

## **Agreement Regarding Facility Access for City Representatives and Employees**

### **Recitals:**

1. The City of Austin (City) has a uniform procedure for the acceptance and use of tickets or other event admission by City employees to attend job-related events.
2. Circuit of the Americas, LLC (COTA) and the City have multiple contracts reflecting the City's status as endorsing municipality pursuant to State law regarding the Event Trust Fund and the Major Event Trust Fund.
3. COTA works with the City during events where the City is the endorsing municipality to ensure that appropriate access is given to employees to enable them to properly perform their job duties, to monitor contract compliance, and to confirm that legal standards have been met.
4. Pursuant to the Event Trust Fund and Major Event Trust Fund contracts, COTA has agreed to terms and conditions relating to sustainable practices at the facility such as use of bicycle routes, recycled materials, and use of mass transit to limit carbon emissions.
5. Under the applicable State laws, the City must also review attendance at the event and provide certain certifications to the State as needed pursuant to the requirements relating to the Event Trust Fund and the Major Event Trust Fund.
6. The City has employees who have job duties related to review of COTA practices to ensure compliance with the contract requirements and funding requirements.
7. The City also has employees who assist with security and other event-related activities that may impact public health, security, and safety.
8. The City has representatives that may attend events for which the City is the endorsing municipality as ceremonial hosts to attendees at such events.
9. Security at events of this nature requires that persons attending in an official capacity have facility access and therefore they must obtain credentials to allow them this proper access to needed portions of the facility.

10. City policies authorize acceptance of tickets and appropriate credentials when City employees are representing the City at a community activity. Event Trust Fund activities and Major Event Trust Fund activities at the facility are community activities insofar as these events utilize tax dollars to bring events to this facility located within the city limits.
11. This Agreement does not alter or in any way impact the obligations of the parties under any Agreement relating to the Event Trust Fund or Major Event Trust Fund (the "Trust Fund Agreements").

## **AGREEMENT**

Therefore, the City and COTA do agree as follows:

### **Purpose:**

The purpose of this Agreement is to establish the process for City employees and representatives to access the COTA facilities during events for which the City is the endorsing municipality for purposes of the Event Trust Fund and Major Event Trust Fund to perform business-related duties including reviewing compliance with the Trust Fund Agreements between the City and COTA related to these events.

### **ACCESS TO THE PROPERTY:**

- a. City, through its Economic Development Department, Police, Fire, EMS, and other representatives, shall have the right to enter the portions of the facility approved by COTA for purposes related to their official and employment-related duties in accordance with the credentials or tickets issued in accordance with this Agreement.
- b. The facility at all times is under the sole charge and control of COTA during the period of any event for which access has been granted by COTA.
- c. Access to the entrances and exits of the facility shall be open or closed under the direction of COTA in accordance with the terms of this Agreement and the normal constraints for public safety and public health as determined by public safety and public health officials responsible for these duties during the applicable events.

- d. This Agreement does not limit access to the facility by the City in performance of the City's government functions related to public health and safety.

#### **NUMBER AND COST FOR CREDENTIALS:**

- a. COTA and the City shall mutually agree each year on the number and access capability of credentials and tickets to be provided to the City either free-of-charge or for a fee.
- b. Any credentials provided to the City will be provided only in accordance with legal requirements and the City policies set forth in the recitals to this Agreement.
- c. City employees who are attending the events for other purposes will purchase tickets in the same manner as the general public.
- d. The total value of credentials purchased by the City for employees who are attending applicable events in any given calendar year at COTA pursuant to their official duties will not exceed the Manager's purchasing authority as set forth in the City Charter Article VII, Section 15.

#### **ISSUED CREDENTIALS:**

- a. COTA will issue credentials to the City for distribution to appropriate persons. Upon request, City employees to whom the credentials have been issued must show a City-issued photo ID to COTA upon presentation of the credential for access to the facility.
- b. If a City employee is unable to perform his or her job duties related to the event and the City must assign a different person, the City Manager or his designee will reassign the credential to a person who will be using it to perform the required job duties. Under no circumstances can employees transfer their credentials to anyone else without management approval. Transfers may only be made with approval of the City Manager or his designee.
- c. The City will monitor use of credentials and tickets in accordance with City policies.
- d. City may not sell the credentials or tickets.

**Term:**

The term of this Agreement is 10 years from the last date of execution by the parties as reflected by the dated signatures on the Agreement.

The Agreement may be extended by mutual agreement of the parties reflected in writing for so long as the City is the endorsing municipality on events held at the COTA property.

**STANDARD TERMS AND CONDITIONS:****Termination:****Termination without cause:**

This Agreement may be terminated without cause by either party prior to the expiration of the term upon the provision of at least 30 days written notice. Termination shall not relieve COTA of its obligations under any Trust Fund Agreement relating to the Event Trust Fund or Major Event Trust Fund nor shall it relieve the City of its corresponding responsibilities. If this Agreement is terminated without cause by COTA, COTA shall continue to provide reasonable access to City employees to the extent required by law to inspect and review compliance with Trust Fund Agreements between the parties and to the extent required for the City to perform its governmental functions to protect public health and safety.

**Termination for cause:**

In the event of a material default by a party relating to the rights and responsibilities set out in this Agreement, the other party shall have the right to terminate this Agreement for cause, but only after written notice of the default is delivered to the other 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.

Each party's sole and exclusive remedy due to a default by the other party under this Agreement is to terminate this Agreement in accordance with the terms and provisions of this Agreement.

After the 30 day notice and opportunity to cure period, the party seeking termination must also give 30 days' written notice of intent to terminate if the party who has allegedly failed to perform offered a cure that was not found to be satisfactory by the party terminating for cause. This second notice must also be sent certified mail.

### **Amendment in Writing**

This Agreement may be modified only by a writing properly 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 properly executed by each of the Parties.

### **Assignment**

A party to this Agreement may not assign or transfer its interests under this Agreement.

### **Complete Agreement**

This Agreement constitutes the entire Agreement and understanding between the parties and supersedes all previous Agreements, understandings, discussions, or representations concerning its subject matter. This Agreement may not be amended in whole or in part except in a written amendment executed by both parties to the Agreement.

### **Severability**

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

### **Attorney's Fees**

The parties agree that they shall each be responsible for their own attorney's fees in the event of any dispute under this Agreement or related to this Agreement.

### **Independent Contractor**

This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties.

City and COTA are independent contractors. COTA agrees and understands that the Agreement does not grant to COTA or its employees any rights or privileges established for employees of the City.

### **Funding Out:**

COTA acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.

COTA acknowledges that the City has provided notice that the City's payment obligations to COTA are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide COTA notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.

### **Default**

A party shall be in default (Default) under the Agreement if the party fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and following Notice of Default as provided in the section of this Agreement relating to Termination, fails timely to cure the alleged default as provided in this Agreement.

### **Open Records**

COTA is required to make any information created or exchanged with the City pursuant to this contract, 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.

### **Jurisdiction and Venue**

This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Agreement, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County Texas.

## **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 unless the law regarding service of process applies in which case the notices must be served in accordance with that law. Other notices and routine communications may be delivered by other means such as email, courier, or fax. 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 the City of COTA. Notice shall be addressed as follows:

To City:  
ATTN: City Manager  
301 West Second Street  
Austin Texas 78701

With copy to:  
City Attorney  
Law Department  
301 West Second Street  
Austin, Texas 78701

To COTA:  
ATTN: Steve Sexton  
100 Congress Avenue, Suite 1350  
Austin, Texas 78701-2744

With copy to:  
Richard T. Suttle, Jr.  
Armbrust and Brown, PLLC  
Austin, Texas 78701-2477

## **No implied wavier**

No waiver or consent, express or implied, by any party to this Agreement, or of any breach or default by any party in the performance of that party's obligations under this Agreement, will be deemed or construed to be a consent or waiver of any other breach or default in the performance by the party of that obligation or any other

obligation under this Agreement. Failure on the part of the party to complain of any act of any party or to declare any party in default, irrespective of how long the failure continues, will not constitute a waiver by the party of its rights under this Agreement until the applicable statute of limitations period has run.

EXECUTED in Austin, Travis County, Texas.

City of Austin, Texas

By:   
Marc A. Ott, City Manager

DATE: 11/14/13

Circuit of Americas, L.L.C.

By:   
Steve Sexton, President CEO

DATE: 11/14/13

Approved as to form:

  
Leela Fireside, Assistant City Attorney