Agreement
City of Austin
Circuit Events Local Organizing Committee
(V8 Supercars 2013)

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

RECITALS:

1. Tex. Rev. Civ. Stat Art 5190.14 § 5C, the Events Trust Fund Act (Act) and rules related to the Act, found at 34 Tex. Admin. Code, Chapter 2 Subchapter B, as amended and supplemented (collectively, the Rules), were passed and enacted for the purpose of attracting and securing eligible events to Texas. The Texas Comptroller of Public Accounts (Comptroller or State) is tasked with administering the Act and the Rules. The Act at 5C(a)(3), defines eligible events (Event). CELOC has proposed V8 Supercars Championship (commonly known as "V8 Supercars"), whose site selection committee is V8 Supercars Australia Pty Ltd, as an eligible Event under the Act. The subject V8 Supercars event (Event) will be held in May of 2013 at the raceway facilities of Circuit of the Americas (COTA) in Austin, Texas.

2. The Act at 5C(a)(2), provides that a municipality that contains a site selected by a site selection organization for one or more events, such as the Circuit of the Americas Track now located in the City, is an eligible "Endorsing Municipality" for purposes of establishing an Events Trust Fund (ETF) as authorized under the Act at 5C(d) thus making local and state funds available to attract, secure, and hold an eligible event, such as the V8 Supercars Event.

3. The Act at 5C(b) authorizes an Endorsing Municipality or a local organizing committee (Local Organizing Committee), such as CELOC, to request 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.

4. The Act at 5C(d) and (d-1) authorizes the City, or its designee, to fund the ETF in an amount up to the estimated Local Increment. 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 5C(f) authorizes the State to fund the ETF with $6.25 for each dollar of estimated Local Increment, but not more than the estimated State Increment

5. The Act at 5C(d-l) 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. However, under this Agreement, CELOC has agreed and

committed to fund the Local Increment on behalf of the City.

6. If CELOC does not fund the Local Increment on behalf of the City, the City may terminate this Agreement, under Section 25 below.

7. The Act at 5C(k) authorizes disbursements to CELOC as the "Local Organizing Committee" on the prior approval of the City.

8. The parties acknowledge and agree that City will solely and exclusively utilize CELOC as its designee (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 ETF.

9. On December 9, 2012, the CELOC Board of Directors voted to request, and COTA has submitted a formal letter requesting, that the City (i) act as the Endorsing Municipality for purposes of establishing an ETF for the Event, and (ii) authorize CELOC, as the local organizing committee, to submit a request to the Comptroller to determine the incremental increase in the receipts of various taxes for the Event.

10. On December 13, 2012, the City, by resolution of City Council, approved the City to act as "endorsing municipality" for the event, to approve and appoint CELOC as the Local Organizing Committee for the Event, to approve CELOC to apply to the site selection organization for the Event, to hold the Event in Austin, Texas in May of 2013, and approve CELOC to make application to the Comptroller for and on behalf of the City as the endorsing municipality for participation in the ETF.

11. On January 8, 2013, CELOC made application to V8 Supercars Australia Pty Ltd, as the site selection committee for V8 Supercars Championship (the "Site Selection Organization") for a V8 Supercars Event to be held in Austin, Texas for May of 2013. On January ___, 2013, 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 May, 2013 Event.

AGREEMENT

12. Agreement Purpose.

The purpose of this Agreement is to establish the parties' authority, rights, and responsibilities with respect to the application to the Comptroller for creation of an ETF, the funding of the ETF, and disbursements from that account for the 2013 Event. 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.

13. Term.

If the Comptroller approves creation of the ETF for the Event, this Agreement shall remain in effect until 180 days after the 2013 Event, unless terminated sooner only in accordance, with the terms of Sections 25 or 27 of this Agreement

14. 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 and resolution of City Council enacted on December 13, 2012. No City appropriation is necessary for performance of this Agreement

15. City Responsibilities.

A. City responsibilities and obligations include:

(1) 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 disbursement and reimbursement request letters to the Comptroller; (iii) receive funds from the ETF; and (iv) make annual ETF reimbursement requests to the Comptroller under the Rules.

(2) 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 disbursement and reimbursement of eligible expenses from the ETF in accordance with the Rules. Parties acknowledge that the State is the final determiner of what constitutes an "eligible expense" for reimbursement purposes.

B. Per 15.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 2013 Event and to perform those certain duties and tasks on behalf of the City as specified in Section 17 below and any such other duties as subsequently agreed by the City and CELOC in writing, City hereby grants its prior approval for CELOC's submittal to the Comptroller of all disbursement and reimbursement request letters and invoices for eligible expenses related to the Event, subject only to final review and approved by the City.

16. CELOC Authority. CELOC is authorized by the City, and has the authority to fulfill certain responsibilities on the City's behalf as the City's exclusive Designee to make application to the Site Selection Organization for the Event on behalf of the City, to make application for the Event on behalf of the City for participation under the Act and for administration of the ETF for the Event under the Act and as further authorized and described at Section 17.

17. CELOC Responsibilities and Authority.

A. Specific Responsibilities and Authority (2013 Event).

(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 the Rules, including requesting that the Comptroller make a Local and State Increment determination per Section 5C(b) of the Act (Trust Fund Estimate), with such request made not later than 3 months prior to the Event.

Should the date of the Event be changed, the request may be resubmitted at any time permitted by the Comptroller.

(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 estimated Local Increment, contribution, up to the amount of estimated Local Increment determined by the Comptroller.

(d) Enter into an Event Support Contract with the Site Selection Organization per the Rules.

(e) Submit to the Comptroller documentation of the Site Selection Organization's "highly competitive selection process" per the Rules.

(f) Prepare and submit all disbursement request letters for the Event or the ETF to the City, for review and approval, and to the Comptroller, including required documentation and backup information if 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. The City will have only one board member, regardless of the number or type of Events under this or any other agreement between CELOC and the City.

(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

B. Modifications of obligations and responsibilities.

CELOC's obligations and responsibilities under this Section 17, and the time periods for compliance or performance, as well as the distributions under Section 20 may be modified or amended with written approval of the City, this approval will not be unreasonably withheld. 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.

18. Funding of Local Increment.

A. The City authorizes and requests, and by its authorized signature below CELOC agrees to fulfill, the obligation and responsibility on behalf of the City for the payment of the City's Local Increment contributions for the Event in amounts up to the estimated anticipated Local Increment.

B. If this Agreement and the Interlocal are terminated because CELOC does not meet its financial obligation of depositing the annual Local Increment in amounts up to the estimated anticipated Local Increment, then Circuit of the Americas will guaranty the City against any liability to the Comptroller for any amount the

Comptroller asserts that the City owes the Comptroller for such Local Increment, as such obligation is further set out in Section 25 of the Agreement between the City and Circuit of the Americas.

C. Per Act, the Local Increment will be matched by the State in a ratio of 1:6.25.

19. INTENTIONALLY LEFT BLANK FOR EXPANSION.

20. Disbursements.

A. The City authorizes and approves for disbursement from the ETF in the following order of priority:

(1) To the Site Selection Organization, payment for all or part of the Event service fee, provided if such service fee has been paid to the Site Selection Organization, then in reimbursement to the payor thereof.

(2) To CELOC, in payment of eligible expenses, including the EIS for the Event,

21. Disbursements Must Be Eligible Expenses.

All disbursements from the ETF must constitute eligible expenses, as determined by the State, in accordance with the Act and the Rules.

22. 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 Section 5C(m), with CELOC receiving funds contributed by CELOC on behalf of the City as City's Designee.

23. Sustainability Initiatives.

A. CELOC and Circuit of the Americas LLC, (Circuit of the Americas) will enter into an agreement, with City input, that specifies CELOC's and Circuit of the Americas' responsibilities to accomplish the terms specified in Exhibit A.

B. CELOC will exert reasonable efforts to report or cause Circuit of the Americas to report to the City annually, after the Event is held and prior to disbursement of funds to CELOC by Comptroller for the next year's race, on progress made as it relates to the terms specified in Exhibit A.

C. Subject to and following the 30 day notice and opportunity to cure described in Section 25 below, there must also be 90 days written notice of intent to terminate delivered to CELOC, pursuant to this section, with copy to the State (for a total 120 day notice period).

D. Failure to meet items (A) and (B) above, or terms specified in Exhibit A, constitute grounds for termination; provided, however, both parties will first attempt non-binding arbitration to resolve any dispute between the parties with regard to the alleged failure of Circuit of the Americas to meet items (A) and (B)

above or the terms specified in Exhibit A. If non-binding arbitration is not successful, the City and CELOC agree to resolve the dispute in the jurisdiction and venue set forth in Section 25 below prior to the City exercising any termination remedy due to such dispute.

E. City and Circuit of the Americas will enter into an agreement that specifies Circuit of the Americas' responsibilities to accomplish the terms specified in Exhibit A. In the event City is entitled to terminate the Contract between the City and Circuit of the Americas, and City has provided notice of the termination of the Contract between the City and Circuit of the Americas, City may terminate this Agreement by giving 90 days advance notice of termination to CELCC.

24. Minority/Women Business Enterprise Initiatives.

City and Circuit of the Americas will enter into an agreement that specifies Circuit of the Americas' responsibilities to accomplish the M/WBE terms specified in that Agreement, In the event City is entitled to terminate the Contract between the City and Circuit of the Americas, and City has provided notice of the termination of the Contract between the. City and Circuit of the Americas, City may terminate this Agreement by giving 90 days advance notice of termination to CELOC,

25. Termination with Cause.

A. In the event of a material default by a party relating to the ETF authority, rights, and responsibilities set out in this Agreement, the other party shall have the right to terminate the Agreement for cause, but only after written notice of the definite is delivered to the party via certified mail. The notice shall be effective 30 days after delivery, unless otherwise specified, or the default is cured, as provided below. 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 the default does not exist or that it 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.

B. Subject to and following the 30 day notice and opportunity to cure described in Section 25 above, there must also be 90 days written notice of intent to terminate delivered to the State and the other party pursuant to this Section (for a total 120 day notice period).

C. This Agreement may be terminated upon occurrence of any of the following events which continue beyond the 30 and 90 day notices and opportunities to cure set forth above:

(1) The Event fails to meet the Performance Measures set out below.

(2) Termination of the City's Agreement with Circuit of Americas.

26. Performance Measures.

A. Performance measures are:

(1) The occurrence of the Event within the time permitted in the Act or otherwise approved by the State.

(2) City and CELOC, respectively, meet all their designated responsibilities as defined in Sections 15 and 17.

(3) CELOC timely deposits or causes the deposit of the Local Contribution.

(4) Reporting regarding Sustainability Measures for the Event as set forth in Exhibit A.

27. Repeal or Modification of the Act.

This Agreement expressly contemplates its effectiveness under the Act as currently in effect. Should the Act be repeated 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 parry on 90 days written notice to the other party and the Comptroller.

28. 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.

29. 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. However, if it is determined by a competent jurisdiction by a non-appealable final judgment that CELOC cannot provide the Local Increment on behalf of the City, this entire Agreement is void.

30. 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 Ac 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:
Attn: 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: Secretary
100 Congress Avenue, Suite 1300
Austin, TX 78701-2744

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

31. Estoppel Certificate / Leader Protection

Upon a written request from CELOC, the City shall, within ten (10) business days after receipt of such request, execute and deliver to CELOC and any other party designated by CELOC, an estoppel certificate in form reasonably approved by the City Manager which certifies whether the City has knowledge of any default under this Agreement or CELOC's Performance Measures. CELOC may, from time to time, deliver a written notice of lender ("Notice of Lender") executed by CELOC and notifying the City of a lender for all or part of Circuit of the America's race track facilities and related development The Notice of Lender mast include the name and address of COTA's lender (the "Lender"). Until the City receives a written release of the Notice of Lender from the Lender, the City agrees to provide the Lender a notice of default provided to the Comptroller under Section 29 (B) above and will provide Lender the same 90 day opportunity to cure such default

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; tins consent will not be unreasonably withheld.

33. Effective Date.

The effective date of this Agreement is deemed to be the date upon which the last party executing this Agreement actually signs.

34. 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.

35. Survival of Obligations.

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

36. 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 anon-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.

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 parry 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 parry 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.

38. 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.

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, ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR 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 CELOC AS REQUESTED BY CELOC.

THIS SECTION IS NOT INTENDED AND SHALL NOT BE CONSTRUED TO REQUIRE CELOC TO INDEMNIFY OR HOLD HARMLESS CITY FROM ANY CLAIMS OR INABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR ITS EMPLOYEES, OR FROM DAILY OPERATIONAL EXPENSES INCURRED BY THE CITY IN THE NORMAL COURSE OF BUSINESS.

EXECUTED as of the dates below, in Austin, Travis County, Texas.

CITY OF AUSTIN TEXAS

By: _____
Name: Marc A. Ott
Title: City Manager

Date: _____

CIRCUIT EVENTS LOCAL ORGANIZING COMMITTEE

By: _____
Wayne S. Hollingsworth

Title: Authorized Director

Date: January 11, 2013