

RESOLUTION NO. R2020-40

A RESOLUTION APPROVING A VISITORS' CENTER OPERATIONS AGREEMENT WITH THE BURNET CHAMBER OF COMMERCE AND AUTHORIZING THE APPROPRIATION OF HOTEL OCCUPANCY TAX REVENUE TO FUND THE AGREEMENT FOR THE CURRENT FISCAL YEAR

Whereas, City Council has made it a priority to promote economic development through tourism, including efforts to attract to the community out of town visitors, travelers, businesses, organizations, and groups whether for purposes of business or pleasure; and

Whereas, City Council finds tourism and tourism related industries and the money spent by tourists and visitors to the community are essential components of a diverse local economy aiding in the creation of jobs for local residents, increased revenues for local businesses and increased local sales tax revenue; and

Whereas, the City currently levies a local Hotel Occupancy Tax; and

Whereas, in accordance with Section 351.103 of the Texas Tax Code, a portion of Hotel Occupancy Tax collected by the City must be used for "*advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;*" and

Whereas, City Council finds the operation of visitors' center is an effective way to promote and advertise the City to tourist and conventioners; and

Whereas, City Council recognizes the Burnet Chamber of Commerce possesses expertise in the operation of a visitors' center; and, will be actively engaged in promoting tourism in the City, including promoting travel to the City by residents of other areas for festivals and similar events; and

Whereas, City Council desires to delegate operations of a visitors' center to the Burnet Chamber of Commerce; and

Whereas, the Burnet Chamber of Commerce's board of directors has approved the agreement that is the subject of this Resolution.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF BURNET, TEXAS:

Section one. That the recitals to this Resolution are incorporated herein for all purposes.


Section two. That the Visitors' Center Operations Agreement, attached hereto as **Exhibit "A"**, is hereby approved; and the operations of the visitors' center shall be funded this fiscal year by such amount approved in the 2020-21 budget.

Section three. That the mayor is hereby authorized to execute an agreement in substantial form as **Exhibit "A,"** and execute such other documents and take such other actions reasonably necessary to facilitate the purpose of this Resolution.

Section four. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THIS 27th DAY OF AUGUST 2020.

CITY OF BURNET, TEXAS


Crista Goble Bromley, Mayor

ATTEST:



Kelly Dix, City Secretary



EXHIBIT "A"

VISITORS' CENTER OPERATIONS AGREEMENT

This Agreement is made and entered into by and between the City of Burnet, Texas, a Texas home rule municipal corporation, and the Burnet Chamber of Commerce a 501c6 corporation formed in the state of Texas. The City and Chamber may jointly be referred to herein as the "Parties" and individually as a "Party."

RECITALS:

Whereas, the City has made it a priority to promote economic development through tourism, including efforts to attract to the community out of town visitors, travelers, businesses, organizations, and groups whether for purposes of business or pleasure; and

Whereas, tourism and tourism related industries and the money spent by tourists and visitors to the community are essential components of a diverse local economy aiding in the creation of jobs for local residents, increased revenues for local businesses and increased local sales tax revenue; and

Whereas, the City currently levies a local Hotel Occupancy Tax, as defined herein; and

Whereas, in accordance with Section 351.103 of the Texas Tax Code, a portion of Hotel Occupancy Tax collected by the City must be used for "*advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;*" and

Whereas, the Parties agree that the Chamber possesses expertise in the operation of a visitors' center, marketing and promotional activities and will be actively engaged in promoting tourism in the City, including promoting travel to the City by residents of other areas for festivals and similar events; and

Whereas, the Parties concur that inasmuch as the Chamber is a private organization to which the City Council is delegating the management and/or supervision of only those programs approved in advance by the City, this Agreement is authorized by Section 351.101(c) of the Texas Tax Code.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties below, the Parties do mutually agree as follows:

ARTICLE ONE

Definitions

The terms set out in *italics* shall mean as follows:

Agreement Effective Date means the latter date this Agreement is executed by either Party.

Budget Year means the City's budget year, which runs from October 1st to September 30th the following year.

Chamber means the Burnet Chamber of Commerce.

City means the City of Burnet, Texas.

City Council means the governing body of the City.

City Holidays means those days designated by City Council to be official holidays of the City.

Local Hotel Occupancy Tax or *HOT* means a tax currently levied by the City of Burnet pursuant to Chapter 351, of the Texas Tax Code.

Statutorily Authorized Promotional Programs or *SAPP(S)* for the purposes of this Agreement means the equipping, repairing, operation, and maintenance of a visitor information centers as authorized by Texas Tax Code Section 351.001 (a)(1)

Visitors' Center means the Burnet Visitors and Convention Bureau.

ARTICLE II

Annual Allocation of Hot

- 2.1 **Annual allocations.** The City shall not have any financial obligation to the Chamber under this Agreement unless and until the City Council allocates HOT funds as provided in this Article II. City Council shall be under no obligation to fund this Agreement in any subsequent Budget Year; and, any allocation of funds for subsequent Budget Years shall be at City Council's sole discretion. In the event City Council fails, for any reason, to fund this Agreement for any subsequent Budget Year, this Agreement shall become void as of the first day of the Budget Year such funds were not allocated.

- 2.2 **Current Budget Year allocations.** The City's Annual Allocation for the Budget Year this Agreement first became effective is an amount up to \$60,700.00; and, shall be allocated by the Chamber as follows:

- Operations Costs. \$49,200.00
- Rent \$9,000.00
- Utilities (actual costs up to) \$2,500.00

2.3 **Unspent annual allocations.** Any Annual Allocation, which is unencumbered or unexpended at the end of the City's Budget Year for which the allocation occurred shall be remitted to the City within 90 days from the last day of that Budget Year.

ARTICLE III Chamber's Use of Hot

3.1 **Promotional Services.** Pursuant to Section 351.101(c) of the Texas Tax Code, the City engages the Chamber, to manage and supervise certain STAPPS. Specifically, the City engages the Chamber to manager and operate a visitors' information center known as the "Burnet Visitors and Convention Bureau", which is located at 101 North Pierce, Ste. 1, Burnet, Burnet County, Texas. All HOT revenue expended by the Chamber pursuant to this Agreement shall directly enhance and promote tourism and convention attendance in the City.

3.2 **Branding.** The Chamber recognizes the intent and desire of the City to establish and enhance a "brand identity" for the City of Burnet. The Chamber shall ensure that SAPPS are compatible with and enhance the "branding" efforts of the City and shall assist the City in developing strategies for coordinating the City's marketing efforts with the Chamber's marketing programs.

ARTICLE IV VISITORS AND CONVENTION BUREAU

4.1 **Operations.** During normal business hours the Visitors Center shall provide the following:

- A comfortable atmosphere that invites visitors and conventioners to relax and plan their time in Burnet; and
- One or more travel counselors on-site to assist tourist and conventioners with their travel questions; and, who shall be well versed in local attractions, dining venues, event, live entertainment, shopping and day trip opportunities;
- A large selection of complementary City of Burnet and Highland Lakes area travel literature;
- A restroom available to the public, which shall be maintain in a clean and sanitary condition; and
- Free public internet access.

4.2 **Hours of operation.** The Visitors' Center shall be operated in accordance with the following schedule:

- Monday through Friday 9:00 a.m. until 5:00 p.m.
- Saturday 10:00 a.m. until 2:00 p.m.
- Sunday Closed.
- Holidays The Visitors' Center may be closed on City Holidays.

4.3 **Insurance.** The building in which the Visitors' Center is located is leased from M-S Luck LTD. The Chamber shall, at all times, comply with the insurance, and other, requirements of the Lease Agreement.

ARTICLE V CHAMBER'S DUTY TO CITY

The Chamber acknowledges that, pursuant to the terms of this Agreement and Section 351.101 (c) of the Texas Tax Code, it has a fiduciary duty to the City with respect to its handling and use of the HOT expended in accordance with this Agreement.

ARTICLE VI RECORDS

The Chamber shall maintain (or cause to be maintained) current and complete books and records reflecting expenditures of funds from the HOT hereunder in accordance with applicable law and prudent accounting procedures. Further, such book and records shall be made available to the City for inspection during normal business hours upon reasonable advance notice. All such records, to the extent considered public records which fall within the provisions of Texas Government Code, Chapter 552, may be subject to disclosure and the Chamber shall cooperate fully with the City in timely producing all such records in response to any public request for same.

ARTICLE VII CITY'S RIGHT TO AUDIT

The City reserves the right for the City's internal audit department personnel, or an independent certified public accounting firm selected by the City, to conduct examinations, during normal business hours, of the books and records maintained by the Chamber with respect to its expenditures hereunder, which books and records shall be made available to City at the Chamber's office upon at least 30 days' notice to the Chamber of the City's inspection and audit. Any and all costs incurred by the City associated with any audit described herein shall be borne by the City.

ARTICLE VIII TERMINATION

8.1 **Chamber's Default.** The City may terminate this Agreement by furnishing written notice to the Chamber if at any time during the term of this Agreement the Chamber fails to perform any of its obligations hereunder and such failure to perform such

covenant continues for 30 days after written notice given by the City to the Chamber; provided that if such failure cannot reasonably be cured within such 30-day period then the Chamber shall not be in default hereunder and the City shall not have the right to terminate this Agreement unless and until the Chamber fails to commence curing such failure within such 30-day period and prosecute such cure to completion with diligence.

- 8.2 **Unspent Funds.** In the event this Agreement is terminated by the City pursuant to the terms of this Agreement and unspent HOT reserved for SAPP costs and expenditures remains, then such unspent amounts shall be eligible for use by the City in any manner permitted Chapter 351 of the Texas Tax Code and the Chamber shall have no further right or entitlement to the receipt of such funds, except for the payment of eligible costs and expenses reasonably incurred by the Chamber up to and including the date of termination. In such case the Chamber shall return to the City any unspent funds in the Chamber's possession within 90 days of termination of this Agreement.
- 8.3 **City Default.** City Default shall mean the failure of the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, and the City fails to cure such failure within 30 days after written notice from the Chamber describing such failure, or if such failure cannot be cured within such 30-day period in the exercise of all due diligence, then if the City fails to commence such cure within such 30-day period or fails to continuously thereafter diligently prosecute the cure of such failure. If the City is in default of this Agreement, the Chamber may terminate this Agreement by written notice and sue for damages, subject to the limitations of Article IX.

ARTICLE IX LIABILITY OF CHAMBER AND CITY

- 9.1 **Immunity and City Personnel Liability.** The Chamber agrees that no provision of this Agreement is intended to, or shall be interpreted to, negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas. Further, the Chamber agrees that it may assert claims only against the assets of the City, but only as prescribed in section 9.4, and that under no circumstances shall any officer or employee of the City ever be personally liable for any of the obligations of City under this Agreement.
- 9.2 **INDEMNIFICATION. THE CHAMBER AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, THE CHAMBER'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR CHAMBER'S MISUSE OF HOT REVENUE AND/OR THE MISMANAGEMENT OF SUCH REVENUES.**

- 9.3 **REIMBURSEMENT OF FUNDS.** IF THIS AGREEMENT OR THE USE OF HOT REVENUE, AS PROVIDED HEREIN IS DEEMED TO BE IMPERMISSIBLE BY A COURT HAVING JURISDICTION OVER THE PARTIES AND SUBJECT MATTER, AND A FINAL NON-APPEALABLE JUDGEMENT REQUIRES THE CHAMBER TO RETURN SUCH FUNDS, THEN THE CHAMBER AGREES THAT ANY AND ALL FUNDS ADVANCED TO IT BY THE CITY SHALL BE REIMBURSED TO THE CITY.
- 9.4 **City's Liability Limitations.** Should the City be in default of this Agreement the Chamber specifically agrees that the City's liability under this Agreement shall in no event exceed the Annual Allocation of HOT for the budget year in which the default is alleged to have occurred, less any HOT distributed to the Chamber for that budget year.
- 9.5 **No special damages.** Notwithstanding any provisions herein to the contrary neither the City nor the Chamber shall ever be liable to the other Party for any consequential, special, punitive (or exemplary), or any similar damages, including, without limitation, lost profits, loss of revenue or income, cost of capital, or loss of business reputation or opportunity.
- 9.6 **Attorney's Fees.** Neither Party shall be liable to the other for any Attorney's Fees or costs incurred in the enforcement of this Agreement; save and except, the City shall be entitled to recover reasonable and necessary attorney's fees, expert witness fees and court costs, incurred to recover HOT funds that were adjudicated by a court of competent jurisdiction to have been either impermissibly paid by the City to the Chamber or misspent by the Chamber.

ARTICLE X NOTICES

Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by: (a) delivering the same in person to the Party to be notified, (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the Party to be notified at the address herein specified, or (iii) delivery by private courier with proof of delivery required. If notice is deposited in the United States mail pursuant to (ii) of this Article, it will be effective from and after the date of receipt or delivery thereof if refused. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purpose of notice, the address of the parties shall be, until changed as hereinafter provided for, as follows:

CHAMBER:

Burnet Chamber of Commerce
101 North Pierce, STE. 1
Burnet, Texas 78611

CITY:

The City of Burnet
Attn. David Vaughn, City Manager
P.O. Box 1369
Burnet, Texas 78611

The Parties shall have the right, at any time, to change their respective addresses and each shall have the right to specify as its address any other address by at least 15 days' written notice to the other Party. Each Party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other Party 15 days' written notice thereof setting forth the address of such additional party or parties; provided, however, that neither Party shall have the right to designate more than two such additional parties. Notice required to be delivered hereunder to either Party shall not be deemed to be effective until the additional parties, if any, designated by such Party have been given notice in a manner deemed effective pursuant to the terms of this Article.

**ARTICLE XI
RELATIONSHIP**

The Chamber shall at all times be the independent contractor of the City and not the employee or agent of the City, with respect to the matters provided for herein. The Chamber shall have no right or power to contract with third parties for, on behalf of, or in the name of the City or to otherwise bind or obligate the City.

**ARTICLE XII
SUCCESSORS AND ASSIGNS; ASSIGNABILITY**

- 12.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Parties and their respective heirs, representatives, successors and permitted assigns.
- 12.2 **Assignment by Chamber.** The Chamber shall not be permitted to assign this Agreement, in whole or in part, unless such assignment is first approved by the City Council.

**ARTICLE XIII
TERM**

- 13.1 **Annual Renewal.** Unless earlier terminated under the terms of this Agreement, this Agreement shall renew annually, subject to the City's Annual Allocation obligations parameters set out in Article II.
- 13.2 **Renewal Cancellation.** In addition to any other right of termination set out herein, either Party may terminate this Agreement, without cause, before the beginning of

a new term by giving the other 30 days' notice prior to the renewal date of the new term.

ARTICLE XIV MISCELLANEOUS

- 14.1 **Amendments.** This Agreement may be amended only by a written instrument so stating which is executed by the Parties.
- 14.2 **Severability.** If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- 14.3 **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- 14.5 **Waivers.** No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.
- 14.6 **Governing Law and Venue.** This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by, the laws applicable to the State of Texas. Venue for any disputes arising under this Agreement shall be in Burnet County, Texas.
- 14.7 **Authority.** The person executing this Agreement on behalf of the Chamber and the City each represents that he/she has the power and authority to do so and to bind his/her principal to the terms of this Agreement.
- 14.8 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

The remainder of this page intentionally blank.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the latter date written below.

THE BURNET CHAMBER OF COMMERCE:

By: _____
Name: _____
Title: _____
Date: _____

CITY OF BURNET, TEXAS

By: *Crista Goble Bromley*
Crista Goble Bromley, Mayor

Date: 8-27-2020

ATTEST:

Kelly Dix
Kelly Dix, City Secretary

