

AGREEMENT BETWEEN THE CITY OF AUSTIN
AND AUSTIN DMO, INC.

This Agreement is entered into between the City of Austin, Texas (“City”), a home rule city located in Travis County, Texas, and Austin DMO, Inc. (“ADMO”), a Texas non-profit corporation doing business as Downtown Austin Alliance in Travis County, Texas.

RECITALS

Whereas, ADMO states that it has a mandate to enhance security and make other improvements within the Austin Downtown Public Improvement District (“P.I.D.”), established pursuant to Texas Local Government Code Chapter 372, Subchapter A, and described on Exhibit B hereto and the City will collect a specially assessed tax to be used for such purposes; and

Whereas, the City has special expertise and infrastructure in the providing of security within the City; and

Whereas, City and ADMO agree that City will administer and conduct the operation of the Austin Downtown Rangers program (“Rangers”), a program established by prior agreements between City and ADMO, and

Now, therefore, City and ADMO agree as follows:

I. PERSONNEL

1.1 City agrees that it is responsible for the salary and benefits of the Ranger Supervisor during the term of this Agreement.

1.1.1 Should there be a vacancy for the Supervisor position, City will post, publish or advertise the position and distribute job application information, collect applications and perform initial screening pursuant to City’s police department guidelines.

1.1.2 Applicants for the Supervisor position who meet City’s police department guidelines will be interviewed within a reasonable time after preliminary qualification to make recommendations for the position. The interviewing committee shall be composed of a representative from ADMO; a representative designated by the Austin Convention and Visitors Bureau (“ACVB”); and the City’s police department DTAC Support Lieutenant or his designee. The committee’s final recommendations shall be transmitted to the City’s Chief of Police who shall make the final determination.

1.1.3 In the event of a vacancy in the Supervisor position, a Lead Ranger shall be selected by the City's police department DTAC Support Lieutenant. The Lead Ranger, in consultation with the DTAC Support Lieutenant, shall have the day-to-day responsibility for the operations of the Rangers, until the Ranger Supervisor is hired.

1.2 ADMO's payment for the Ranger program shall be subject to City's funding of ADMO and engagement of ADMO to provide P.I.D. management services. Subject to the foregoing, for the term of this agreement, ADMO shall reimburse City, upon receipt of invoice as specified in Exhibit A attached hereto. Payment shall be made in quarterly installments upon receipt of an invoice detailing the salary and benefits of the Rangers paid by the City in the previous quarter. The amounts specified in Exhibit A represent the salary and benefit amounts for a number of full-time equivalent personnel agreed upon by the Chief of Police and ADMO, and approved by the City Council. The term "full-time equivalent personnel" means one full-time person or two half-time persons who are employed as Rangers. City and ADMO agree that from time-to-time the number of personnel may vary because of changes in business needs and that upon agreement between City and ADMO the combination of full-time and part-time personnel serving as full-time equivalent personnel may be changed to meet business needs. Nothing in this Agreement precludes the City from providing salaries and benefits at City expense for additional Rangers. Nothing in this Agreement shall preclude the amount specified on exhibit A hereto from being increased, at ADMO's discretion, as additional Rangers are added to the Ranger program, subject to mutual written agreement of City and ADMO.

1.2.1 City shall pay Rangers on a bi-monthly basis and shall seek reimbursement from ADMO by presentment of its invoice to ADMO's designated personnel, in accordance with Section 1.2 above. City's invoice for the prior month's salaries and benefits shall be presented to ADMO not later than the fifteenth of the following month or as soon thereafter as City's procedures permit. ADMO shall promptly reimburse City the invoiced amount from P.I.D. funds.

1.2.2 It is agreed that City's invoice to ADMO shall include a listing of each Ranger's total work hours for the work period; a designation of the hours by type and the costs associated with each type; and separate listings for FICA, insurance and other pay benefits.

1.2.3 In the event ADMO seeks clarification of City's invoices presented to ADMO, ADMO shall notify City's designated representative for such clarification. City shall make its best efforts to respond to ADMO with clarification within fourteen calendar days after City's designated representative's receipt of ADMO's clarification request.

1.3 Salaries and benefits for Rangers will be determined by City's human resources department consistent with City's police department practices, procedures and policies.

1.4 The ADMO may provide additional compensation to the Ranger Supervisor above and beyond his or her City salary and benefits.

1.5 In the event there is a vacancy for a Ranger position, City's police department DTAC Support Lieutenant shall make the final selection.

1.5.1 City shall be responsible for posting, publishing or advertising of the position, distributing job application materials and collecting applications in accordance with City's police department policies and procedures.

1.5.2 Priority will be given to current Austin police department cadet applicants who have successfully completed the cadet employment prerequisites for City's police department. It is, however, ADMO's goal that the cadets not comprise more than 50% of the Ranger full-time equivalent personnel at any given time.

1.5.3 Applicants, other than Austin police department cadet applicants, shall meet, at a minimum, the qualifications and standards of City's and City's police department policies and procedures. Applicants shall be advised that employment as a Ranger is an "at will" position and contingent on yearly funding of the position.

1.5.4 Before making the final selection, City's police department DTAC Support Lieutenant or his designee shall conduct interviews of each applicant who meets minimum qualifications at a time to be determined by the Lieutenant. The Lieutenant or his designee shall invite a representative from ACVB and a representative from ADMO to attend those interviews and advise the Lieutenant during the interview process.

II. TRAINING

2.1 At City's expense, City's police department shall provide training of Rangers in the use of radios, radio communications and cardio-pulmonary resuscitation (CPR).

2.2 In addition, the Ranger Supervisor shall train the Rangers in accordance with Section 7.9.

III. SERVICE AREA

3.1 The Rangers shall serve the downtown P.I.D. Service Area which is set forth as Exhibit B, attached hereto and incorporated herein. In no event shall Rangers serve outside the boundaries of the Service Area. .

IV. OFFICES

4.1 The Rangers shall occupy such offices located at a site mutually agreeable to City and ADMO.

4.2 ADMO shall fund and be responsible for office rent, utilities, maintenance, telephone service, furniture and office equipment, and office supplies for the Ranger offices, up to the amounts shown in Exhibit A attached hereto.

V. EQUIPMENT AND UNIFORMS

5.1 ADMO shall furnish and maintain all equipment reasonably necessary for the use of the Rangers and Ranger Supervisor. Nothing in the Agreement, however, precludes City from furnishing equipment to the Rangers or Ranger Supervisor.

5.1.1 All equipment and supplies furnished by ADMO for the Ranger program shall be used only by the Ranger program for P.I.D. purposes.

5.1.2 City and ADMO shall jointly determine the need for particular equipment.

5.2 Subject to the provisions of Section 7.3, ADMO shall furnish and maintain all uniforms for use by the Rangers and Ranger Supervisor.

5.2.1 ADMO and City shall mutually agree on a uniform design, including replacement designs for new uniforms.

VI. ASSIGNMENT OF RANGERS

6.1 For the purposes of the Texas Tort Claims Act, the Ranger Supervisor and the Rangers shall be employees of the City and shall be subject to the City's and City's police department personnel policies and procedures, City's police department special and General Orders and Standard Operating Procedures for Rangers. It is expressly understood that the Rangers are not commissioned police officers and shall take no action as police officers.

6.2 City's police department DTAC Support Lieutenant shall have command and control authority and, in consultation with ADMO's Executive Director or his designees, shall be responsible for assignment of Rangers including, but not limited to, routes and duty hours within the Service Area as set forth in Exhibit B.

6.2.1 From time-to-time, ADMO may request the presence of Rangers at special events. These requests shall be forwarded to the DTAC Support Lieutenant through the Ranger Supervisor. The Support Lieutenant shall determine whether the use of Rangers at these events is reasonable and appropriate. The decision to use the Rangers for Special Events will be made on a case-by-case basis.

VII. DUTIES OF RANGER SUPERVISOR

7.1 The Ranger Supervisor shall be responsible for and shall maintain the inventory of Ranger equipment and inventory of uniforms; shall consult with and obtain from the ACVB those points of interest in the service area and questions asked by visitors to the service area; and shall train the Rangers in the points of interest and questions asked by visitors; and other duties as may be assigned from time-to-time.

7.2 The Ranger Supervisor is responsible for the assignment and supervision of interns and volunteers engaged in office support or research activities.

7.3 The Ranger Supervisor shall advise ADMO of the quantities of uniforms needed. The Ranger Supervisor shall give ADMO an estimate of these needs and associated costs by March 15 of each year for the period covering the upcoming ADMO fiscal year, which starts on May 1 and runs through April 30.

7.4 The Ranger Supervisor shall prepare and submit annual and monthly reports on the performance of the Ranger program to ADMO. The dates of submission, content, and format of the report shall be determined by the Ranger Supervisor and the Executive Director of the ADMO.

7.4.1 City's police department DTAC Support Lieutenant or his 'or her designee may assist ADMO in the release of quarterly reports to the news media, regarding the Ranger program.

7.5 The Ranger Supervisor shall meet with the Executive Director of ADMO at such times as they deem appropriate to report on status of the program and delivery of services.

7.6 The Ranger Supervisor shall meet with the City's police department DTAC Support Lieutenant or his or her designee at such times as they deem appropriate to report on the status of the program and delivery of services.

7.7 The Ranger Supervisor and/or City's police department DTAC Support Lieutenant, or his or her designee, shall attend meetings of ADMO Security Committee or ADMO Board of Directors' meetings upon request by the Executive Director of ADMO

7.8 The Ranger Supervisor will assist the ADMO in obtaining crime statistics for the Service Area. Requests for crime statistic information should be forwarded by the Ranger Supervisor to the DTAC Support Lieutenant. The Support Lieutenant will ensure that the information request from the ADMO will be processed according to Austin Police Department policy. The Support Lieutenant will ensure that a response to such request will be made in a timely and reasonable manner.

7.9 The Ranger Supervisor, with City's police department approval, shall provide training to Rangers on Ranger procedures, including reporting of encounters; personal safety while walking or operating a bicycle; and bicycle safety.

VIII. MODIFICATION OF PROGRAM

8.1 City and ADMO each has the right to request changes in the Ranger program during the term of this Agreement. Any changes must be mutually agreeable, reduced to writing, and signed by each party to be effective.

IX. TERM, RENEWAL, TERMINATION

9.1 This Agreement as properly amended or modified from time-to-time shall automatically renew annually on May 1 unless terminated by either party in accordance with other provisions of this Agreement.

9.1.2 The term of this Agreement is from May 1, 2009, until April 30, 2010, subject to and contingent upon availability to ADMO of current P.I.D. revenue funds.

9.2 Either party to this Agreement may terminate it by giving 30 days written notice to the other party.

X. NOTICE

10.1 All notices sent pursuant to this Agreement shall be in writing and may be hand delivered or mailed by certified mail, postage prepaid, return receipt requested.

10.1.1 When notices are hand delivered, notice shall be deemed effective upon delivery to the designated representative of the party to whom the notice is addressed.

10.1.2 When notices are mailed, notice shall be deemed effective three (3) days after deposit in a United States mail box or at a U.S. post office.

10.2 Either party may change its address for notice under this Agreement by providing a notice of the change of address in compliance with paragraph 10.3 of this Agreement.

10.3 Notices given pursuant to this Agreement shall be delivered or mailed to the City's and ADMO's designee at the following addresses:

Chief of Police
Austin Police Department
715 East 8th Street
Austin, Texas 78701

Executive Director
Austin DMO, Inc.
211 East 7th Street, Ste. 100-L
Austin, Texas 78701

XI. LIABILITY AND RESPONSIBILITY FOR LOSSES

11.1 ADMO expressly understands that City is self insured and subject to the Texas Tort Claims Act. City shall not be liable for any training, claims, damages and attorney fees arising from the negligent or illegal acts of ADMO employees, interns or volunteers in relation to the operation of the Ranger program. ADMO shall not be liable for any training, claims, damages and attorney fees arising from the negligent or illegal acts of City employees, interns or volunteers in relation to the operation of the Ranger program.

11.2 If both ADMO and City are liable for any training, claims, damages and attorney fees arising from the negligent or illegal acts of City and ADMO employees, interns or volunteers in relation to the operation of the Ranger program, City and ADMO shall be liable for the portion of the training, claims, damages and attorney fees that arise from the negligent or illegal acts of the party as determined by the court adjudicating the matter or as agreed in any settlement.

XII. WAIVER

12.1 The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or different provision of the Agreement, unless stipulated by the party not in breach of this Agreement.

XIII. TEXAS LAW TO APPLY

13.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created herein are performable in Travis County, Texas.

XIV. LEGAL CONSTRUCTION

14.1 If, for any reason, any one or more of the paragraphs or sentences of this Agreement are held invalid by a court of competent jurisdiction, such holding shall not affect, impair or invalidate the remaining sentences or paragraphs of this Agreement, but shall be confined to its operation to the specific sections, sentences, clauses or parts of this Agreement held invalid, and the invalidity of any section, sentence, clause, or parts

this Agreement in any one or more instances shall not affect or prejudice in any way the validity of the Agreement in any other instance.

XV. ENTIRE AGREEMENT

15.1 This Agreement supersedes any and all other agreements, either oral or written, between ADMO and City with respect to the subject matter of this Agreement and contains all of the covenants and agreements between ADMO and City with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party which are not embodied herein and that no other agreements, statement, or promise not contained in this Agreement shall be valid or binding. No modifications concerning this Agreement shall be of any force or effect, except a subsequent amendment in writing signed by the parties, as set forth in paragraph 8.1 above.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to it and their respective legal representatives, successors and assigns where permitted by this Agreement.

15.3 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

THE CITY OF AUSTIN

By:_____ Date:_____

AUSTIN DMO, INC, DBA DOWNTOWN AUSTIN ALLIANCE

By:_____ Date:_____