

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

**STATE OF TEXAS §
 §
COUNTY OF COMAL §**

This Agreement is made this the xx day of xx, 2014 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 122-31 of the New Braunfels Code of Ordinances ("Code").

SECTION 2 TERM OF AGREEMENT

This Agreement shall become effective on October 1, 2014 and terminate on September 30, 2019. This agreement may be renewed for two additional five year periods, 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 actually received by the City from the local hotel occupancy tax ("HOT") in consideration for the Chamber advertising and promoting tourism for the visitor market from which the City derives direct tourist income benefit. The City Council shall approve the Chamber's annual tourism budget

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 publishing and distributing brochures and community information packets, by advertising in various appropriate tourist publications and general media publications, 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 resort, 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 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. It is understood and agreed by and between the parties that, upon budget approval by the City, a fiduciary duty is created in the Chamber with respect to expenditure of the revenue provided.

5.2 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 or other person, shall make the records available for inspection and review during normal business hours in accordance with the Texas Public Information Act.

5.3 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 The Chamber shall provide a proposed line item budget to the City Council for approval that will include administrative and operations costs. The proposed budget for the next fiscal year shall be provided no later than June 30 of each year. An annual report of activities shall be provided no later than November 30 of each year. The budget shall provide a complete financial plan and shall contain the following:

- 1) A budget message, explanatory of the tourism/promotional activity contracted, which message shall contain an outline of the plan of activities and set forth the reasons for the salient changes from the previous year (as applicable) and any major budgetary revisions. Any subsequent budgetary revision that increases the total budget appropriation (excluding reserves) will require City Council approval. All items of expenses shall contain narratives as the basis of the expenditure; and a consolidated statement of anticipated receipts and expenditures for all funds.

5.5 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 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 sixty (60) days after the end of each calendar 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 (current 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 or Mayor.

SECTION 6. TRANSFER OF FUNDS

6.1 For the first six months of the fiscal year (October-March), the City shall remit monthly payments to the Chamber in an amount not to exceed fifty percent (50%) of the approved annual budgeted expenditures. The cumulative payments from October-March will not exceed 50% of the budgeted expenditures. The monthly payments from October-March will be based on the projected cash flow requirement of the convention and tourism fund activities. Chamber staff will submit a funding/payment request to the Director of Finance no later than 10 business days prior to the beginning of the month. Beginning in April and continuing through the end of the fiscal year, monthly payments will be submitted that reconcile the amount remitted to fifty percent (50%) of the actual hotel/motel collections fiscal year to date (including quarter ending payments when applicable). Chamber will maintain no more than a \$100,000 or five percent (5%) fund balance/reserve, whichever is the greater amount. The fund balance reserve is calculated as five percent (5%) of the annual operating and maintenance expenditures adopted in the current fiscal year budget or \$100,000, whichever is greater. The last monthly payment of the fiscal year shall be in an amount that reconciles, in accordance with Section 6.2, actual-CTF Convention and Tourist Fund (CTF) expenditures in the fiscal year plus the required reserve as defined in this section with the amount paid to the CTF in the first eleven months of the fiscal year. City shall remit the monthly payments to the Chamber within forty-five (45) days after the end of each month.

6.2 Within forty-five (45) days after the end of each fiscal year, City and Chamber will reconcile the payments made during the year with actual CTF expenditures as well as the required reserve as defined in Section 6.1, and either a reimbursement from Chamber to City or an additional payment from City to Chamber will be made in order to reflect the true monetary payments required to be made pursuant to this Agreement for the preceding calendar year. In no case shall the total payment to the CTF exceed 50 percent of the total local hotel occupancy tax received by the City in a fiscal year.

6.3 If, in any fiscal year, 50 percent of the local hotel occupancy tax revenue exceeded the CTF's actual expenditures plus the required reserve (as defined in Section 6.1), then the Chamber will submit to the City Council an amended budget that addresses the use of those funds.

SECTION 7**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 8**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 9**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 10**RENEWAL**

Sixty (60) days prior to the end of the term of the contract, the Chamber may submit to the City Manager evidence of justification for exercising the option to renew this contract with the City for an additional five year period, not to exceed two-five year renewal periods. 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 option under the Acts rests exclusively with the City Council.

SECTION 11**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
CHAMBER**

City of New Braunfels
424 S. Castell Ave.
New Braunfels, TX 78131-1747
Attn: City Manager and Mayor

Greater New Braunfels Chamber of Commerce
P.O. Box 311417
New Braunfels, TX 78131-1417
Attn: President and Chair of the Board

SECTION 12 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 13 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 14 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 15 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 2014.