

MAJOR EVENTS TRUST FUND AGREEMENT

THIS MAJOR EVENTS TRUST FUND AGREEMENT ("Agreement") is entered into by and among the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("Comptroller") and the CITY OF AUSTIN ("City").

RECITALS

1. This Agreement is an interlocal agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791, Texas Government Code.
2. During the 81st Legislative Session, the Texas Legislature appropriated the amount of \$25,000,000.00 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 (as amended, the "Act").
3. The Act authorizes Comptroller to enter into an agreement with an Endorsing Municipality, such as City, for the purposes of establishing the Formula 1 Racing Major Events Trust Fund ("Formula 1 Major Events Trust Fund" or "fund") to attract and secure a Formula 1 automobile race for the State of Texas.
4. City as an Endorsing Municipality has entered into an agreement with Circuit Events Local Organizing Committee ("CELOC") dated June ~~23~~, 29, 2011 ("Contract"), relating to holding a Formula 1 automobile race and related activities in each year during the term of this Agreement, for each such occurrence (the "Event"), beginning in calendar year 2012 ("2012 Event") and future years in the market area determined by Comptroller pursuant to the Act, and establishing CELOC as the City's exclusive designee for certain purposes.
5. City ~~has~~ requested Comptroller to initiate and establish the Formula 1 Major Events Trust Fund ~~under the Act at 5A(e)~~ for the 2012 Event and for additional Formula 1 automobile races City intends to host in future years ("Future Events").
6. In accordance with subsection (b) of the Act, the Comptroller has determined on _____ that the 2012 Event will result in an incremental increase in receipts to the state from taxes imposed under Chapters 151, 152, 156, and 183, Tax Code and Title 5, Alcoholic Beverage Code ("State Increment") of _____ and an incremental increase in sales and use tax, mixed beverage tax, and hotel occupancy tax imposed by the City ("Local Increment") of _____.
7. Because the sum of the State Increment and Local Increment for the 2012 Event is greater than \$15,000,000.00, the Act provides that City or its designee may remit an amount not to exceed the amount of the Local Increment to Comptroller for deposit into the Formula 1 Major Events Trust Fund in advance of the 2012 Event, and the Comptroller may deposit the amount of appropriated funds determined under subsection (f) of the Act ("State Contribution").
8. City has authorized and desires that City's designee herein below ~~to~~ deposit an amount not in excess of the Local Increment and have the Comptroller deposit the State Contribution into the

Formula 1 Major Events Trust Fund in advance of the 2012 Event for the purpose of attracting and securing the 2012 Event.

9. The parties acknowledge and agree that City will solely and exclusively utilize the Local Organizing Committee as its designee to provide the Local Increment, and that this Agreement does not affect Comptroller's responsibility to provide City's tax revenues to the City. This agreement does not require the expenditure of City funds into the Major Events Trust Fund. To provide funds for Future Events, City has requested that ~~City's~~ the Local Organizing Committee as its designee have the right, at the conclusion of the 2012 Event and all Future Events, to submit additional amounts to the Comptroller for the purpose of replenishing the Formula 1 Major Events Trust Fund ~~in accordance with the Act. The parties acknowledge and agree that City will solely and exclusively utilize a designee named herein to provide the Local Increment.~~

10. The execution of this Agreement is one of the contingencies that must be satisfied pursuant to Art. IX, Sec. 17.58 of the General Appropriations Act, 81st Legislative Session, ("81st GAA") in order for the State Contribution to be transferred from the State's General Revenue Fund to the Formula 1 Major Events Trust Fund for the 2012 Event; and no further Legislative appropriation will be required thereafter in connection with advance funding of the 2012 Event and Future Events under this Agreement.

11. On June ~~23, 29~~, 2011, City adopted a resolution authorizing negotiation and execution of this Agreement.

AGREEMENT

Recognizing the importance of working cooperatively to attract a Formula 1 automobile race to the Austin area, Comptroller and City hereby agree as follows:

Section 1. Creation of Trust Fund. The Formula 1 Major Events Trust Fund is created outside the Texas State Treasury.

Section 2. Purpose of Agreement and Use of Funds. The purpose of this Agreement and the Formula 1 Major Events Trust Fund is to provide financial assistance to City in attracting and securing the 2012 Event and Future Events. Funds provided under this Agreement may be drawn down by ~~the~~ City's designee and used only for such purpose and for activities that are eligible in accordance with the Act, which may include the payment of a service fee necessary for securing the 2012 Event and Future Events. At no time shall the State Contribution for the 2012 Event or any Future Event ever exceed \$25,000,000.00 for disbursements in advance of a Future Event.

Section 3. Duties and Responsibilities for the 2012 Event. No later than 30 days after the date of this Agreement, City's designee shall remit an amount equal to the lesser of the Local Increment or \$4,000,000.00 (the amount remitted being the "Local Contribution") to the Comptroller. Upon receipt of the Local Contribution and verification by the Comptroller that all contingencies in the 81st GAA have been satisfied, Comptroller shall transfer the Local Contribution and the State Contribution into the Formula 1 Major Events Trust Fund for use by City's designee in accordance with this Agreement, ~~the Contract~~ and any related agreements, and the Act. Funds remaining in the Formula 1 Major Events Trust Fund at the conclusion of the 2012 Event shall remain in the fund for

the purpose of paying the cost of securing a Future Event and for paying the cost of activities that are eligible in accordance with the Act until the expiration or termination of this Agreement. Neither City nor City's designee shall remit amounts in excess of the Local Contribution for deposit into the Formula 1 Major Events Trust Fund without written permission of the Comptroller.

Section 4. Transactions for Future Events, Years Two through Ten. City's designee and Comptroller, as applicable, have the following duties and responsibilities for Future Events:

(a) Within 30 days after the conclusion of the 2012 Event and all Future Events, City's designee may remit to the Comptroller an amount not to exceed the most recently determined Local Contribution.

(b) Upon receipt from City's designee of an amount under subsection 4(a) of this Agreement, Comptroller shall deposit into the Formula 1 Major Events Trust Fund the amount received under subsection 4(a) and the amount of state funds determined under subsection (f) of the Act.

(c) City's designee may submit a request to Comptroller under 34 TAC Section 2.102(a) regarding a Future Event not earlier than one (1) year and not later than ~~eleven~~^{three} (11) months before the date of the Future Event; provided, however, should the date of any Future Event be changed, such request may be submitted at any time permitted under the subsection (b-1) of the Act.

(d) Promptly upon delivery of each such request, City's designee will annually submit, or cause to be submitted, to Comptroller such economic studies and supporting documentation as required by 34 TAC § 2.102(a) or as reasonably requested by Comptroller as input for and to facilitate Comptroller's annual determination of the ~~City~~^{Local} Increment and the State Increment for the next Future Event and to determine the qualification of the next Future Event for advance funding under the Act.

(e) City has authorized and provided Comptroller with a copy of the City's authorization of CELOC to act as City's designee ~~from City~~ and the Contract that covers all ~~events~~^{Events} in question and upon requests of the Comptroller, City will provide written confirmation of the authority of City's designee to act on behalf of City under the Contract, the Event Support Contract, and ~~the~~^{this} Agreement.

(f) After receipt of the items required by subsections 4(c)-(e) of this Agreement, Comptroller shall make the determinations and verifications under the Act, including a new determination of the Local Contribution and State Contribution, and make any adjustments to amounts deposited in the Formula 1 Major Events Trust Fund, as necessary.

(g) Upon Comptroller's verification that all contingencies of the 81st GAA have been satisfied and after adjustments to the amounts contained in the Formula 1 Major Events Trust Fund, as necessary, funds deposited in the Trust Fund shall be made available to the City ~~s~~ or its designee for disbursement in accordance with the Act and the Event Support Contract.

(h) Funds remaining in the Formula 1 Major Events Trust Fund at the conclusion of all Future Events shall remain in the fund for the purpose of paying the cost of securing a Future Event and for paying the cost of activities that are eligible in accordance with the Act until the expiration or termination of this Agreement.

(i) Neither City nor City's designee shall remit amounts in excess of the Local Contribution for deposit into the Formula 1 Major Events Trust Fund without written permission of the Comptroller.

Section 5. City's Designee. City has designated CELOC as its exclusive Local Organizing Committee (as defined in the Act) and designee to act on the City's behalf pursuant to the Contract, which authorizes CELOC to fulfill those obligations and responsibilities on behalf of City as

described in the Contract. The Contract shall, at all times, provide that the Comptroller receive 90 day advance notice of termination. City shall promptly provide Comptroller with a copy of all amendments and modifications to the Contract.

Section 6. Term of the Agreement. This Agreement is effective on the date signed by both parties below (“Effective Date”) and ~~will expire on August 31, 2021,~~ shall remain in effect until 90 days after the 2012 Event, with automatic one-year renewals, terminating 90 days after the Event in the year 2021 (Term), unless terminated sooner ~~pursuant to Section 7, only in accordance with the terms of this Agreement.~~ Upon expiration of this Agreement under this section, City’s designee and Comptroller are entitled to receive, in accordance with the Act, their pro rata portion of the funds remaining in the Formula 1 Major Events Trust Fund.

Section 7. Termination or Suspension of Agreement. The Comptroller may terminate or suspend this Agreement immediately, in whole or in part, upon notice to the City and CELOC (at CELOC’s address in the Contract): if the 2012 Event or a Future Event is not held during any eighteen month period under this Agreement; if the City’s designee fails to provide or maintain the Security required in Section 8 of this Agreement; or as provided by the Act, ~~Section 5(A),~~ or other applicable law. In the event City is entitled to terminate the Contract between the City and CELOC and has provided the required notice of the termination of the Contract between the City and CELOC, City may terminate this Agreement by giving 90 days advance notice of termination to Comptroller.

Section 8. Security. City’s designee shall provide Comptroller with a performance bond, or other security acceptable to Comptroller, sufficient to secure repayment of the state portion of funds withdrawn from the Formula 1 Major Events Trust Fund in connection with an ~~event~~ Event that does not occur (the “Security”). City’s designee must provide to Comptroller acceptable documentation of this Security within twenty (20) calendar days following the Effective Date, and the Security must be written by a company that is of adequate financial rating, licensed and authorized to do business in Texas and otherwise acceptable to Comptroller. The Security or a substitute or replacement for the Security must remain in effect during the term of this Agreement that the fund has ~~advance~~ advanced amounts for the 2012 Event or a Future Event and be in favor of Comptroller as principal or beneficiary. City’s designee is responsible for payment of all costs of the required Security.

Section 9. Responsibility for Liability. **TO THE EXTENT ALLOWED BY TEXAS LAW, THE CITY AND COMPTROLLER AGREE THAT EACH PARTY IS RESPONSIBLE TO THE EXCLUSION OF ANY SUCH RESPONSIBILITY OF THE OTHER PARTY FOR ITS OWN PROPORTIONATE SHARE OF LIABILITY FOR ITS NEGLIGENT ACTS AND OMISSIONS FOR CLAIMS, SUITS, AND CAUSES OF ACTION, INCLUDING CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY AND DEATH, ARISING OUT OF OR CONNECTED TO THIS AGREEMENT AND AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, PROVIDED THAT THE EXECUTION OF THIS AGREEMENT WILL NOT BE DEEMED A NEGLIGENT ACT.**

Section 10. Dispute Resolution. Any dispute by City under this Agreement shall be resolved under the provisions of Chapter 2260, Texas Government Code.

Section 11. Recitals. The parties agree that the recitals set forth above in this Agreement are true and correct, and the representations, covenants and recitations set forth therein are made a part hereof for all purposes.

Section 12. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

Section 13. Time of the Essence. Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced. 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.

Section 14. Severability Clause. In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

Section 15. Survival of Sections. The provisions of Sections 1, 2, 8, 9, 10 and 11 of this Agreement shall survive the termination date of this Agreement under Section 6 or 7 to ensure City's ~~designee's~~ compliance under the Act and with this Agreement.

Section 16. Notices. Any written notices required under this Agreement will be by either hand delivery to the City Manager's office at 301 W. 2nd St., Austin, Texas 78701, or to Comptroller's General Counsel, Texas Comptroller of Public Accounts, LBJ Building, 111 E. 17th Street, Austin, TX 78774, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

Section 17. Merger. This Agreement contains the entire agreement between Comptroller and City relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

Section 18. Signatories. The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of their respective entities and parties named below.

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Martin A. Hubert
Deputy Comptroller

Date: _____

CITY OF AUSTIN

Marc A. Ott
City Manager

Date: _____

DRAFT

Legend:	
<u>Insertion</u>	
Deletion	
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Style change	
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Deleted cell	
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Split/Merged cell	
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Statistics:		
	Count	
Insertions		33
Deletions		28
Moved from		2
Moved to		2
Style change		0
Format changed		0
Total changes		65