

MUNICIPAL HOTEL OCCUPANCY TAX FUNDING AGREEMENT FOR TOURISM AND PROMOTIONAL SERVICES

This **Municipal Hotel Occupancy Tax Funding Agreement for Tourism and Promotional Services**, dated as of October 1, 2016, is between the City of Kyle, a Texas home-rule municipal corporation (the "City"), and the Kyle Area Chamber of Commerce, a Texas non-profit association (the "Chamber"), pursuant to Chapter 351 of the TEXAS TAX CODE.

As authorized by TEXAS TAX CODE §§ 351.002 and 351.003(a), the City, by ordinance, has enacted a municipal hotel occupancy tax of seven percent (7%).

TEXAS TAX CODE § 351.101(a) authorizes the City to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract visitors, historical tourists, and conventions to the City.

TEXAS TAX CODE § 351.101(c) authorizes the City to delegate to the Chamber, by contract, the management or supervision of programs and activities funded with revenue from the municipal hotel occupancy tax.

This Agreement provides for the Chamber's management or supervision of programs and activities necessary to promote tourism and the convention and hotel industry, pursuant to Chapter 351 of the Texas Tax Code, provided the Chamber is funded with revenue from the municipal hotel occupancy tax in accordance with the budget, substantially in the form of Exhibit A.

Accordingly, the parties agree as follows:

- 1. Definitions.** Terms defined in the preamble have their assigned meanings and each of the following terms has the meaning assigned to it.
 - 1.1. **"Agreement"** means this Municipal Hotel Occupancy Tax Funding Agreement for Tourism and Promotional Services, as amended from time to time.
 - 1.2. **"Effective Date"** means the date the first party to sign this Agreement receives the fully signed Agreement from the other party.
 - 1.3. **"Fiscal Year"** means the twelve-month period beginning October 1 and ending September 30.
 - 1.4. **"Hotel Tax Revenue"** means the revenue from the municipal hotel occupancy tax that are levied and collected by the City in accordance with Chapter 351 of the TEXAS TAX CODE.
 - 1.5. **"Normal Business Hours"** means beginning at 8:00 A.M. and ending at 5:00 P.M. local time on a day other than a Saturday, Sunday, or other day on which the Chamber is authorized or required to close.

- 1.6. **"Services"** means the advertising, solicitations, programs, and activities authorized under Chapter 351 of the Texas Tax Code and undertaken by the Chamber for the purposes of enhancing and promoting tourism and the convention and hotel industry within the City.
- 1.7. **"Visitor's Bureau Funds"** means the funds derived from the municipal hotel occupancy tax authorized under Chapter 351 of the TEXAS TAX CODE and paid to the Chamber under this Agreement and in accordance with the budget attached to this Agreement, substantially in the form of Exhibit A.
2. **Performance of Services by the Chamber.** The Chamber shall perform the Services in accordance with Chapter 351 of the TEXAS TAX CODE, all other applicable laws and regulations, this Agreement, and the budget attached to this Agreement, substantially in the form of Exhibit A.
3. **Allocation and Disbursement of Visitor's Bureau Funds.**
 - 3.1. **Funds Allocated for the Fiscal Year Ending September 30, 2017.** Subject to the provisions of this Agreement, the City shall pay to the Chamber the total amount of \$85,000 in Visitor's Bureau Funds from the City's Hotel Tax Revenue in four (4) quarterly installments of \$21,250.00 each during the 2016–2017 Fiscal Year.
 - 3.2. **Funds Allocated for the Fiscal Year Ending September 30, 2018.** Subject to the provisions of this Agreement, the City shall pay to the Chamber the total amount of \$61,000 in Visitor's Bureau Funds from the City's Hotel Tax Revenue in four (4) quarterly installments of \$15,250.00 each during the 2017–2018 Fiscal Year.
 - 3.3. **Funds Allocated for the Fiscal Year Ending September 30, 2019.** Subject to the provisions of this Agreement, the City shall pay to the Chamber the total amount of \$37,000 in Visitor's Bureau Funds from the City's Hotel Tax Revenue in four (4) quarterly installments of \$9,250.00 each during the 2018–2019 Fiscal Year.
 - 3.4. **Quarterly Installments of Visitor's Bureau Funds.** Subject to the terms of this Agreement, the Chamber may request a quarterly disbursement of Visitor's Bureau Funds at any point during the respective quarter. Prior to the City's disbursement of any Visitor's Bureau Funds to the Chamber, the Chamber shall make quarterly written requests for disbursement of Visitor's Bureau Funds from the City. No later than thirty (30) calendar days after the City receives a written request from the Chamber for a quarterly disbursement of Visitor's Bureau Funds, the City shall pay the Chamber one-fourth (1/4) of the Visitor's Bureau Funds allocated for the Fiscal Year in which the disbursement is requested pursuant to this Agreement.

4. Use of Visitor's Bureau Funds.

- 4.1. **Use of Visitor's Bureau Funds by the Chamber.** Subject to the provisions of this Agreement and in accordance with Chapter 351 of the TEXAS TAX CODE, the Chamber shall use the Visitor's Bureau Funds for advertising and providing local and regional tourist information via both print and digital formats to attract visitors, historical tourists, and conventions to the City in a manner that seeks to directly enhance and promote tourism and the convention and hotel industry.
- 4.2. **Administrative Costs.** The Chamber may spend Visitor's Bureau Funds for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the Chamber's tourism promotion activities and performance of Services authorized under Chapter 351 of the TEXAS TAX CODE.
- 4.3. **Restrictions on Travel Expenditures.** In accordance with Section 351.101(f) of the TEXAS TAX CODE, Visitor's Bureau Funds may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.

5. Budgets, Recordkeeping, and Reporting Requirements.

- 5.1. **Budget for 2016–2017 Fiscal Year.** Prior to the execution of this Agreement, the Chamber shall submit to the City an annual budget to be approved by the Kyle City Council for the 2016–2017 Fiscal Year. The Chamber's proposed budget must identify proposed expenditures of Visitor's Bureau Funds by the Chamber. In accordance with Section 351.101(c) of the TEXAS TAX CODE, the City shall not disburse Visitor's Bureau Funds to the Chamber as set forth in Section 3 of this Agreement unless a budget for the Chamber's Services has been approved in writing by the Kyle City Council. The Chamber agrees that the total of all payments made by the City to the Chamber under this Agreement will not exceed the amount approved by the Kyle City Council for the 2015–2016 Fiscal Year as shown in the budget attached to this Agreement, substantially in the form of Exhibit A.
- 5.2. **Budget for Fiscal Years 2017–2018 and 2018–2019.** Prior to the disbursement of any Visitor's Bureau Funds allocated above in Section 3 of this Agreement for Fiscal Years 2017–2018 or 2018–2019, the Chamber shall submit to the City an annual budget in accordance with Section 5.5 of this Agreement to be approved by the Kyle City Council for said Fiscal Year. The Chamber's proposed budget must identify proposed expenditures of Visitor's Bureau Funds by the Chamber. In accordance with Section 351.101(c) of the TEXAS TAX CODE, the City shall not disburse Visitor's Bureau Funds to the Chamber as set forth in Section 3 of this Agreement unless a budget for the Chamber's Services has been approved in writing by the Kyle City Council. The Chamber agrees that the total of all

payments made by the City to the Chamber under this Agreement will not exceed the amounts allocated above in Section 3 of this Agreement.

- 5.3. **Reallocation of Visitor's Bureau Funds within the Budget.** The City agrees that the Chamber may reasonably reallocate funds within the budget among line items to meet changing conditions. Despite the preceding sentence, the Chamber's reallocation of funds among line items shall not exceed fifteen percent (15%) of the total approved budget during any Fiscal Year in which this Agreement is in effect. Subject to the terms of this Agreement, the City agrees that any such reallocation of Visitor's Bureau Funds by the Chamber among line items in the budget during any Fiscal Year in which this Agreement is in effect will not necessitate a new approval of the budget or of expenditures made by the Chamber for Services provided in accordance with Chapter 351 of the TEXAS TAX CODE. Despite the preceding sentence, if the Chamber seeks to reallocate funds from one line item to the Employee Services line item in the budget during any Fiscal Year in which this Agreement is in effect, then the Chamber must obtain consent from the City prior to any such reallocation. If the Chamber reallocates funds among line items as allowed by this section, then the Chamber shall identify such reallocation in the quarterly reports required by Section 5.9 of this Agreement.
- 5.4. **Chamber Reimbursements to the City.** The Chamber shall reimburse the City for expenditures of Visitor's Bureau Funds made in excess of the total amount of Visitor's Bureau Funds allocated to the Chamber for a given Fiscal Year. Despite the preceding sentence and in accordance with Section 5.3 of this Agreement, if the Chamber spends Visitor's Bureau Funds in excess of a specific line item in the budget for a given Fiscal Year, the City shall not require the Chamber to reimburse the City for such line item expenditures provided the Chamber's total expenditures do not exceed the total amount of Visitor's Bureau Funds allocated to the Chamber for that Fiscal Year.
- 5.5. **Budgets in Subsequent Fiscal Years.** For subsequent Fiscal Years, the Chamber shall submit a proposed budget to the City no later than ninety (90) days before the start of the new Fiscal Year for approval by the Kyle City Council. The Chamber's proposed budget in subsequent Fiscal Years must identify proposed expenditures of Visitor's Bureau Funds by the Chamber. In accordance with Section 351.101(c) of the TEXAS TAX CODE, the City shall not disburse Visitor's Bureau Funds to the Chamber in subsequent Fiscal Years unless a budget for the Chamber's Services has been approved in writing by the Kyle City Council.
- 5.6. **Fiduciary Relationship.** The Chamber acknowledges that the approval of such budget by the Kyle City Council creates a fiduciary duty in the Chamber with respect to the Visitor's Bureau Funds provided by the City to the Chamber under this Agreement. The Chamber shall spend Visitor's Bureau Funds only in the manner and for the purposes specified in this Agreement, TEXAS TAX CODE § 351.101(a), and in the budget as approved by the City.

- 5.7. **Separate Account.** The Chamber shall maintain the Visitor's Bureau Funds paid by the City to the Chamber under the provisions of this Agreement in a separate account. The Chamber shall not commingle Visitor's Bureau Funds with any other money.
- 5.8. **Financial Records.** The Chamber shall maintain complete and accurate financial records of each expenditure of Visitor's Bureau Funds made by the Chamber and, on request of the City Manager or the City Manager's designee, or as may be required by law, the Chamber shall make the records available for inspection and review during Normal Business Hours.
- 5.9. **Quarterly Reports.** The Chamber shall submit a quarterly report in electronic format no later than thirty (30) days after the end of each quarter during the term of this Agreement to the City Finance Director, with a copy to the City Manager, describing the Services provided and the Visitor's Bureau Funds expended by the Chamber during the previous quarter. The Chamber shall include administrative expenses and any allocation of personnel resources related to this Agreement in the quarterly report.

6. Operation and Maintenance of the Tourist Information Center.

- 6.1. **Location.** The Tourist Information Center is currently located within the Chamber's office at 401 Center Street, Kyle, Texas, 78640.
- 6.2. **Staffing.** The Chamber agrees to provide paid and volunteer staffing such that the Tourist Information Center is open to the public during the following times:

6.3.1. Monday–Friday 9:00 A.M. to 4:00 P.M.

During these times, the staff will provide assistance to visitors, respond to telephone inquiries, distribute tourism materials and information, maintain records, stock brochure racks and bins, and perform other services and tasks as directed by the Chamber.

- 6.3. **Tourist Information Center Furnishings.** The furnishings, equipment, and materials necessary for the effective operation of the Tourist Information Center are the sole property of the Chamber, including, but not limited to, desks, chairs, computers, copiers, telephone equipment, and office supplies.

7. Kyle Economic Development & Tourism Board.

- 7.1. **Oversight.** The Kyle Economic Development & Tourism Board (the "ED&T") will monitor the Chamber's performance under this Agreement.
 - 7.1.1. **Chamber Approval of Budget and Agreement.** The Chamber's Board of Directors shall review and approve the proposed budget attached to this Agreement, substantially in the form of Exhibit A, and this Agreement prior to submission to the ED&T for recommendation to the City Council.

The budget must contain an itemization of proposed expenditures for office space, personnel, equipment, supplies, vehicles, and other expenses to be incurred by the Chamber in performance of this Agreement.

7.1.2. **Expenditures.** The ED&T shall monitor the Chamber's expenditures of Visitor's Bureau Funds under this Agreement for conformity to the budget attached to this Agreement, substantially in the form of Exhibit A. The Chamber shall provide a quarterly report as required by Section 5.9 of this Agreement to the ED&T.

7.2. **Check Endorsements and Visitor's Bureau Funds.** The Chamber shall designate at least two officers authorized to co-sign checks drafted on all accounts containing Visitor's Bureau Funds. Two officers shall sign all checks, regardless of amount, written on accounts containing Visitor's Bureau Funds.

8. **Effective Date.** This Agreement is effective on the Effective Date.

9. **Term and Termination.**

9.1. **Term.** Subject to the provisions of this Agreement, the term of this Agreement begins on October 1, 2016 and terminates on September 30, 2019. Following this three-year term, the parties may elect to extend this Agreement under the same terms for an additional three-year term. To exercise the option to extend this Agreement for an additional three-year term, each party shall notify the other in writing at least ninety (90) days prior to the expiration of the term of this Agreement. The Chamber agrees that the City's obligation to make the final quarterly payment of Visitor's Bureau Funds to the Chamber is contingent upon the City's collection of sufficient Hotel Tax Revenue. The Chamber's obligation to submit a quarterly report to the City under Section 5.9 of this Agreement for the final quarter of the Fiscal Year survives the end of the term of this Agreement. The parties agree that this Agreement does not constitute a debt of the City.

9.2. **Termination of Agreement.** This Agreement may be terminated by either party, with or without cause, by tendering ninety (90) days written notice to the other party.

9.3. **Reimbursements for Contractual Obligations.** In the event this Agreement is terminated by either party pursuant to Section 9.1 or Section 9.2 of this Agreement, the City agrees to reimburse the Chamber for any contractual obligations undertaken by the Chamber in satisfactory performance of those activities specified in this Agreement and that were approved by the Kyle City Council through the budget attached to this Agreement, substantially in the form of Exhibit A, or through the budget approved by the Kyle City Council in future Fiscal Years. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated by this Agreement.

- 9.4. **Return of Visitor's Bureau Funds.** Subject to Section 9.3 of this Agreement, the Chamber agrees to return any unencumbered or unused Visitor's Bureau Funds to the City no later than sixty (60) days following
- 9.4.1. the termination of this Agreement; or
 - 9.4.2. the end of the Fiscal Year.
- 9.5. **Appropriation of Visitor's Bureau Funds.** Notwithstanding anything to the contrary in this Agreement, the parties agree the City's financial obligations under this Agreement are contingent upon adoption of a budget by the Kyle City Council appropriating sufficient Visitor's Bureau Funds to allow for the City's full compliance with the terms of this Agreement. In the event the Kyle City Council does not appropriate sufficient Visitor's Bureau Funds to allow for the City's full compliance with the terms of this Agreement, the parties agree this Agreement will terminate on the last day of the Fiscal Year in which sufficient Visitor's Bureau Funds were appropriated for this Agreement provided the City gives the Chamber sixty (60) days written notice. In the event the Kyle City Council appropriates some Visitor's Bureau Funds, but in lesser amounts than those set forth in the budget, the parties may agree upon a revised budget for Chamber expenses that will be covered by the amounts that the Kyle City Council appropriates under the revised budget. If the parties are unable to agree upon a revised budget within thirty (30) days of the new Fiscal Year, this Agreement will terminate and no Visitor's Bureau Funds will be released by the City to the Chamber until a new Chamber budget is approved by the Kyle City Council.

10. General Provisions.

- 10.1. **Governing Law.** This Agreement is governed by the laws of the State of Texas and all obligations of the Parties under this Agreement are performable in Hays County, Texas.
- 10.2. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.
- 10.3. **Entire Agreement.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements.
- 10.4. **Severability.** It is the intention of the parties that the provisions of this Agreement will be enforceable to the fullest extent permissible under Texas law. If any clause or provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, that provision is severed from this Agreement and the other provisions remain in force.
- 10.5. **Amendments.** The parties shall not amend this Agreement, except by an agreement in writing signed by both parties.

- 10.6. **No Waiver.** Failure of a party to give notice of any breach by the other party of any provision of this Agreement will not be deemed a waiver of any prior or subsequent breach.
- 10.7. **Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement represent that they have authorization to sign on behalf of their respective organizations.
- 10.8. **Headings.** The headings contained in this Agreement are for convenience and reference only and should not affect the meaning or interpretation of any provision of this Agreement.
- 10.9. **Notice.** The parties must send all notices and consents in writing by certified mail. A notice or writing is effective when the intended recipient receives it. If a party's address for notice changes, that party must send a signed notice in writing by certified mail to the other party within ten (10) business days of the address change. The current address for notice for each party is as follows:

City: City of Kyle
Attn: Kyle City Manager
100 W. Center Street
Kyle, Texas 78640

Chamber: Kyle Chamber of Commerce
401 Center Street
Kyle, TX 78640

Executed this the _____ day of _____, 2016.

CITY OF KYLE, TEXAS

By: _____

Printed Name: _____

Title: _____

KYLE CHAMBER OF COMMERCE

By: _____

Printed Name: _____

Title: _____