

**Agreement
City of Austin
Circuit Events Local Organizing Committee**

The City of Austin, a home-rule municipal corporation located in Hays, Travis, and Williamson Counties, State of Texas, (City) acting through its duly authorized agent the City Manager, and Circuit Events Local Organizing Committee, a Texas non-profit corporation, (CELOC) acting through its duly authorized agent or officer, enter into this Agreement (Agreement) on June 23, 2011, upon the terms and conditions set forth below.

RECITALS:

1. During the 81st Legislative Session, the Texas Legislature appropriated the amount of \$25,000,000 for the state fiscal biennium beginning September 1, 2009 for the purpose of attracting and securing eligible events pursuant to the terms of Tex. Rev. Civ. Stat. Art 5190.14 § 5A, the Major Events Trust Fund (as amended, the “Act”) and related rules at 34 Tex. Admin. Code Chapter 2 Subchapter A (Rules).
2. The Act at 5A(r) and (s) authorizes the Texas Comptroller of Public Accounts (Comptroller or State) to enter into an interlocal agreement with a city that contains a site selected by a site selection organization for one or more events (Endorsing Municipality), such as the City of Austin, for purposes of establishing a Major Events Trust Fund (METF) that makes City and State funds available up to one year in advance of an event to attract and secure the Formula One automobile race (Event) for the State of Texas.
3. The Act at 5A(r) and (s) authorizes the interlocal agreement to have a term of up to ten years, with funds in the METF held from year-to-year for future Events.
4. The Act at 5A(b) and (b-1) authorizes an Endorsing Municipality or a local organizing committee (Local Organizing Committee) to request each year that the Comptroller estimate the incremental increases in certain local taxes (Local Increment) and state taxes (State Increment) that will be attributable to the Event.
5. The Act at 5A(d) authorizes the City to fund the METF in an amount up to the estimated Local Increment and, under this Agreement, CELOC, as the City’s exclusive designee, has agreed and committed to fund the Local Increment on behalf of the City; the Act at 5A(f) authorizes the state to fund the METF with \$6.25 for each dollar of estimated Local Increment, but not more than the estimated State Increment.
6. The Act at 5A(d-1) and (e) authorizes the City to determine whether the Local Increment will come from sales, use, and mixed beverage tax collected and retained by the State; hotel occupancy tax collected and remitted by the City; surcharges; any other source; or any combination of sources and, under this Agreement, CELOC has agreed and committed to fund the Local Increment on behalf of the City.

7. If CELOC does not fund the Local Increment on behalf of the City, the City may terminate (i) this Agreement, under Section 26 below, and (ii) the Interlocal.
8. The Act at 5A(h) authorizes disbursements from the METF to the City or its designee and State to fulfill Event-related obligations and at 5A(k) authorizes disbursements to CELOC as the “Local Organizing Committee” on the prior approval of the City.
9. On June 1, 2011, the City received a letter from the Event “Site Selection Organization”, confirming that, after an international highly competitive selection process, the Site Selection Organization has chosen Austin as the sole location for the Event from 2012 to 2021.
10. On June 3, 2011, CELOC incorporated as a Texas non-profit corporation; and, per its Articles of Incorporation, its purpose includes assisting with the organization, administration, management, promotion, facilitation, and operation related to hosting the Event and promoting the public interest of the City of Austin, Travis County, and the State of Texas.
11. On June 6, 2011, the CELOC Board of Directors voted unanimously to request, and has submitted a formal letter requesting, that the City (i) act as the Endorsing Municipality for purposes of establishing a Major Events Trust Fund for the Event, and (ii) appoint CELOC to submit a request to the Comptroller to determine the incremental increase in the receipts of various taxes.
12. On June 23, 2011, the City of Austin entered into an interlocal agreement (Interlocal) with the State of Texas as an Endorsing Municipality, requesting establishment of the METF and referencing this document.

AGREEMENT

13. Agreement Purpose.

The purpose of this Agreement is to establish the parties’ authority, rights, and responsibilities with respect to the application to the Texas Comptroller of Public Accounts (Comptroller) for creation of a Major Events Trust Fund (METF), the funding of the METF and disbursements from that account for the Event and upon termination. This Agreement does not constitute City approval for any permits or licenses that may be needed by CELOC or any other entity to hold this event.

14. Term.

If the Comptroller approves creation of the METF for the Event, this Agreement shall remain in effect until June 22, 2012, with automatic one-year renewals, terminating during the final year on August 31, 2021 (Term), unless terminated sooner.

15. City Authority.

The City has the authority to enter into this Agreement in accordance with the terms of the Act and pursuant to the approval of City Council on June 23, 2011.

16. City Responsibilities.

A. City responsibilities include:

- (1) Enter into an interlocal agreement with the Comptroller for purposes of requesting participation in the trust fund program.
- (2) Authorize CELOC, and, if requested by CELOC, confirm the authority of CELOC as the City's exclusive Designee, to (i) contribute the Local Increment on the City's behalf, (ii) prepare and submit reimbursement request letters to the Comptroller, (iii) receive funds from the METF, and (iv) make annual METF requests to the Comptroller under 34 TAC Section 2.102(a).
- (3) Coordinate, cooperate with, and assist CELOC in the submission of invoices, receipts, and other documents evidencing eligible expenses, all as reasonably requested by CELOC, to obtain reimbursement of CELOC's eligible expenses from the METF, including providing prior approval per the Act at 5A(k) and for obligations under 5A(h). Parties acknowledge that the State is the final determiner of what constitute an "eligible expense" for reimbursement purposes.

B. Per A.(2), in carrying out the duties in this Agreement, the City may, and does hereby, designate and authorize CELOC to act as its exclusive designee and "Local Organizing Committee" for the Event and to perform those certain duties and tasks on behalf of the City as specified in Section 18 below and any such other duties as subsequently agreed by the City and CELOC in writing.

17. CELOC Authority.

CELOC is appointed by the City, and has the authority to fulfill certain responsibilities on the City's behalf, as the City's exclusive "Designee" under the Interlocal at Section 15, and as further authorized and described at Section 18.

18. CELOC Responsibilities and Authority.

A. Year One Responsibilities and Authority.

- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will fulfill the following responsibilities and obligations on behalf of the City:
 - (a) Make a request to the Comptroller under 34 TAC Section 2.102(a), including requesting that the Comptroller make a Local and State Increment determination per section 5A(b) of the Act (Trust Fund

Estimate), with such request made not earlier than one year, but not later than 11 months prior to the next Event.

- (b) Commission, pay for or provide for payment of, and submit to the Comptroller an Economic Impact Study (EIS) assessing estimated tax increment for the next year's Event.
 - (c) Pay or provide for payment of the City's initial estimated Local Increment contribution, up to the amount of estimated Local Increment determined by the Comptroller, but not to exceed \$4 million.
 - (d) Enter into an Event Support Contract with the Site Selection Organization per Rule 2.100(7)(B).
 - (e) Submit to the Comptroller documentation of the Site Selection Organization's "highly competitive selection process" per Rule 2.100(6).
 - (f) Provide and fund a performance bond or other financial or performance assurance (Assurance) in a form and with an institution acceptable to the State insuring the State's Increment Funding if the Event is not held in the State (within the time permitted) after a disbursement of the State Increment has been made.
 - (g) Prepare and submit all disbursement request letters for the Event or the METF to the Comptroller, including required documentation and backup information requested by the Comptroller.
- (2) CELOC will have one City representative to the CELOC board. This representative will be a non-voting, ex-officio member.
 - (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.
 - (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
 - (5) "Year One" is described as the period between establishment of the METF and 90 days after the first Event occurrence. Provided, however, the definitions of Year One, Future Year and Final Year in this Agreement are for administrative purposes only and do not preclude or prohibit CELOC from submitting and receiving disbursements of eligible expenses from one such year or period during a different year or period or otherwise limit CELOC ability or authority to submit for and receive distributions from the METF under this Agreement in accordance with the rules for these distributions established by the Comptroller.

B. Annual Responsibilities and Authority for Future Events.

- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will, fulfill the following responsibilities and obligations on behalf of the City:
 - (a) Make a request to the Comptroller under 34 TAC Section 2.102(a), including requesting that the Comptroller make a Local and State Increment determination per section 5A(b) of the Act (Trust Fund

Estimate), with such request made not earlier than one year, but not later than 11 months prior to the next Event.

- (b) Commission, pay for, and submit to the Comptroller an EIS assessing estimated tax increment for the next year's Event, to be submitted on or before 20 days after the previous Event (e.g., an EIS for the 2013 race will be submitted 20 days after the 2012 race).
- (c) Commission, fund or provide funding for, and submit to the Comptroller an EIS reassessing estimated tax increment for the previous event, to be submitted on or before 9 months following each Event per the Act at Section 5A(w).
- (d) Pay or provide for payment of the City's Local Increment contribution up to the amount of estimated Local Increment determined by the Comptroller.
- (e) Provide and fund the Assurance with an institution and on terms acceptable to the State insuring the State Increment if the event is not held in the State (within the time permitted) after a disbursement of the State Increment has been made. The costs to provide the Assurance may be paid out of the Funds as an eligible expense.
- (f) As the City's Designee or as required by the Comptroller, submit information, including audited statements, attendance figures, and other related information as described in the Act 5A(i).
- (g) Prepare and submit all disbursement request letters for the Event or the METF to the Comptroller, including required documentation and backup information requested by the Comptroller.
- (2) CELOC will maintain one City representative on the CELOC board. This representative will be a non-voting ex-officio member.
- (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.
- (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
- (5) The annual period for each "Future Year" is described generally as the period between the 91st day after one Event and 90 days after the next Event.

C. Final Year Responsibilities and Authority.

- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will, fulfill the following responsibilities and obligations on behalf of the City:
 - (a) Commission, pay for, or provide for payment of, and submit to the Comptroller an EIS assessing the final Event, if any occurs during the Final Year period, to be submitted on or before 9 months following the final Event.

- (b) As the City's Designee or as required by the Comptroller, submit information, including audited statements, attendance figures, and other related information as described in the Act 5A(i).
- (c) Prepare and submit all disbursement request letters for the Event to the Comptroller, including requested documentation and backup information requested by the Comptroller.
- (2) CELOC will maintain one City representative on the CELOC board. This member will be a non-voting, ex-officio member.
- (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.
- (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
- (5) The Final Year is described generally as the period between the 91st day after the penultimate Event and 90 days after the last Event.

D. Modifications of obligations and responsibilities.

CELOC's obligations and responsibilities under this Section 18, and the time periods for compliance or performance, as well as the distributions under Sections 21, 22, and 23 may be modified or amended with notice to the Comptroller and the City. Further, the City may ratify any non-compliant or untimely performance by CELOC and upon such ratification, the compliance or performance will be considered and deemed compliant, performed, cured and timely. Such ratification is only effective if it is in writing.

19. Funding of Local Increment Year One and Future Years.

- A. The City authorizes and requests and, by its authorized signature below, CELOC agrees to fulfill the following obligations and responsibilities on behalf of the City: payment of the City's Local Increment contributions for the Event in Year One and the Event in Future Years, in amounts up to the estimated anticipated local incremental tax revenue impact for each such Event as certified by the Comptroller (Local Increment).
- B. Per the Interlocal Agreement, the Local Increment will be matched by the State in a ratio of 1:6.25, but currently for Year One the State match may not exceed the smaller of the estimated State Increment or \$25 million.

20. INTENTIONALLY LEFT BLANK FOR EXPANSION.

21. Disbursements in Year One.

- A. The City authorizes and approves for disbursement from the METF in the following order of priority:
 - (1) To CELOC, for eligible expenses directly related to the costs of the Assurance.

- (2) To the Site Selection Organization, payment for all or part of the Event service fee, in an amount not to exceed \$25,000,000.
- (3) To CELOC, in payment of eligible expenses, including the EIS for the Event.

B. No disbursement may be made before proof of Assurance is provided to City and State.

22. Disbursements in Future Years.

A. In the period between Year One and termination of this Agreement, the City approves for disbursement from the METF in the following order of priority:

- (1) To CELOC, for eligible expenses directly related to the costs of the Assurance.
- (2) To the Site Selection Organization, payment for all or part of the Event service fee in advance of the Event, in an amount not to exceed \$25,000,000.
- (3) To CELOC, for eligible expenses related to the Economic Impact Study(ies).
- (4) To CELOC, for eligible expenses.

B. No disbursement may be made before proof of Assurance is provided to City and State.

23. Disbursements After Final Year.

A. The City approves for disbursement from the METF after the final Event, in the following order of priority:

- (1) To the State of Texas, State reimbursement per the Act at 5A(t), in an amount proportionate to the State's initial appropriated contribution to the fund, but not to exceed \$25,000,000.
- (2) To the Local Organizing Committee, for eligible expenses related to the Economic Impact Study.
- (3) To CELOC, for all eligible expenses.
- (4) Any remaining funds shall be disbursed pro-rata per the Act at 5A(m) to each entity contributing such funds, with CELOC receiving funds it contributed on behalf of the City as the City's designee.

B. The Assurance provided by CELOC must remain in effect until the Comptroller has confirmed all disbursements have been properly completed and any obligation to the METF is released.

24. Disbursements Must Be Eligible Expenses.

All disbursements from the METF must constitute eligible expenses, as determined by the State, in accordance with the Act at 5A(h) and Rule 2.104(a).

25. Fund Disbursement Upon Early Termination.

Early termination of this Agreement triggers reimbursement of funds on hand to the party or parties contributing such funds, but only after eligible expenses have been disbursed for applicable Events; per the Act at 5A(m), with CELOC receiving funds contributed on behalf of the City as City's designee.

26. Termination With Cause.

In the event of a default by a party, the other party shall have the right to terminate the Agreement for cause, but only after written notice of such default is delivered to the party in default via certified mail. The notice shall be effective thirty (30) days, unless otherwise specified or the default is cured as provided below, after the date of delivery of such notice. During this time period, the party alleged to be in default shall have the right to and may cure the event of default or may provide evidence sufficient to prove to the other party's reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the party alleging the default. Evidence may include an opinion from the Comptroller regarding whether or not the alleged default is material to compliance with the Act. Each party's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

27. Termination.

- A. Subject to and following the 30 day notice and opportunity to cure described in Section 26, there must also be 90 days written notice of intent to terminate delivered to the State and the other party pursuant to this Section, with copy to the State (for a total 120 day notice period).
- B. This Agreement may be terminated upon occurrence of any of the following events:
 - (1) Termination of the City's Interlocal Agreement with the State of Texas.
 - (2) The Event fails to meet the Performance Measures set out below in 27.C.
- C. Performance measures are:
 - (1) The occurrence of an annual Event within the time permitted in the Act at 5A(s) or otherwise approved by the State.
 - (2) City and CELOC, respectively, meet all their designated responsibilities as defined in Sections 16 and 18.
 - (3) CELOC timely deposits, or causes the deposit of, each Local Contribution.

28. Repeal or Modification of the Act.

This Agreement expressly contemplates its effectiveness under the Act as currently in effect. Should the Act be repealed or modified in such a manner that the Event no longer qualifies under the provisions of the Act, this Agreement shall become voidable by either party on ninety (90) days written notice to the other party and the Comptroller.

29. Jurisdiction and Venue.

The parties agree that this Agreement is governed by the laws of the State of Texas and that venue for a dispute arising from this Agreement shall be in Austin, Travis County, Texas.

30. Severability.

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

31. Notices.

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be addressed to the person designated for receipt below. Legal notices shall be sent postage prepaid and Return Receipt Requested. Other notices and routine communications may be delivered by any other means (fax, e-mail, courier). These notices and communications shall be deemed delivered upon receipt of a successful fax, e-mail, or courier confirmation report by the addressee; provided, that the notice is specifically directed to the attention of the person designated for receipt of notices to City or CELOC. Notice shall be addressed as follows:

To City:
City Manager
301 W. 2nd St.
Austin, TX 78701

With copy to:
City Attorney
Law Department 301 West 2nd St,
Austin, TX 78701

To CELOC:
Attn: Chairman
100 Congress Avenue, Suite 1350
Austin, TX 78701-2744

With copy to:
Richard T. Suttle, Jr.
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, TX 78701-2744

32. Assignment.

A party to this Agreement may not assign or transfer its interests under this Agreement except with the written consent of the other party to this Agreement.

33. Amendment.

This Agreement may not be amended in whole or in part except in a written amendment executed by all parties to this Agreement, with copy to the State.

34. Survival of Obligations.

All provisions of this Agreement that impose continuing obligations on the parties shall survive the expiration or termination of this Agreement.

35. Business Days.

Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day (i.e., Saturday, Sunday or a holiday recognized by the U.S. federal government or the State of Texas), then such period or date will be extended until the immediately following business day.

36. Limited Indemnity.

THE CELOC AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY REGARDING THE CITY OBLIGATIONS AND RESPONSIBILITIES THAT THE CELOC IS UNDERTAKING ON THE CITY'S BEHALF AS ITS EXCLUSIVE DESIGNEE AS SET OUT IN THIS AGREEMENT AND THE INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE TEXAS COMPTROLLER.

TO THE EXTENT ALLOWABLE BY LAW, CELOC SHALL ALSO DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES AND COURT COSTS ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CITY, OR ANY AGENT OR EMPLOYEE OF THE CITY OR CELOC IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. CITY SHALL COORDINATE ITS DEFENSE WITH THE CELOC AS REQUESTED BY THE CELOC.

THIS SECTION IS NOT INTENDED AND SHALL NOT BE CONSTRUED TO REQUIRE CELOC TO INDEMNIFY OR HOLD HARMLESS CITY FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR ITS EMPLOYEES, OR FROM DAILY

**OPERATIONAL EXPENSES IN EXCESS OF SERVICES BILLED IN THE
NORMAL COURSE OF BUSINESS.**

37. No Implied Waiver.

No waiver or consent, express or implied, by any party to or of any breach or default by any party in the performance by such party of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party of the same or any other obligations of such party under this Agreement. Failure on the part of a party to complain of any act of any party or to declare any party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights under this Agreement until the applicable statute of limitations period has run.

EXECUTED on the ____ day of _____, 2011, in Austin, Travis County, Texas.

CITY OF AUSTIN, TEXAS

By: _____

Name: Marc A. Ott

Title: City Manager

Date: _____

CIRCUIT EVENTS LOCAL ORGANIZING COMMITTEE

By: _____

Name: _____

Title: _____

Date: _____