A/E's design of articles or their use in combination with other materials or in the operation of any process relating to the Improvements to be constructed pursuant to this Agreement. In the event of litigation, Austin Film Society agrees to cooperate reasonably with the Contractor and all parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

5.3. Indemnification of Certain Entities. Austin Film Society shall include in its Professional Agreement negotiated with the Contractor for the Improvements, a provision that the Contractor covenants and agrees to fully indemnify and hold harmless Austin Film Society, the City, the A/E, and their respective current and former employees, officers, directors, volunteers, agents and representatives (the "**Indemnified Entities**"), individually and collectively, from and against any and all costs, Claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal or bodily injury, death and property damage ("**Claims**") made upon any Indemnified Entity directly or indirectly arising out of, resulting from, or related to: (i) a violation or alleged violation of any ordinance, regulation, statute or other legal requirement by the Contractor or any of its agents or employees; or (ii) the Contractor's activities under its Professional Agreement, including any negligent acts or omissions of the Contractor, any agent, officer, director, representative, employee, or consultant occurring in the performance of the rights and duties under its Professional Agreement. This Section 5.3 shall not apply to any Claims resulting from the negligence of any of the Indemnified Entities, but shall include Claims attributable to the extent of the Contractor's sole, contributory, partial, joint, comparative or concurrent acts, omissions or negligence of the Contractor or any subcontractor under the Contractor.

5.4. Payment and Performance Bonds. Austin Film Society agrees to and shall require the Contractor to name the City as co-obligee with Austin Film Society on the payment and performance bonds. The payment and performance bonds required of the Contractor under this Agreement shall be in accordance with the specifications provided in **Exhibit "D"** attached to this Agreement.

5.5. **Assumption.** In contracting with the A/E and the Contractor, Austin Film Society will require that each contract, including the Identified Documents, provide that it can be assumed by the City in the event of a termination of the Lease due to an uncured default by Austin Film Society or, at the City's option, upon failure of Austin Film Society's completion of the Improvements during the term of the Lease, subject to the rights of Austin Film Society's lender.

Article 6.
EVENTS OF DEFAULT AND REMEDIES

6.1. **Austin Film Society's Default and the City's Remedies.** Austin Film Society shall be deemed to be in default under this Agreement if Austin Film Society fails or refuses to perform Austin Film Society's obligations under this Agreement, or any representation or warranty made by Austin Film Society pursuant to this Agreement becomes untrue, and after thirty (30) calendar days' notice of an event of default from the City and such default was for any reason other than a default by the City. If Austin Film Society is deemed to be in default under this Agreement after the expiration of the cure period, the City shall be entitled to require specific performance, withhold the City's Contribution, or terminate this Agreement subject to the rights of Austin Film Society's lender, if any, or assume Austin Film Society's obligations and complete the Improvements without liability to Austin Film Society. In the event a default by Austin Film Society is not reasonably curable within such 30-day period, then Austin Film Society shall, only with specific written approval by the City, have additional time to complete the cure of its default so long as it prosecutes its cure diligently and in good faith. Fraudulent statements made in the inducement of the City by board members or officers of Austin Film Society who are materially involved with the Improvements shall be grounds for termination for cause. Upon the occurrence of any event deemed to be a default by Austin Film Society under this Agreement, subject to Austin Film Society's lender's rights, all Professional Agreements, Identified Documents, Progress Documents, Contract Documents and other records relating to the Improvements shall be returned to the City.

6.2. **The City's Defaults and Austin Film Society's Remedies.** The City shall be deemed to be in default under this Agreement if the City fails to meet, comply with, or perform any covenant, agreement or obligation within the time limits and in the manner required in this Agreement. If the City is deemed to be in default under this Agreement, the City shall also have a thirty (30) calendar day time period, after being notified by Austin Film Society of the default, in which to cure the default. After the expiration of the cure period, Austin Film Society may, at Austin Film Society's sole option, do any one or more of the following: (i) terminate this Agreement by written notice delivered to the City; or (ii) exercise any other right or remedy Austin Film Society may have at law or in equity by reason of such default. Austin Film Society may not seek any remedy for non-payment by the City if such non-payment is due to:

6.2.1. Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City; and

6.2.2. Non-Appropriation. The funding of this Agreement is dependent upon the availability of appropriations. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render this Agreement null and void to the extent funds are not appropriated or available. The City shall provide Austin Film Society written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

Article 7. MISCELLANEOUS PROVISIONS

7.1. **Representation.** Austin Film Society represents and warrants to the City that Austin Film Society did not incur any cost or expense associated with any CCRI prior to the Effective Date, for which Austin Film Society would seek reimbursement under this Agreement.

7.2. **Termination.** This Agreement will automatically terminate upon the first to occur of (i) the termination or expiration of the Lease (as may be reinstated, renewed or continued) or (ii) the expiration or satisfaction of all the terms and obligations under this Agreement by the Parties.

7.3. **Miscellaneous.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions of this Agreement. The Parties agree that no term of this Agreement is intended to modify the Lease and that in the event of any conflict between the terms of the Lease and this Agreement, the terms of the Lease supersede. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Venue for any action regarding this Agreement shall be in the District Courts or County Courts of Law of Travis County Texas. This Agreement is to be deemed to have been prepared jointly by the Parties. If any inconsistencies or ambiguities exist, they shall not be interpreted or construed against either Party as the drafter. The Parties shall take such actions and execute such documents as each may reasonably request to carry out the purposes of this Agreement. All section headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise effect this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same

instrument. Each Party represents and warrants to the other Party that it is duly authorized to execute this Agreement. In performing the obligations under this Agreement, Austin Film Society shall be an independent contractor, and nothing herein shall be deemed to constitute the City and Austin Film Society as partners or joint venturers. Nothing in this Agreement shall alter in any manner the status of personnel employed by Austin Film Society or by the City, who shall in no event be deemed to be employees of the other. When the approval or consent of the City is required under this Agreement, and it is not otherwise stated, such approval or consent shall not be unreasonably withheld or delayed and in the event the City has not responded to a request for such approval or consent by Austin Film Society within thirty (30) business days of its request, then the parties shall work together to diligently review the request and promptly respond in accordance with the approval schedules set forth in the City Code and rules.

7.4. Book and Records. Austin Film Society shall keep proper books of records and accounts in which full and correct entries shall be made of all of its construction transactions and its assets and businesses so as to permit the presentation of financial statements prepared in accordance with sound accounting principles consistently applied on a cash basis; and permit the City, or its representatives, at reasonable times and intervals upon prior notice, to visit Austin Film Society's office.

7.5. Notices. If notice, payment, report or other matter is required or permitted to be given under this Agreement, it may be effected by personal delivery to the address set forth below, or by certified mail, postage prepaid, return receipt requested, properly addressed to the appropriate address set forth below:

If to the City:	The City of Austin City Attorney City of Austin Law Department Post Office Box 1088 Austin, Texas 78767-1088
If to the City PM:	The City of Austin Economic Development Department 301 West Second Street, Suite 2030 Austin, Texas 78701 Attn: City PM for Austin Film Society Project
If to Austin Film Society:	Film Society of Austin, Inc. 1901 East 51 st Street Austin, Texas 78723 Attn: Executive Director

With a copy to:

Rick Triplett, Esq.
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701

Such addresses may be changed by notice to the other Parties given in the same manner as above provided.

7.6. Force Majeure. Both Austin Film Society and the City agree they shall grant the other Party a reasonable extension of time as appropriate, if conditions beyond the Parties' control or Acts of God, flood, riot, civil insurrection, labor strikes or orders of local or federal government render timely performance of the Parties' services impossible or unexpectedly burdensome. The Party suffering the impossibility or burdensome conditions must provide written notice to the other Party within ten (10) business days of the onset of such performance delay, specifying the reasons therefore. Consent to an extension of time for performance under such circumstances will not be unreasonably withheld, conditioned or delayed. Failure to fulfill obligations due to conditions beyond either Party's control shall not be considered a breach of this Agreement; provided, however, that such obligations shall be suspended only for the reasonable duration of such conditions.

7.7. Right to Audit. Austin Film Society agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall, upon reasonable notice to Austin Film Society, have access to, and the right to audit, examine or reproduce at the expense of the City any and all records of Austin Film Society related to its performance under this Agreement. Any audit or examination shall take place at the offices of Austin Film Society during reasonable business hours. Austin Film Society shall retain all such records for a period of three (3) years after final payment of the CCRI under this Agreement, or until any audit and litigation matters relating to the Improvements or this Agreement that the City has brought to the attention of Austin Film Society are resolved, whichever is longer. Austin Film Society agrees to refund to the City any overpayments disclosed by any such audit and the City agrees to pay any underpayments of the Bond Funds disclosed by any such audit, subject to the City's right to decline payment as set out in Sections 6.2 and 6.2.1 above. At the request of Austin Film Society, the City shall provide Austin Film Society a copy of such audit. In addition, Austin Film Society shall include in its Professional Agreement with the Contractor the following:

7.7.1. The Contractor agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine or reproduce any and all records of the Contractor related to Austin Film Society's performance under this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment under the Professional Agreement, or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved,

whichever is longer. The Contractor agrees to refund to Austin Film Society any overpayments disclosed by any such audit.

7.7.2. The Contractor agrees to include the terms of Section 7.7.1 above in all subcontractor agreements entered into by the Contractor in connection with the Professional Agreement.

7.8. Indemnity.

7.8.1. Indemnified Claims shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.8.1.1. damage to or loss of the property of any person (including, but not limited to, the City, the Contractor and their respective agents, officers, employees and subcontractors; the officers, agents and employees of such subcontractors; and third parties); and/or

7.8.1.2. death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers and employees of the City, the Contractor and third parties).

7.8.2. Fault shall include negligence, willful misconduct or a breach of any legally imposed strict liability standard.

AUSTIN FILM SOCIETY SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF AUSTIN FILM SOCIETY, OR ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, IN THE PERFORMANCE OF AUSTIN FILM SOCIETY'S OBLIGATIONS UNDER THIS AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR AUSTIN FILM SOCIETY (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM. THIS INDEMNIFICATION DOES NOT INCLUDE INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CITY, OR THE CITY'S AGENTS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES OR SUBCONTRACTORS.

7.9. **Dispute Resolution.** In the event of a dispute, either Party may make a written request for a meeting between representatives of each Party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the Parties.

Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both Parties, in which event the Parties may proceed directly to mediation as described below. If the efforts to resolve the dispute through negotiation fail, or the Parties waive the negotiation process, the Parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and Austin Film Society agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and Austin Film Society will share the costs of mediation equally.

7.10. CONFIRMATION AND WAIVER. AUSTIN FILM SOCIETY CONFIRMS TO THE CITY THAT IT IS NOT RELYING ON, AND WAIVES ANY CLAIM REGARDING, ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY CONCERNING OR RELATING TO THE PROPERTY, THE CONDITION OF THE PROPERTY, COMPLIANCE OF THE PROPERTY WITH THE LAWS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, THE OBLIGATIONS, RESPONSIBILITES OR LIABILITIES OF THE OWNER THEREOF, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. AUSTIN FILM SOCIETY ACKNOWLEDGES AND AGREES WITH THE CITY THAT AUSTIN FILM SOCIETY IS ENTERING INTO THIS AGREEMENT AND THE TRANSACTION CONTEMPLATED HEREIN RELYING SOLELY UPON ITS OWN CONSULTANTS, LEGAL COUNSEL, EVALUATIONS AND EXAMINATIONS. AUSTIN FILM SOCIETY SPECIFICALLY ACKNOWLEDGES THAT THE CITY CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWER.

7.11. Waiver of Attorneys' Fees. In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorneys' fees, Austin Film Society knowingly and intentionally waives its right to attorneys' fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding or litigation arising out of or connected to this Agreement.

7.12. Accessibility of Information. Austin Film Society is required to make, upon proper request, 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.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first set forth below.

CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: 
Name: Robert Goode
Title: Assistant City Manager
Date: 7/22, 2014

FILM SOCIETY OF AUSTIN, INC., a Texas non-profit corporation, doing business as The Austin Film Society

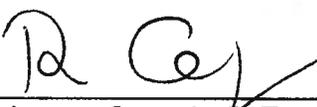
By: 
Rebecca Campbell, Executive Director
Date: 7/17, 2014

EXHIBIT "A"

THE PROPERTY

AUSTIN FILM STUDIOS
(BOUNDARY EXHIBIT)

20.061 ACRES
AUSTIN FILM TRACT
RMMA

FN. NO. 09-154(AJM)
JUNE 4, 2009
BPI JOB NO. 1400-26.94

DESCRIPTION

OF 20.061 ACRES OF LAND OUT OF THE JOSEPH BURLESON SURVEY NO. 10, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO THE CITY OF AUSTIN, BY DEED OF RECORD IN VOLUME 428, PAGE 245, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 20.061 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod with cap set at the intersection of the southerly right-of-way line of East 51st Street (90' R.O.W.) and the easterly right-of-way line of Future Vaughan Street (60' R.O.W./not yet of record), for the northwesterly corner hereof;

THENCE, over and across said City of Austin tract, along said southerly right-of-way line of East 51st Street, for a portion of the northerly line hereof, the following three courses and distances:

- 1) Along a non-tangent curve to the left, having a radius of 1000.23 feet, a central angle of 02°52'22", an arc length of 50.15 feet, and a chord which bears S65°09'18"E, a distance of 50.15 feet to a 1/2-inch iron rod found at the end of said curve;
- 2) S66°37'37"E, a distance of 366.27 feet to a 1/2-inch iron rod found at the beginning of a non-tangent curve to the left;
- 3) Along said curve, having a radius of 1477.40 feet, a central angle of 13°23'30", an arc length of 345.31 feet, and a chord which bears S73°17'02"E, a distance of 344.52 feet to a 1/2-inch iron rod found at the end of said curve, being on the northerly line of said City of Austin tract, also being the southwesterly corner of Lot 1, F.V.M.F. Addition, a subdivision of record in Book 80, Page 209 of the Plat Records of Travis County, Texas;

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THENCE, S62°29'38"E, leaving the southerly right-of-way line of East 51st Street, along the southerly line of said Lot 1, for the northerly line of said City of Austin tract and a portion of the northerly line hereof, a distance of 867.96 feet to a 1/2-inch iron rod with cap set in the westerly right-of-way line of Future Tilley Street (R.O.W. varies/not yet of record), for the northeasterly corner hereof;

THENCE, S42°17'46"W, leaving the southerly line of said Lot 1, over and across said City of Austin tract, along said westerly right-of-way line of Future Tilley Street, for the easterly line hereof, a distance of 551.23 feet to a 1/2-inch iron rod with cap set for the southeasterly corner hereof;

THENCE, leaving said westerly right-of-way line of Future Tilley Street, continuing over and across said City of Austin tract, for the southerly line hereof, the following four (4) courses and distances:

- 1) N47°36'07"W, a distance of 538.82 feet to a 1/2-inch iron rod with cap set at an angle point;
- 2) S42°23'53"W, a distance of 401.38 feet to a 1/2-inch iron rod with cap set at an angle point;
- 3) N43°25'06"W, a distance of 392.30 feet to a 1/2-inch iron rod with cap set at an angle point;
- 4) S87°00'00"W, a distance of 270.00 feet to a 1/2-inch iron rod with cap set in said easterly right-of-way line of Future Vaughan Street, for the southwesterly corner hereof;

THENCE, continuing over and across said City of Austin tract, along said easterly right-of-way line of Future Vaughan Street, for the westerly line hereof, the following three (3) courses and distances:

- 1) N03°00'00"W, a distance of 429.60 feet to a 1/2-inch iron rod with cap set at a point of curvature of a curve to the right;
- 2) Along said curve, having a radius of 270.00 feet, a central angle of 31°00'00", an arc length of 146.08 feet, and a chord which bears N12°30'00"E, a distance of 144.31 feet to a 1/2-inch iron rod with cap set at the point of tangency of said curve;

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JUNE 4, 2009
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- 3) N28°00'00"E, a distance of 188.52 feet to the POINT OF BEGINNING, containing an area of 20.061 acres (873,846 square feet) of land, more or less, within these metes and bounds.

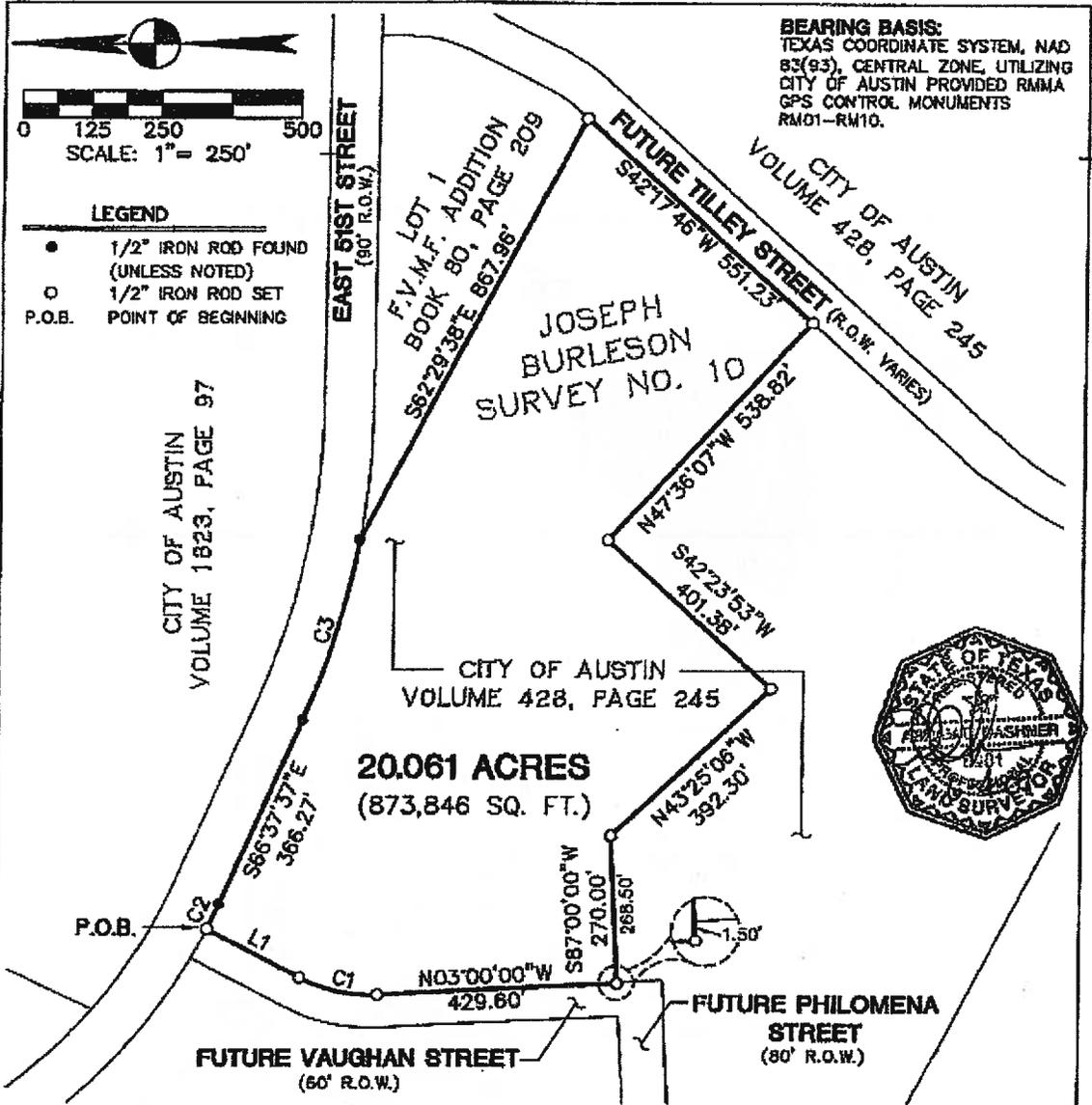
BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(93), CENTRAL ZONE, UTILIZING CITY OF AUSTIN PROVIDED RMMA GPS CONTROL MONUMENTS RM01-RM10.

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS DESCRIPTION IS BASED UPON A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

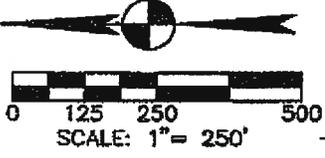
BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
211 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701


6-4-09
ABRAM C. DASHNER, R.P.L.S.
NO. 5901
STATE OF TEXAS





BEARING BASIS:
 TEXAS COORDINATE SYSTEM, NAD
 83(93), CENTRAL ZONE, UTILIZING
 CITY OF AUSTIN PROVIDED RMAA
 GPS CONTROL MONUMENTS
 RM01-RM10.



LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED)
- 1/2" IRON ROD SET
- P.O.B. POINT OF BEGINNING



20.061 ACRES
 (873,846 SQ. FT.)

CURVE TABLE					
No.	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	31°00'00"	270.00	146.09	144.31	N12°30'00"E
C2	2°52'22"	1000.23	50.15	50.15	S85°09'18"E
C3	13°23'30"	1477.40	345.31	344.62	S73°17'02"E

LINE TABLE		
LINE	BEARING	LENGTH
L1	N28°00'00"E	186.52

Bury+Partners
 ENGINEERING SOLUTIONS
 221 West Sixth Street, Suite 660
 Austin, Texas 78701
 Tel. (512) 382-0011 Fax (512) 622-1466
 Bury+Partners, Inc. ©2009/04 2009

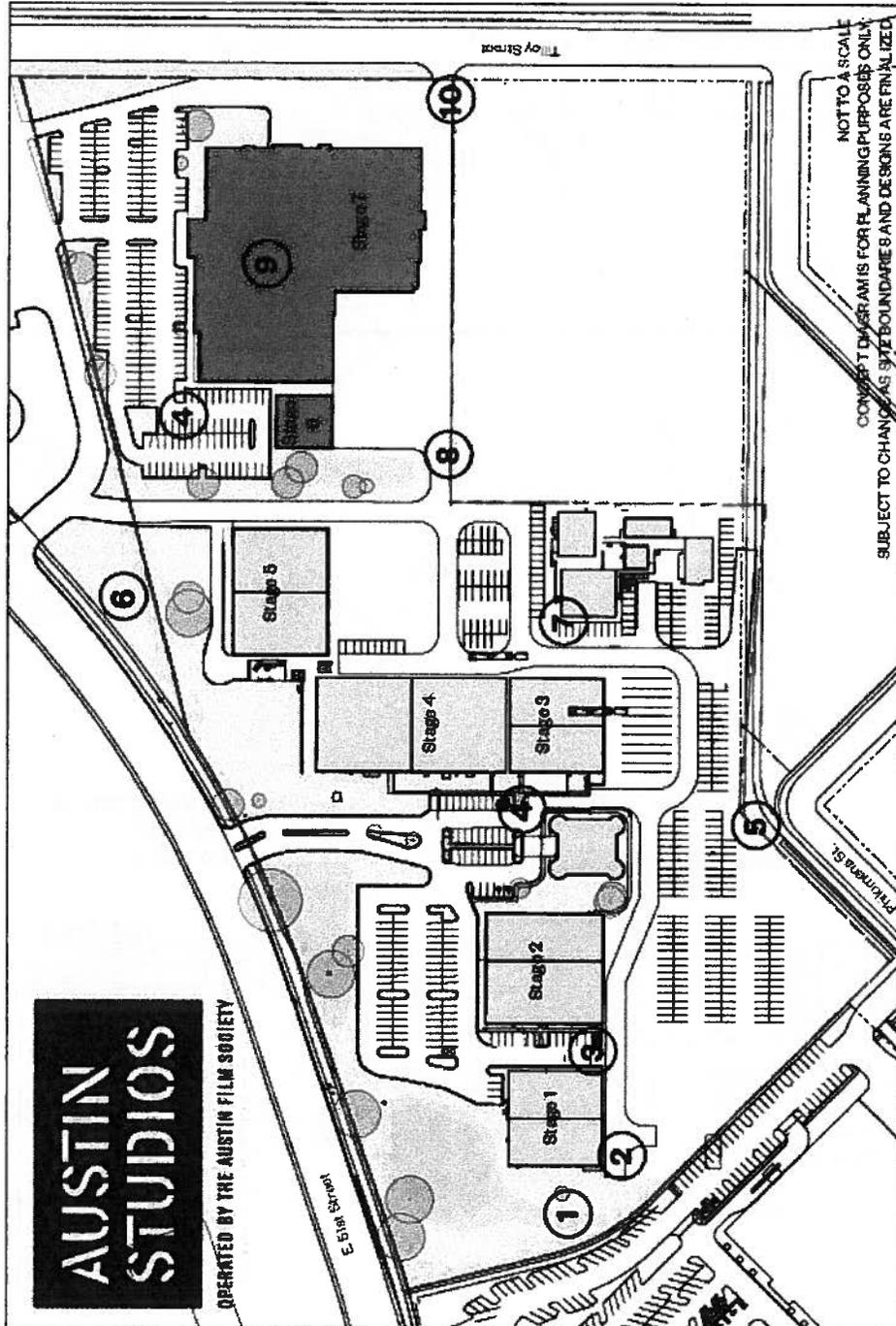
SKETCH TO ACCOMPANY DESCRIPTION
 OF 20.061 ACRES OF LAND CUT OF THE JOSEPH BURLESON SURVEY
 NO. 10, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS,
 AND BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO THE
 CITY OF AUSTIN, BY DEED OF RECORD IN VOLUME 428, PAGE 245, OF
 THE DEED RECORDS OF TRAVIS COUNTY, TEXAS.

CATELLUS

DATE: 6/4/09 FILE: H:\1400\28\140028EX18.dwg FN No.: 09-154(A.M) DRAWN BY: A.M PROJ. No: 1400-26.94

EXHIBIT "B"

CONCEPT PLAN



5/1/2014

AUSTIN STUDIOS CONCEPT DIAGRAM*

1**	<p>Security, Screening & Landscaping Improvements</p> <ul style="list-style-type: none"> • Install Fencing, Pedestrian Gate with Key-Card Access, Pedestrian Path and Outdoor Break Area/Garden • Upgrade & Install Additional Security Cameras
2**	<p>Drainage & Foundation Improvements</p> <ul style="list-style-type: none"> • Reinforce Stage 1 Foundation, Reconstruct and Enhance Drainage Swale
3	<p>Security & Vehicular Connectivity Upgrades</p> <ul style="list-style-type: none"> • Widen Gate Opening, Install Automatic Gate with Key-Card Access, Upgrade Security Cameras
4**	<p>Infrastructure Upgrades</p> <ul style="list-style-type: none"> • Upgrade Water, Wastewater, Telecommunications, and Electrical Service • Retrofit HVAC Systems (Stage 3, Red Building) for Energy Efficiency
5	<p>Security & Screening Improvements***</p> <ul style="list-style-type: none"> • Install Fencing and Pedestrian Gates with Key-Card Access
6**	<p>Accessibility, Wayfinding, Security & Landscaping Improvements</p> <ul style="list-style-type: none"> • Complete ADA-Compliant Access Pathways and Enhance Landscaping Along East 51st Street • Install Monumental & Directional Signage Upgrade & Install New Automatic Gates with Key-Card Access & Security Cameras
7	<p>Trailers & Trailer Infrastructure Upgrades***</p> <ul style="list-style-type: none"> • Upgrade Water, Wastewater, Telecommunications and Electrical Service to Trailers for Additional Capacity • Purchase Trailers for Additional Production Office/Creative Media Tenant Space
8**	<p>Vehicular & Infrastructure Connection, Drainage Improvements***</p> <ul style="list-style-type: none"> • Create Vehicular and Infrastructure "Bridge" to former Armory site, Reconstruct & Enhance Drainage Swale
9**	<p>Removal of former National Guard Armory including Code Compliance & Infrastructure Upgrades</p> <ul style="list-style-type: none"> • Upgrade Building's Core Systems, including utilities service, restrooms, roof replacement, and life safety • Create Critical Infrastructure for Creative Media Hub and Production Tenants
10	<p>Vehicular & Infrastructure Connection, Security & Wayfinding Improvements***</p> <ul style="list-style-type: none"> • Create Vehicular Connection to future Tilley Street, Connect Utilities to Tilley Street • Install Fencing and Automatic Gates with Key-Card Access, Install Monumental and Directional Signage

* Concept Diagram for planning purposes only and is subject to change as site boundaries and designs are finalized.

** Denotes activities that are anticipated to be completed in a first phase.

*** Implementation of these items is subject to determination of final lease boundaries.

EXHIBIT "C"

PROJECT BUDGET

	<u>Project Budget</u>	<u>CCRI Eligible</u>
Project Management	\$ 216,000.00	Yes
Design Services	\$ 578,800.00	Yes
Permits and Fees	\$ 18,671.00	No
Project Inspection Fees	\$ 52,728.00	Yes
Construction Services	\$3,833,926.00	Yes
Art in Public Places	\$ 104,000.00	Direct City Expense
Debt Issuance (City)	\$ 30,000.00	Direct City Expense
Furniture, Fixtures and Equipment	<u>\$ 184,546.00</u>	Yes
Subtotal Project Budget	\$5,018,671.00	
Project Contingency	<u>\$ 400,000.00</u>	Yes, as it relates to CCRI items
TOTAL PROJECT BUDGET	<u>\$5,418,671.00</u>	
Austin Film Society Contribution (Permits)	<u>\$ 18,671.00</u>	
Total Bond Funds	<u>\$5,400,000.00</u>	

EXHIBIT "D"

INSURANCE AND BOND REQUIREMENTS

NOTE: When the term "construction manager" is used in this Exhibit it means the person or entity hired by Austin Film Society to perform construction management services, whether through the construction manager at risk procurement method or other delivery method.

A. General Requirements

Austin Film Society shall forward certificates of insurance with the endorsements required below to the City as verification of coverage within 5 calendar days after the date this Agreement is executed (unless provided otherwise below), EXCEPT that Austin Film Society shall have in place a policy of commercial general liability insurance meeting the requirements of their 2009 Lease during the entire lease term.

Austin Film Society's permanent buildings are insured on the City's property insurance policy. Austin Film Society shall contact the City's Risk Management Division for scheduling and other information related to the required use of the City's property insurer's plan review services for the construction of any Improvements to be made pursuant to the Agreement. Contact must be made no later than when the design drawings are 50% complete.

Austin Film Society shall not commence work on the Project until the required insurance is obtained by the construction manager and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Austin Film Society and is not a limitation of liability on the part of Austin Film Society.

Austin Film Society must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of work on the Improvements to be made pursuant to the Agreement and for all A/E and other professionals prior to the commencement of work under their respective agreements.

Austin Film Society's, and all engineers/architects and Project Management consultants (professionals), contractor's, and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better or otherwise be approved by the City. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: City Project Manager Economic Development Department
City of Austin
P. O. Box 1088
Austin, Texas 78767-1088

The “other” insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Exhibit, covering both the City and Austin Film Society, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Exhibit, Austin Film Society, the construction manager, or other professionals, contractors, and subcontractors of Austin Film Society must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties hereto or the underwriter on any such policies.

Austin Film Society shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement (Term) without providing a substantially equivalent policy of insurance or coverage in replacement thereof.

The Professionals, and any contractor, or subcontractor responsible for maintaining insurance pursuant to this Agreement shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth in this Exhibit to the Agreement during the period of construction and until Final Completion plus the period for all construction warranty work and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies), Austin Film Society, professionals, contractors, or subcontractors.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Austin Film Society, the professionals, contractors or subcontractors of Austin Film Society.

B. Specific Requirements

Worker’s Compensation and Employers’ Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker’s Compensation Act (Section 401). The minimum policy limits for Employer’s Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Austin Film Society’s, its professionals’, contractors’, and subcontractors’ policy shall apply to the State of Texas and include these endorsements in favor of the City:

- (i) Waiver of Subrogation, Form WC 420304, or equivalent coverage.
- (ii) Thirty days' Notice of Cancellation, Form WC 420601, or equivalent coverage.

Commercial General Liability Insurance. If not previously provided under the Lease by Austin Film Society for itself, Austin Film Society, any professionals, including the A/E team, the construction manager and other contractors shall provide the minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
 - (i) Blanket contractual liability coverage for liability assumed under this Agreement and all contracts related to this Project.
 - (ii) Independent contractor's coverage.
 - (iii) Products/completed operations liability for the duration of the warranty period.
- (b) The policy must also include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, endorsement CG 2404, or equivalent coverage.
 - (ii) Thirty days' notice of cancellation, endorsement CG 0205, or equivalent coverage.
 - (iii) The City listed as an additional insured, endorsement CG 2010, or equivalent coverage.

Business Automobile Liability Insurance. Austin Film Society, its professionals, contractors, and subcontractors shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.

- (a) The policy must include these endorsements in favor of the City:
 - (i) Waiver of subrogation, endorsement CA 2046, or equivalent coverage.
 - (ii) Thirty days' notice of cancellation, endorsement CA 0244, or equivalent coverage.
 - (iii) The City listed as an additional insured, endorsement CA 2048, or equivalent coverage.

If these specific endorsements are not available, evidence of equivalent coverage shall be provided to the City. If neither the endorsement or equivalent coverage is available, a written statement to that effect from the carriers underwriter shall be provided to the City for approval. Acceptance of the statement shall not be reasonably withheld by the City.

Other Insurance. Other insurance shall be maintained by Austin Film Society as required in the Lease.

Builders Risk Insurance. During the construction of the Improvements to be completed pursuant to the Agreement, or any subsequent construction or repair of the Improvements, Austin Film Society shall require its contractor to maintain an all risk builders risk insurance policy in the amount of the construction contract or construction manager contract, as the case may be. The policy must name the City as mortgagee/loss payee as its interest may appear.

Hazardous Material Insurance. For work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Austin Film Society and the City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.
- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Austin Film Society and the City.

Professional Liability Insurance. In addition to the workers compensation, business auto liability and commercial general liability coverage requirements above, all contractors providing professional services shall provide Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of

any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30 day notice of cancellation in favor of the Austin Film Society and the City. The minimum limit of liability for this coverage shall be \$1,000,000.

Performance and Payment Bonds. Austin Film Society shall require its general contractor or construction manager, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City and in compliance with the Texas Government Code, with the City and Austin Film Society named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the construction manager to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to the construction manager, no construction of the Improvements being completed pursuant to the Agreement may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Austin Film Society will be in material default under the Agreement.

Payment Bond. Austin Film Society shall require the construction manager to provide a payment surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Austin Film Society shall require the construction manager to provide a performance surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full and complete performance by the construction manager of these covenants and agreements contained in the contract documents.

Nothing in this Exhibit is intended to overlap or be duplicative of the insurance currently carried by Austin Film Society.

EXHIBIT "E"

MILESTONE DELIVERABLES

Pre-Design Phase

- Consultant M/WBE Compliance Plan

Schematic Design Phase

- Schematic Design Drawings And Outline Project Manual
- Updated Project Budget And Schedule
- Schematic Design Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Design Development Phase

- Design Development Drawings And Project Manual
- Updated Project Budget And Schedule
- Design Development Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Document Phase @ 50% Complete

- 50% Complete Construction Document Phase Drawings And Project Manual
- Updated Project Budget And Schedule
- 50% Construction Document Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Document Phase @ 100% Complete

- 95% - 100% Complete Construction Document Phase Drawings And Project Manual
- Updated Project Budget And Schedule
- 100% Construction Document Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Phase

- Executed Construction Agreement
- Monthly Construction Progress Reports, Updated Schedules And LEED Documentation
- M/WBE Compliance Report
- Record Documents at Final Completion

Post Construction Phase

- 6 Month and 12 Month Warranty Reports