

RESOLUTION NO. 20100422-036

WHEREAS, the City moved forward on the path to health and wellness by forming the Mayor's Fitness Council Task Force in 2004 with the mission of having Austin, Texas designated as the fittest city in the nation by the year 2010; and

WHEREAS, it was recognized that certain funding and grants were not available to the task force as an unincorporated entity; and,

WHEREAS, the Mayor's Fitness Council non-profit corporation was formed in March of 2009 to further the task force's program and mission by becoming eligible to receive grants and matching funds from other funding sources; and

WHEREAS, the Mayor's Fitness Council non-profit corporation's purpose is to raise awareness of the cost of health care, to promote prevention of chronic disease and better health in Austin, and to promote the City as a healthy place to live and work; and

WHEREAS, during the process of corporate formation, certain funds were received by the City as a result of the Mayor's Fitness Council Task Force's efforts and sale of merchandise which rightfully belongs to the Mayor's Fitness Council non-profit corporation now that it is a separate legal entity; and,

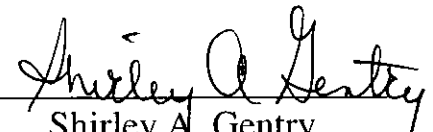
WHEREAS, the City Council believes it is in the City's best interests to provide the income generated by the Mayor's Fitness Council Task Force's efforts as initial start-up funding to the Mayor's Fitness Council's non-profit corporation to make it eligible for both matching and outright grants targeted to non-profit corporations in the State of Texas; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is authorized to execute a Co-Sponsorship Agreement with the Mayor's Fitness Council non-profit corporation for payment of program income earned by the former Mayor's Fitness Council Task Force, in an amount not to exceed Twenty Seven Thousand Three Hundred Nine Dollars (\$27,309.00), to further the purpose and mission of the former task force.

ADOPTED: April 22, 2010

ATTEST:


Shirley A. Gentry
City Clerk

**CO-SPONSORSHIP AGREEMENT
BETWEEN THE CITY OF AUSTIN
AND
THE MAYOR'S FITNESS COUNCIL**

1. FINDINGS AND STATEMENT OF PUBLIC PURPOSE

This Co-Sponsorship Agreement (Agreement) is entered into by and between the City of Austin, a home-rule municipal corporation situated in Hays, Travis and Williamson Counties acting through its City Council and City Manager or his designee (City) and The Mayor's Fitness Council, a Texas non-profit corporation (MFC).

The Mayor's Fitness Council Task Force was established in 2004 by Mayor Will Wynn with the goal of having Austin, Texas recognized as the fittest city in the nation by 2010. The task force was instrumental in establishing the "Healthy People 2010 Initiative" which focused on four pillars of health: physical activity, nutrition, healthy weight and reducing the use and exposure of the Austin community to tobacco products. The MFC was incorporated in March of 2009 as a non-profit corporation in order to allow the MFC to become a permanent entity, eligible to receive community health grants targeted and only available to non-profit corporations. The mission of the MFC has been to support and inspire people to improve their fitness and health by encouraging physical activity and improved nutrition.

The City Council finds that by addressing both the consumer and supplier components of healthy living and employing values of collaboration, inclusiveness, compassion, sensitivity and commitment, the MFC enriches Austin's cultural environment and enhances the City's reputation as an exciting metropolitan area, an ideal place to live and work, playing a major role in attracting citizens to the City, and fostering the health and well-being of the citizens of Austin by promoting vibrant activity.

Because of the above-stated public purpose, the City Council finds therefore that the City's co-sponsorship of the MFC will serve a public benefit.

2. CITY OF AUSTIN'S CO-SPONSORSHIP RESPONSIBILITIES

- A. The City agrees to co-sponsor the work and mission of the MFC with a one-time payment of twenty seven thousand three hundred nine dollars (\$27,309) to the MFC, representing program income earned by the former task force.
- B. The City will coordinate and collaborate with the MFC to promote the continuity of the programs and events the MFC develops and organizes, including increasing public awareness, appreciation and support for the importance of health and fitness in our community.

3. THE MAYOR'S FITNESS COUNCIL'S CO-SPONSORSHIP RESPONSIBILITIES

In exchange for the City's co-sponsorship, the MFC agrees to be responsible for the following:

- A. Organize the corporation as a separate legal entity from the City and obtain funding and grants that will allow the corporation to become self-sustaining, provide leadership and focus in supporting and driving healthy behaviors in the greater Austin community;
- B. Develop programs and events that focus on prevention and employ evidence based-elements and public health approaches to ensure effective and sustainable results;
- C. Foster linkages with key community partners for implementation of evidence-based elements and public health approaches;
- D. Arrange for its website to be hosted by an independent party as soon as possible, removing its content from the City's website and server;
- E. Implement a comprehensive marketing and promotion plan; and,
- F. Provide booth space, advertising, and other opportunities for marketing and promoting the City at MFC events and program materials published during the remainder of the 2009-2010 fiscal year.

4. GENERAL RESPONSIBILITIES

- A. This Agreement does not abrogate the MFC's or its agents', employees,' contractors', or volunteers' responsibility to comply with federal, state, and local laws.
- B. The City and MFC agree that the MFC's employees, agents, and volunteers are not City of Austin officials, staff, employees, or agents, nor shall the MFC's employees, agents, or volunteers represent themselves as City officials, staff, employees, or agents.
- C. Failure to comply with the requirements of this Agreement may result in the revocation of the City's co-sponsorship of the MFC.
- D. This Agreement is effective upon its execution by all parties, may be executed in counterparts which together will constitute a single document and remains in effect until the obligations under this Agreement have been performed.
- E. This Agreement constitutes the entire agreement between the parties regarding the City's co-sponsorship of the MFC. This Agreement may not be modified except as agreed by the parties in writing, nor may this Agreement be assigned, transferred or conveyed without the other party's express written consent.

- F. 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 will remain in full force and effect, as if it never contained the offending term or provision.
- G. Any notice required under this Agreement shall be given in writing and may be delivered by hand, by certified mail, or by a recognized overnight commercial delivery service (e.g., FedEx). Notice by hand-delivery is deemed effective immediately, by certified mail is deemed effective two (2) days after deposit in U.S. Post Office or in a U.S. Mail Box, and by overnight commercial delivery is deemed effective the following day. Notice to a party shall be addressed as follows:

THE CITY OF AUSTIN

Mr. Rudy Garza
Assistant City Manager
P.O. Box 1088
Austin, Texas 78767-1088

THE MAYOR'S FITNESS COUNCIL

Mr. Lou Earle
750 Allison Lane
San Marcos, Texas 78666

- H. The City and MFC hereby warrant that each has the right and authority to make and enter into this Agreement and to grant the rights set forth herein. It is expressly understood and agreed that the City, neither by the execution of this Agreement, nor any conduct of any representative of the City, shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to the City against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit.
- I. Nothing in this Agreement shall be deemed to be a commitment or obligation of the City or MFC to enter into any joint venture, joint enterprise, partnership or any other legal business relationship.
- J. Venue for any dispute arising under this Agreement shall be filed and maintained in Austin, Travis County, Texas.

This Agreement is entered into and executed by:

Marc A. Ott, City Manager
City of Austin

April ____, 2010

Lou Earle, Director
The Mayor's Fitness Council

April ____, 2010