

**AGREEMENT BETWEEN
THE MAYOR'S BETTER AUSTIN FOUNDATION, INC. AND THE CITY OF AUSTIN**

RECITALS

This agreement (Agreement) is for a donation of services to the City of Austin (City) from the Mayor's Better Austin Foundation, Inc. (Foundation).

Recognizing the importance to the City and its residents of providing the additional expertise of senior policy advisors (Senior Advisors), the City and the Foundation (collectively, the Parties) agree as follows:

I. PURPOSE

- A. The Foundation is a 501(c)3 nonprofit organization that raises public interest funding through grants and charitable contributions in order to provide broad policy expertise and other support to the City to benefit the City and its residents.
- B. The Foundation's Senior Advisors Program is a pilot program that contributes high-level policy expertise to the City for the benefit of the City in the new 10-ONE city government. Under the new 10-ONE structure, the City Council is organized into 10 City Council Committees. The Foundation will assign Senior Advisors to the City, provided that the utilization of the Senior Advisors is consistent with the stated purpose of the Foundation as set forth in Exhibit A. Such Senior Advisors may be employees, volunteers, or independent contractors of the Foundation, as determined in its discretion. The Senior Advisors shall be under the oversight of the City's designee (City Designee).
- C. Senior Advisors will satisfy all conflict of interest, recusal, and personal financial disclosure requirements applicable to City Council policy aides. The Foundation's solicitation and acceptance of charitable contributions and grant awards will comply at all times with the Foundation's Bylaw's comprehensive conflict of interest requirements and other restrictions. The Foundation's Bylaws are attached as Exhibit A.

II. TERM

- A. This Agreement shall become effective on the last date executed by all parties and shall remain in effect for 2 years, unless previously terminated pursuant to Section VI or extended by mutual written agreement.
- B. It is the intent and understanding of the Parties that the obligations of each party under this Agreement that require funding, if any, shall remain effective only so long as and provided that each party has fully appropriated funds for performing such obligations for the party's current fiscal year. If for any fiscal year of any party funds are not appropriated for such party's performance of its obligations under this Agreement, this Agreement shall become void and such party shall promptly give notice to the other party of the non-appropriation of funds.

III. OBLIGATIONS OF FOUNDATION

- 11/1/2014
11/1/2014
- A. The Foundation will directly hire the Senior Advisors as full or part-time volunteers, employees, or independent contractors and provide applicable compensation.
 - B. The Foundation will assign Senior Advisors to the City of Austin on a pro-bono basis for 2 years, unless this Agreement is terminated prior pursuant to Section VI, or extended by mutual written agreement.
 - C. The Foundation will manage the overall Senior Advisor Program grant.
 - D. The Foundation will designate a program site supervisor to coordinate relevant professional training and development for, and to schedule regular one-on-one site meetings with each Senior Advisor and, as necessary, the City Designee.
 - E. The Foundation shall enforce its Bylaws requiring that all donors and Senior Advisors comply fully with all state and local conflict of interest requirements and the Foundation's comprehensive conflict of interest restrictions.
 - F. The Foundation shall quarterly publish and provide a schedule of its donors and grant awards received to the City Designee. This list is a public record.
 - G. The Foundation shall require each Senior Advisor as a condition of assignment to execute a waiver of liability, an acknowledgement that City resources are to be used only for City purposes, an agreement that each Senior Advisor will abide by State, Federal, and City laws that are applicable to the City, including, but not limited to Open Records, Open Meetings, ADA, harassment, ethics, and non-discrimination, an acknowledgement that each Senior Advisor is not an employee of the City, and that the Foundation is solely responsible for any payments due and owing to them for their services, and an acknowledgement that they each understand that city resources may not be used to advocate for or against a measure on any ballot.
 - H. Foundation is required to make 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.
 - I. The City shall have the right to audit the books and records of the Foundation as it deems necessary to determine compliance with this Section III. Foundation 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 Foundation related to the performance under this Agreement. Foundation shall retain all such records for a period of three years after the Agreement term has concluded, or until all audit and litigation matters that the City has brought to the attention of Foundation are resolved, whichever is longer.

IV. OBLIGATIONS OF THE CITY

- A. The City shall provide assigned Senior Advisors with office space and other adequate work equipment, and with email, building and system access, as is typical for City interns.
- B. The City shall abide by the intent of the Senior Advisor Program as an opportunity to utilize the services of Senior Advisors as a public interest resource for the City.

V. MUTUAL RIGHTS AND OBLIGATIONS OF THE CITY AND FOUNDATION

- A. Representatives of the Foundation and the City will meet periodically to determine plans for future opportunities.
- B. The Parties agree that Senior Advisors are not employees of the City, and that all services performed by Senior Advisors are deemed volunteer services to the City. Any liability or obligation to a Senior Advisor arising from participation in the Senior Advisor Program, including without limitation compensation, employee benefits, or reimbursement of expenses, shall be the sole responsibility of the Foundation, and not the City.
- C. The Parties agree that the acceptance of a Senior Advisor by the City under the Senior Advisor Program may be revoked by the City at any time on any basis not prohibited by law.
- C. The Parties agree that the role of Senior Advisors is to assist the new council committees and provide other policy support.

VI. TERMINATION

Notice of any claims of material breach shall be given in writing, identifying the breach claimed with particularity, and stating the time permitted for cure, such time to be commercially and legally reasonable. Such a notice of claim of breach is sufficient to constitute termination of this Agreement. Without waiving any legal rights, the parties agree to voluntary mediation of any disputes.

VII. NOTICES

Any notices to be given under this Agreement shall be considered delivered (i) upon personal service upon the person designated in this Agreement for such notice; (ii) within three days of deposit if mailed by first-class United States mail, postage prepaid, registered or certified, and addressed to the person designated for receipt of notice; or (iii) one business day after being sent for overnight delivery by a reputable commercial courier having the ability to track shipping and delivery of the notices. In cases where there is an emergency or other need for immediate notice to be given, written notice may be faxed or emailed to the person designated for service, provided a written copy of such notice is also delivered promptly to such designated person by one of the three means identified above.

The Parties designate the following persons for receipt of notice:

If to Foundation: Name
 Address

Phone Number:
Email Address:

If to City of Austin:

Marc A. Ott
City Manager, City of Austin
Attention: X
301 W. 2nd Street
Austin, Texas 78701
Phone Number:
Email Address:
(Designated Person for Contract Management)

The Parties may change the person designated for receipt of notice from time to time by giving notice in writing to the other parties, identifying the new person designated for receipt of service and identifying his/her name, title, address for notice and phone number.

VIII. MISCELLANEOUS

- A. Complete Agreement. This is the complete agreement by and between the Parties on the subject matter of the Agreement. It supersedes any other agreement or understanding between the Parties, written or oral, and any other commitments, promises, undertakings, understandings, proposals or representations of the Parties to each other, written or oral, concerning the subject matter of this Agreement.
- B. Amendment in Writing. This Agreement may be modified only by a writing duly executed by each of the Parties. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the Parties unless made in writing and duly executed by each of the Parties.
- C. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- D. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that any lawsuit, litigation, or mediation, with a mediator agreeable to both Parties, arising out of or relating to this Agreement will take place in Travis County, Texas.
- E. Authority. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized function, which it is authorized to perform individually under the applicable statutes of the State of Texas. The Foundation also warrants that it has authority to enter into and perform under this Agreement pursuant to its Articles of Incorporation and its Bylaws.
- F. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by the Foundation and the City, or designee.

In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorney's fees, the Foundation knowingly and intentionally waives its right to attorney's 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.

This Agreement is executed to be effective the date of the last party to sign.

MAYOR'S BETTER AUSTIN FOUNDATION:

By: _____
Name
Title

Date: _____

CITY OF AUSTIN:

By: _____
Marc Ott
City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

Date: _____