

**RENEWAL OF THE AGREEMENT BETWEEN THE CITY OF NEW BRAUNFELS AND
THE GREATER NEW BRAUNFELS CHAMBER OF COMMERCE, INC.
CONCERNING THE USE OF HOTEL OCCUPANCY TAX FUNDS**

STATE OF TEXAS §
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COUNTY OF COMAL §

This Agreement is made this the _____ day of _____, 2024 by and between the City of New Braunfels, a Municipal Corporation of the State of Texas, hereinafter called "City", acting herein by and through its City Manager, and the Greater New Braunfels Chamber of Commerce, Inc., a private non-profit corporation hereinafter called "Chamber", acting by and through its duly elected officers.

SECTION 1. LEGAL AUTHORITY

The City of New Braunfels collects a local hotel occupancy tax as authorized by Section 351 of the Texas Tax Code ("Act"). Pursuant to the Act, the City expends the funds collected for the purpose of advertising and encouraging the growth of tourism and convention activity in the City as outlined in Section 122-36 of the New Braunfels Code of Ordinances ("Code"), and as amended.

SECTION 2. TERM OF AGREEMENT

This is the first five (5) year Renewal Agreement that shall become effective on October 1, 2024, and shall terminate on September 30, 2029. This agreement may be renewed for one additional five-year period, subject to the provisions of Section 10 below.

SECTION 3. SERVICES TO BE PROVIDED

3.1 As part of its obligation under the Act to use local hotel occupancy tax funds for attracting and promoting tourism and the convention and hotel industry, the City hereby agrees to pay to the Chamber fifty percent (50%) of the money received by the City from the local hotel occupancy tax ("HOT") in consideration for the Chamber advertising and promotional and tourism related initiatives for the visitor market from which the City derives direct tourist income benefit.

3.2 The Chamber agrees to conduct a continuing program of state-of-the-art advertising and promotion for the purpose of attracting visitors, tourists, and conventions to the City by advertising in appropriate tourist and general market mediums, by representing the City at travel shows and other such events, by participating with state and regional agencies in tourist development programs of benefit to the City, and by using all appropriate means to increase the traveling public's awareness of the leisure, meeting and recreational advantages of the City. The Chamber shall distribute information on all local accommodation establishments that pay hotel occupancy taxes to the City via an accommodation guide updated by the Chamber annually.

SECTION 4. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by and between the parties that the Chamber is hired and engaged as an independent contractor and is not an officer, agent, or employee of the City.

SECTION 5. MANAGEMENT OF FUNDS

5.1 Fiduciary Duty. The Chamber agrees to maintain a separate financial account of the HOT funds received from the City and may not commingle the funds with any other account. This financial activity is referred to as the Convention and Tourism Fund (CTF) in the City's budget document. It is understood and agreed by and between the parties that, upon budget approval by the City Council, a fiduciary duty is created by the Chamber with respect to expenditure of the revenue provided.

5.2 Accountability. The Chamber agrees to maintain complete and accurate financial records of each receipt and expenditure of the HOT funds and, upon request of the City Council shall provide copies of such records to the City Manager for dissemination to the governing body. Upon request from a member of the public, the Chamber shall make the records available in accordance with the Texas Public Information Act.

5.3 Use of Funds. It is understood and agreed by and between the parties that HOT funds may be spent by the Chamber for day-to-day operations including supplies, salaries, office rental, travel expenses, and other administrative costs, if same have been previously approved in the budget and if directly related to the services provided under Section 3.2.

5.4 Budget. The Chamber shall provide a proposed line-item budget to the City that includes administrative and operating costs. The proposed budget for the next fiscal year shall be provided no later than June 30 of each year. The City Council shall approve the CTF budget in conjunction with the City's budget adoption process. Chamber representatives will make a presentation when requested by Council or the City Manager as part of the City's annual budget approval process that outlines the financial plan for the use of HOT funds. The presentation should include, but not be limited to clearly stating the goals and objectives as well as highlighting any initiatives or shift in strategies for advertising and marketing.

5.5 Semi-annual Reports. The Chamber shall submit semi-annual financial reports no later than 60 days after the end of each reporting period (the reporting periods being October through March and April through September). These reports shall identify a budget comparison of the HOT funds received by contract and the uses thereof as defined in the overall budget.

5.6 Audited Report. The Chamber shall submit a fiscal year audited financial report to the City, showing in detail the disbursement and use of HOT funds paid to the Chamber pursuant to this Agreement, no later than one-hundred twenty (120) days after the end of each fiscal year of this Agreement. In addition, the City reserves the right to request an annual audited financial statement reflecting the financial position of the entire Chamber of Commerce during the term of this Agreement. The Chamber agrees to provide a current audited statement (currently defined as no later than the last fiscal year), such statement

to be delivered within twenty (20) days upon receiving a request of the City Manager.

5.7 Payments. As stated in section 3.1, 50% of the proceeds of the HOT funds are to be paid to the Chamber for marketing and advertising initiatives. The City and Chamber will collaboratively develop hotel occupancy tax projections for the upcoming fiscal year as part of the annual budget process. That projection will serve as the basis for developing the Convention and Tourism Fund (CTF) annual budget.

Payments will be disbursed to the chamber in accordance with the following schedule.

- October 1 – 25% of annual budget
- January 1 – 25% of annual budget
- April 1 – 25% of annual budget
- July 1 – 25% of annual budget

5.8 Reserves. The CTF balance/reserve will be reconciled during the City's budget process so that the ending fiscal year reserve balance is equal to \$700,000. The reserve is not considered part of the adopted budget for administrative and operating expenditures. The purpose of the reserve is to allow for effective cash flow of operating expenditures.

5.9 Fiscal Reconciliation. As part of the budget process, a prior year reconciliation of revenues and expenditures will occur to ensure that 50% of the actual HOT funds are allocated to the CTF budget for eligible expenditures. For example, if actual HOT collections exceed the initial budget that the CTF budget was based on, 50% of the collections over and above the initial budget will be incorporated into the following year's CTF budget. Similarly, if 50% of actual collections is lower than the adopted budget, an offsetting adjustment would be incorporated into the following year's CTF budget.

SECTION 6. INDEMNIFICATION

The Chamber agrees to indemnify the City, its officers, agents, and employees, from any and all claims, losses, causes of action and damages, suits, and liability of every kind including all expenses of litigation, courts costs, and attorney fees, for injury to or death to any person, or for damage to any property arising from or in connection with the operations of the Chamber, its officers, agents and employees carried out in furtherance of the Agreement.

SECTION 7. INSURANCE

The Chamber shall maintain a comprehensive general liability insurance policy, with an insurance company or companies authorized to do business in the State of Texas, which shall include bodily injury, property damage, contractual and automobile liability coverage with a minimum coverage of not less than \$1,000,000. In addition, workers' compensation insurance coverage shall be provided by the Chamber in accordance with State Law.

SECTION 8. TERMINATION

If either party materially breaches this Agreement, the other party may terminate the Agreement by providing thirty (30) days written notice to the defaulting party; provided, however, that the defaulting party may cure the default within the 30-day notice period if same can be cured. Should a dispute arise regarding the existence of a material breach or whether a default has occurred or whether the default has been cured, then the parties shall make a good faith effort to resolve the dispute, including presenting the issue to a mediator approved by the parties, before the Agreement is declared terminated or in default.

SECTION 9. RENEWAL

One hundred and fifty (150) days prior to the end of the term of the Agreement, the Chamber may submit to the City Manager evidence of justification for exercising the option to renew this contract with the City for one additional five year period. It is understood and agreed that the Chamber is not entitled to any right of automatic renewal of this Agreement for the ensuing year, or years, since such renewal option rests exclusively with the City Council.

SECTION 10. NOTICE

Wherever notice is required or permitted, the notice shall be in writing and deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set out below, or at other addresses they have specified by written notice delivered in accordance herein:

City of New Braunfels
Attn: City Manager
550 Landa Street
New Braunfels, TX 78130

Greater New Braunfels Chamber of Commerce
Attn: President/CEO
P.O. Box 311417
New Braunfels, TX 78131-1417

SECTION 11. COMPLIANCE WITH LAWS

In performing its duties under this Agreement, the Chamber shall, at all times, comply with the ordinances of the City of New Braunfels and all applicable laws of the State of Texas.

SECTION 12. PROHIBITION AGAINST DISCRIMINATION

In the performance of the Agreement, the Chamber shall not discriminate against any employee or applicant for employment because of an individual's race, color, religion, national origin, sex, or mental or physical disability. Proven breach of this provision may be regarded as a material breach of this Agreement allowing for termination.

SECTION 13. CONTROLLING THE LAW

It is understood and agreed that in the event any provision of this Agreement is inconsistent with the requirements of the Act, or any other applicable State law, the

requirements of Texas law will control. Exclusive venue shall be in Comal County, Texas.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, relative to the hotel occupancy tax funds made the basis hereof. It is understood and agreed that the City Charter of the City of New Braunfels requires that all contracts with the City be in writing and adopted by action of the City Council.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate originals, in the City of New Braunfels, Comal County, Texas on this _____ day of _____ 2019.

CITY OF NEW BRAUNFELS

BY:

Robert Camareno, City Manager

ATTEST:

Gayle Wilkinson, City Secretary

THE GREATER NEW BRAUNFELS CHAMBER OF COMMERCE, INC.

BY:

President/CEO