

**ADMINISTRATION AND FUNDING AGREEMENT FOR
THE CITY OF ROUND ROCK ECONOMIC DEVELOPMENT PROGRAM**

This Administration and Funding Agreement for the City of Round Rock Economic Development Program ("**Agreement**") is made and entered into as of ~~September 1, 2015~~ January 26, 2017 by and among the City of Round Rock (the "**City**"), a Texas home rule municipal corporation, the Round Rock Transportation and Economic Development Corporation (the "**TED Corp.**"), an economic development corporation organized and existing under Chapter 505 of the Texas Local Government Code, and the Round Rock Chamber of Commerce, Inc. (the "**Chamber**"), a corporation organized and existing under the laws of the State of Texas. The City, TED Corp., and Chamber are sometimes collectively referred to herein as the "**Parties**".

WITNESSETH

WHEREAS, §380.001 of the Texas Local Government Code provides that the governing body of a municipality may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, said §380.001 also provides that the governing body may administer such programs by the use of municipal personnel and may contract with another entity for the administration of a program; and

WHEREAS, as set forth in TED Corp.'s Articles of Incorporation and in Chapter 505 of the Texas Local Government Code, the purpose of said corporation is to promote economic development within the City in order to eliminate unemployment and underemployment and to promote and encourage employment and the public welfare by approving authorized projects; and

WHEREAS, §505.102 of the Texas Local Government Code provides that the TED Corp. may contract with another private corporation to assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by Chapter 505; and

WHEREAS, the City, the TED Corp., and the Chamber wish to jointly develop a program to promote economic development and to stimulate business and commercial activity in the City of Round Rock;

NOW THEREFORE,

Premises considered, the Parties agree to enter into this Agreement as follows:

**ARTICLE I
ECONOMIC DEVELOPMENT PROGRAM**

Section 1.01.—Economic Development Program. -The Parties agree to work together to develop, establish, maintain, and operate an economic development program (the "Program") to promote economic development and to stimulate business and commercial activity in the City of Round Rock that is consistent with Chapters 380 and 505 of the Local Government Code-. The ~~Parties anticipate that the~~ Program will include, without limitation, elements for (1) existing business retention and expansion, (2) recruitment of new business, (3) small business development, (4) ~~planning for the~~ expansion establishment of necessary communication among the Parties relating to infrastructure needs

and planning, and (5) the development of appropriate criteria for government incentives to ultimately be approved by the Round Rock City Council.

~~—————~~ARTICLE II
~~—————~~ADMINISTRATION

Section 2.01. ~~Chamber's~~Chamber's Administration Responsibilities. The Chamber agrees to provide a qualified and competent staff for the implementation of the Program and the attraction of business and industry to the City. In this connection, the Chamber shall employ a director of economic development (currently, the Vice President of Economic Development) (the "Chamber ED Director") whose responsibilities and duties should be focused on the Program and who shall report to and be under the supervision of the Chief Executive Officer of the Chamber (the "Chamber CEO"). The Chamber agrees to provide the management and administrative services necessary to operate the Chamber and to implement the Program. With respect to the retention and expansion of existing businesses, the Chamber agrees that its efforts will include the following:

- ~~—————~~ a) ~~—————~~ systematic visitation program;
- ~~—————~~ b) ~~—————~~ the support of small business;
- ~~—————~~ c) ~~—————~~ programs that promote business among local industry; and
- ~~—————~~ d) ~~—————~~ general support of existing Chamber members.

With respect to recruitment of new business, the Chamber agrees that its efforts will include the following:

- ~~—————~~ a) ~~—————~~ the development of prospects;
- ~~—————~~ b) ~~—————~~ organizing and conducting recruitment trips and trade shows;
- ~~—————~~ c) ~~—————~~ the gathering and dissemination of information regarding available buildings and ~~—————~~ development sites;
- ~~—————~~ d) ~~—————~~ marketing and advertising; and
- ~~—————~~ e) ~~—————~~ maintaining adequate and pertinent community data such as demographics and economic ~~—————~~ information that supports the Program.

Section 2.02 ~~Chamber's~~Chamber's Reporting Responsibilities. The Chamber is accountable for the delivery and reporting the progress of the Program to the City, and the TED Corp., and the EDAC described below in Article IV. The following reports will be delivered and reviewed according to the following schedule:

- ~~—————~~ a) ~~—————~~ Summary of the Program plans for the upcoming calendar year will be reviewed in October;
- ~~—————~~ ba) Prepare and provide to the City and the TED Corp on or before October 31st a summary of the annual operating plan (the "Operating Plan") for carrying out the Program which Operating Plan shall be prepared by the Chamber for the upcoming calendar year and shall be based upon the current Strategic Plan described in section 4.05; provided, however, that the Chamber shall prepare and provide to the City and the TED Corp, on or before March 30, 2017 an initial Operating Plan;

~~b) Prepare and provide to the City and the TED Corp. on or before October 31st and on or before April 30th of each year a summary of Program revenue and expenses from the last summary. The Chamber will also report the restricted fund balance in the Economic Development Opportunity Fund, which can be used with the recommendation of the Chamber Board of Directors for the restricted use for the Program;~~

c) As part of its monthly business visitation program, the Chamber will survey existing businesses related to their issues and satisfaction with the support of the City and Chamber as it relates to the success of their business. The results of these surveys ~~and the activities of the existing business visitation program will be reviewed at the EDAC meeting each month, and~~ will be summarized and shared with the City Council as part of the quarterly updates; _____

~~c) Each month, the specifics of activities, along with metrics, related to business retention, expansion, and recruitment of new business, will be presented to the EDAC;~~

d) Summary of opportunities and proposals made each month will be presented ~~to the EDAC and~~ quarterly to the City Council and the TED Corp. board; ~~and~~

~~e) Opportunities and their disposition will be sent as they occur to the EDAC; and~~

~~f~~

~~e) The Chamber will periodically arrange for tours and meetings with Round Rock businesses to include the Chamber CEO, City Manager, Mayor, and City Council, and EDAC members. The specifics and number of invitees will be on a case by case basis dependent upon the circumstances, as determined by the Chamber staff. _____~~

Section 2.03. ~~City's~~ City's Administration Responsibilities. The City agrees to provide qualified and competent staff assigned to the promotion of economic development and the attraction of business and industry to the City. The City agrees to ~~provide the management and administrative services necessary to implement the Program. The City agrees to continue its efforts to provide for the planning and construction of expansions and upgrades to the infrastructure necessary for the Program, including roads, water and wastewater, and related infrastructure needs; perform the services and provide resources necessary to execute and carry out economic development needs brought forward by the Program.~~ The City agrees to supply general support to the Chamber in fulfilling its responsibilities as set forth in Sec. 2.02 above.

Section 2.04. Joint Chamber, TED Corp., and City Responsibilities. The Parties agree that ~~from time to time it will be necessary for all parties to work closely together on~~ or before July 31st of each calendar year during the term of this Agreement they shall jointly prepare a written strategic plan (the "**Strategic Plan**") for the Program, which Strategic Plan shall be for the following three (3) calendar years. The Strategic Plan shall be approved by each of the Parties in the manner determined by their respective legal counsel on or before August 30th of each calendar year during the term of this Agreement. The Parties further agree that from time to time it will be necessary for the Parties to work closely together on items described in the Strategic Plan as well as other special projects. Because each special project will have unique needs, the Parties agree that the division of responsibilities will be mutually determined and agreed upon on a case-by-case basis.

~~ARTICLE III~~
~~FUNDING~~

Section 3.01. Fees. For the services provided by the Chamber in the administration and execution of the Program, the TED Corp. agrees to ~~fund pay to~~ the Chamber ~~\$535,000.00 for the fiscal year beginning October 1, 2015 and ending September 30, 2016, at the ratesum~~ of \$44,583.33 ~~perfor each calendar month during the Term (defined herein) of this Agreement, which amount shall be paid by the TED Corp. to the Chamber on or before the first day of the calendar month beginning January 1, 2017 and on or before the first day of each calendar month thereafter until this Agreement is terminated. The Parties may from time to time, and by mutual written agreement, agree that the City shall pay to the Chamber additional amounts for specific items as may be mutually agreed upon.~~ The Chamber will provide an invoice to the TED Corp. by the first of each month.

Section 3.02. Private Sector Funding. The Chamber agrees to conduct a periodic campaign to seek private sector funding for the purpose of supplementing the funds provided by the TED Corp. ~~This campaign includes the Momentum group and contributions will be restricted in use for the sole purpose of fulfilling the goals outlined in Article II.~~

Section 3.03. Economic Development Opportunity Fund. The Chamber will maintain a reserve fund that provides for operating reserves and an Economic Development Opportunity Fund made up of unused funds from both the TED Corp. and the private sector contributions ~~from Momentum.~~

Section 3.04. Financial Reporting. ~~Each month the Chamber will report a summary of Program revenue and expenses year to date to the EDAC. Each quarter, the Chamber will report the restricted fund balance in the Economic Development Opportunity Fund, which can be used with the recommendations of the EDAC and approved by the Chamber Board of Directors for the restricted use for the Program.~~

Section 3.05 Annual Audit. No later than six months following the end of the ~~Chamber's~~ Chamber's fiscal year, the Chamber agrees to provide to the City and TED Corp. a copy of its annual audit which shall include the Program funds and expenditures. The annual audit shall be prepared by an independent public accountant in accordance with ~~general~~ generally accepted accounting ~~standards~~ principles, consistently applied. The Chamber agrees to permit the audit of these funds and expenditures by the City or its designated auditor.

~~ARTICLE IV~~
~~TERM~~

~~ECONOMIC DEVELOPMENT ADVISORY COMMITTEE~~

Section 4.01. Purpose. ~~The Parties hereby agree that it is in the best interest of each of them to create an advisory committee for the purpose of providing ongoing and permanent oversight to ensure that the goals and objectives of the Program are being met and that the taxpayer dollars are being spent in an efficient and cost effective manner.~~

Section 4.02. Creation. ~~The City and Chamber hereby agree to create such committee to be called the Economic Development Advisory Committee (“EDAC”).~~

Section 4.03. Membership and Organization.

~~(a) **Permanent Members.** The EDAC shall have eight (8) Permanent Members. The City will have four (4) Permanent Members composed of the Mayor, the Mayor Pro tem, the City Manager and a member of city staff designated by the City Manager. The Chamber will have four (4) Permanent Members composed of the Chairperson of the Chamber Board, the immediate Past Chair of the Board, the Chamber President and the Momentum Chair.~~

~~(b) **Non Permanent Members.** The EDAC may have four (4) Non permanent Members. These members shall be appointed by the Permanent Members. There shall be three (3) at large positions and one (1) representing the small business community. Small business is defined as any business with 25 or less employees.~~

~~(c) **Investor Members.** In addition to the aforesaid Permanent and Non permanent Members, the EDAC may provide for an undetermined number of Investor Members representing the highest level investment group of Momentum. Each such individual or entity may name one senior level representative to be an Investor Member by submitting their name in writing to the Chairperson of the EDAC. Investor Members shall be entitled to vote on matters brought before the EDAC.~~

~~(d) **Qualifications.** In addition to the above qualifications, all Non permanent Members and Investor Members are required to be members in good standing of Momentum and must be either residents of or employed within the City’s corporate limits or its extraterritorial jurisdiction. The Non-Permanent and Investor Members shall have an interest in the Chamber and in the economic development of the City. These members are also expected to exhibit a high level of attendance, a willingness to contribute to the discussion of important issues, the ability to help raise funds for the Program, and the knowledge and opinions of a community leader.~~

~~(e) Terms for Non-permanent Members and Investor Members. Permanent members shall serve as long as they hold the position that accords them membership on the EDAC. The City staff member serves at the pleasure of the City Manager and may be replaced at his/her discretion. The Non-Permanent Members and the Investor Members shall serve for a term of two years.~~

~~(f) Officers. The Mayor shall be the chair and presiding officer of the EDAC. The Chamber Chairperson shall be the vice-chair of the EDAC. Other officers and sub-committees shall be appointed at the discretion of the members of the EDAC.~~

~~(g) Ex-officio Members. The Round Rock ISD and the County Commissioners Court may have one representative each to serve as non-voting members.~~

~~(h) Removal. The Permanent Members shall have the right to remove any Non-permanent Member, Investor Member, or Ex-officio Member for good cause. Good cause for removal shall include the unexcused failure to attend three (3) consecutive meetings of the EDAC. The member subject to removal shall have the right to present evidence as to why he/she should not be removed.~~

~~(i) Quorum. A majority of the Permanent, Non-permanent Members and Investor Members shall constitute a quorum for the consideration of matters pertaining to the purposes of the EDAC. The affirmative votes of a majority of the voting members present shall constitute the act of the EDAC.~~

~~(j) Proxy Voting. Proxy voting by any Member shall not be permitted.~~

Section 4.04. Duties. ~~The purpose of the EDAC is to provide for efficient, economical, and effective controls to ensure that the goals and objectives of the Program are being timely met. The duties of the EDAC shall be strictly advisory in nature and it shall have no authority to obligate the City, the TED Corp., or the Chamber in any financial way nor shall the EDAC have the authority to make expenditures of City, or TED Corp. funds. However, the EDAC shall have the authority to make expenditure of Chamber funds in accordance with Chamber policy. The EDAC shall be advisory only and specifically shall have no rule-making or quasi-judicial power. The EDAC is not a department, agency or political subdivision of the City.~~

In addition, responsibilities of the EDAC shall include:

- a) ~~Oversight of strategic plan and program activities;~~
- b) ~~Planning and oversight of Momentum fundraising activities;~~
- c) ~~Oversight of the Economic Opportunity Development Fund; and~~
- d) ~~Maintaining confidentiality of projects~~

Section 4.05. Reporting. ~~The EDAC shall make semi-annual reports to the City Council, the TED Corp. board, and the Chamber Board of the status of the goals and objectives of the Program, including the accomplishments since the last report, and describing ongoing efforts and future plans regarding the Program.~~

Section 4.06. Rules of Procedure. ~~All meetings of the EDAC shall be conducted generally in accordance with Robert's Rules of Order, in its most current revised edition.~~

~~ARTICLE V~~

~~TERM~~

Section 5.01. Term of Agreement. ~~This~~The initial term of this Agreement is effective as of October~~shall be for a three (3) year period beginning on January 1, 2015~~2017, and shall expire on September 30, 2016.~~Regardless of the foregoing, continue in effect until December 31, 2019. Because the Parties anticipate this Agreement and the Program to be a long term multi-year and ongoing relationship among the Parties, subject to annual renewals thereof, each year, while this Agreement is in effect, the Strategic Planning Committee shall determine in their July meeting whether to recommend to the Parties the addition of one (1) year to the current Term of the Agreement. By so doing, the Parties can continually plan for the short and long term success of the Program. The initial Term, together with each additional one (1) year Term approved by the Parties, is defined as the "Term."~~

Section 5.02. Termination or Cancellation. Except as provided below, this Agreement may only be cancelled or terminated upon mutual consent of the Parties. Upon termination as provided herein, all obligations shall cease herein, and the TED Corp. shall only provide funding for expenses actually expended or incurred up to the date of termination; provided however, that the TED Corp. shall not have

an obligation to fund such incurred expenses unless the City and/or the TED Corp. receives the benefit of such expenses. Any and all funds paid to the Chamber in accordance with Article III of this Agreement, which are not used to pay actual expenses prior to the date of termination, shall be returned to the TED Corp. If any party defaults in the performance of this Agreement, or materially breaches any of its provisions, the defaulting party shall have thirty (30) days after delivery to it of written notice of such default within which to cure such default. If the defaulting party fails to cure its default within such period of time, then any non-defaulting party shall have the right without further notice to terminate this Agreement.

ARTICLE ~~IV~~V
MISCELLANEOUS PROVISIONS

Section ~~65~~65.01. Relationship of Parties.- Nothing contained herein shall be deemed or construed to make the City or the TED Corp., the agent, servant, or employee of the Chamber, or to create any partnership, joint venture, or other association between the City or TED Corp. and the Chamber. Alternatively, nothing contained herein shall be deemed or construed to make the Chamber the agent, servant, or employee of the City or TED Corp., or to create any partnership, joint venture, or other association between the Chamber and the City or TED Corp.

Section ~~65~~65.02. Amendment.- This Agreement may not be altered, waived, amended or extended except by an instrument in writing approved by the Round Rock City Council, the TED Corp. Board of Directors and the Board of Directors of the Chamber.

Section ~~65~~65.03. Notice. Any notice required by this Agreement shall be sent to the following:

To the City:

City of Round Rock _____
City Manager _____
221 E. Main St. _____
Round Rock, Texas 78664 _____

With copy to: _____

Stephan L. Sheets _____
City Attorney _____
309 E. Main St. _____
Round Rock, Texas 78664 _____

To the Chamber:

Round Rock Chamber of Commerce
President
212 E. Main St.
Round Rock, Texas 78664

With copy to:

Round Rock Chamber of Commerce
Chair
212 E. Main St.
Round Rock, Texas 78664

and

D. Scott Heselmeyer
Chamber Attorney
211 Round Rock Avenue
Round Rock, Texas 78664

To the TED Corp.

Round Rock Transportation and Economic Development Corporation
President, Board of Directors
221 E. Main St.
Round Rock, Texas 78664

With copy to:

Director of Finance
City of Round Rock
221 E. Main St.
Round Rock, Texas 78664

Section 65.04. Applicable Law. This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Texas. Venue for any proceeding to enforce this Agreement shall be in Williamson County, Texas.

Section 65.05.- Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 65.06. Non-Appropriation. The obligation of the City and/or TED Corp. for payment and any other monetary obligations under this Agreement are each subject to an appropriation and, accordingly, (a) shall constitute a current expense of the City and/or TED Corp. -in the fiscal year to which an obligation applies and (b) shall not constitute an indebtedness of the City and/or TED Corp. within the meaning of any applicable governmental rule. Nothing herein shall constitute a pledge by the City and/or TED Corp. of any funds, other than funds designated pursuant to lawful appropriations from time to time to pay any money or satisfy any other monetary obligation under any provision of this Agreement.

IN WITNESS WHEREOF, of this Agreement is entered into ~~and effective~~ as of the day of ~~September, 2015~~ date first set forth above.

Round Rock Chamber of Commerce _____, **Inc.**

by: _____

_____, its _____

By: _____

Mike Odom, its President

For Chamber, Approved as to form:

D. Scott Heselmeyer, Chamber Attorney

City of Round Rock, Texas

By: _____

Alan McGraw, Mayor

Attest:

Sara White, City Clerk

For City, ~~approved~~Approved as to form:

Stephan L. Sheets, City Attorney

Round Rock Transportation and Economic Development Corporation

By: _____

By: _____
_____**Alan McGraw, President**

For TED Corp., approved as to form:

Stephan L. Sheets, Corporation Attorney