

## **PUBLICITY AND TOURISM AGREEMENT**

This **PUBLICITY AND TOURISM AGREEMENT** dated \_\_\_\_\_, 2019 (the “Agreement”), is entered into between the **CITY OF SCHERTZ, TEXAS**, a home-rule city (the “City”), and **THE CHAMBER (SCHERTZ-CIBOLO-SELMA AREA)**, a Texas nonprofit corporation (the “Chamber”).

### **RECITALS:**

**WHEREAS**, pursuant to state statutes and its home rule charter, the City enacted a local hotel occupancy tax on occupants of hotels within the City;

**WHEREAS**, the City is required to use such local hotel occupancy taxes for promoting tourism and the convention and hotel industry in the City; and

**WHEREAS**, the City would like to engage the Chamber to use the City’s hotel occupancy taxes to promote tourism and the convention and hotel industry in the City.

### **AGREEMENT:**

For and in consideration of the mutual promises, covenants, benefits, and obligations hereafter set forth, the City and the Chamber hereby agree and contract as follows:

### **ARTICLE I**

**A.** The City hereby agrees that in consideration for advertising, promoting tourism and the convention and hotel industry in the City, the City will pay to the Chamber a portion of the hotel occupancy taxes collected.

**B.** The Chamber agrees that any local hotel occupancy tax funds paid to it by the City shall be used only as permitted in Section 351.101 of the Texas Tax Code, as amended.

**C.** The Chamber agrees to conduct a continuing program of advertising and promotion for the purpose of attracting visitors, tourists, and conventions to the City by providing the following services:

- (1) publishing and distributing brochures and community information packets, including the following:
  - (a) a visitor’s guide that lists information about the City, businesses in the City, hotels, and area events, and area meetings, for which the Chamber will be responsible for compiling the list of business; and

- (b) a biennial area map that lists major City streets, City Parks, hotels, hike and bike trails, City swimming pools, etc.;
- (2) participating with state and regional agencies in tourist development programs of benefit to the local area and to the City; and
- (3) using all appropriate means to increase the traveling public's awareness of the resort and recreational advantages of the local area and the City.

**D.** The Chamber further agrees that it will seek to achieve economic benefit for the City through all of such activities, that it will provide tourist-related information about the City upon request, and that it will serve as an advisory body to the City, on request, in matters related to expanding the tourist-derived economy.

## **ARTICLE II**

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.

## **ARTICLE III**

The Chamber shall secure sufficient numbers of employees to accomplish this Agreement. The Chamber shall further provide such office space, equipment, supplies and other materials as may be necessary to accomplish the purposes of this Agreement.

## **ARTICLE IV**

**A.** The Chamber shall provide to the City, prior to obtaining any local hotel occupancy tax funds, a proposed budget for the upcoming year. Said budget shall include maximum dollar amounts for both the services and products separately. The budget shall include a line item description of the products proposed. At minimum, it shall show the budget for visitor's guides and area maps to be provided, including cost and a minimum number of each product.

**B.** The approval process for the budget shall be as follows: said budget is to be approved by the City Council as part of the City's annual budget in advance of the release of any local hotel occupancy tax funds; said budget shall be submitted to the City for review no later than June 30 of each year; the City Council shall approve the agreed-upon budget no later than September 30 of each year.

**C.** 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 revenue provided.

**D.** The Chamber will invoice for services (e.g. operations of visitor's center) rendered on a monthly basis. The total payment for services shall be invoiced to the City in twelve, monthly amounts. The City shall review the invoiced services against the agreed upon budget and service agreement prior to payment. The City shall pay such portions of the invoice that conform to the agreed upon budget and this Agreement with local hotel occupancy taxes.

**E.** (1) The Chamber will invoice the provided products (e.g. visitor's guide, area map, etc.) up to 20% of the budgeted cost maximum after substantial design has been completed and hard quotes have been obtained on or after October 1 of each calendar year. The Chamber will provide a draft copy of the guide and a copy of the written quote with the invoice for the visitor's guide and/or area map design. The City shall review the submittals and the approved budget prior to payment. The City shall pay such portions of the invoice that conform to the agreed upon budget and this Agreement with local hotel occupancy taxes.

(2) The Chamber will invoice the provided products (e.g. visitor's guide, area map, etc.) up to final 80% of the budgeted cost maximum after the Chamber has received actual delivery of the visitor's guides and/or area maps. The Chamber will provide a final copy of the guide and proof of receipt of at least the minimum number of copies identified in the budget. The City shall review the submittals and the approved budget prior to payment. The City shall pay such portions of the invoice that conform to the agreed upon budget and this Agreement with local hotel occupancy taxes.

**F.** The Chamber shall provide to the City annual reports on the activities that are conducted to benefit the City. These reports shall be provided to the City no later than November 1.

**G.** The Chamber may spend hotel occupancy tax funds for day-to-day operations including supplies, salaries, office rental, travel expenses, and other administrative costs, if such expenditures have been previously approved in the budget and if directly related to the promotion of tourism.

## **ARTICLE V**

**A.** The Agreement shall begin October 1, 2019 and shall continue in force for a period of five years, ending on September 30, 2024. The City Council shall review this Agreement annually prior to budget adoption.

**B.** This Agreement will automatically renew for additional one-year periods if no party notifies the other that the intention is not to renew this Agreement. Any intent not to renew shall be done in writing to the other party at least sixty (60) days prior to the end of this Agreement in the manner described in Article VII.

C. Either party may terminate this Agreement at any time by providing the other party thirty (30) days written notice.

#### **ARTICLE VI**

A. The Chamber will invoice the City on the 1st of each month in accordance with Article IV, beginning November 1, 2019 (for the services and products, if any, provided in the prior month). The City shall pay such invoice with local hotel occupancy taxes.

B. The monthly fee that the City pays to the Chamber does not include any other fees that the City may incur as a member of the Chamber, including membership fees, luncheon dues, special event booths, and sponsorships.

C. Beginning October 1, 2021, and each year thereafter, a three percent (3%) inflation increase will be added to the services portion of the annualized amount due to the Chamber.

#### **ARTICLE VII**

Any notice necessary or appropriate relative to this Agreement shall be effective when deposited in the United States mail. Such notice must be sent certified mail, return receipt requested or registered mail as follows:

If to the City:                   City of Schertz, Texas  
  1400 Schertz Parkway  
  Schertz, Texas 78154  
  Attention: City Manager

If to the Chamber:           Schertz Chamber of Commerce  
  1730 Schertz Parkway  
  P.O. Box 564  
  Schertz, Texas 78154  
  Attention: President

#### **ARTICLE VIII**

No part of the Agreement may be assigned or delegated without the prior written consent of the other party. Any attempted assignment of benefits or rights or delegation of duties or obligations shall be a breach of this Agreement. However, nothing in this Agreement shall prohibit the Chamber from participating with regional or state tourism programs or to contract for joint promotion with other agencies.

**ARTICLE IX**

This Agreement shall be subject to the laws and statutes of the State of Texas.

**ARTICLE X**

**THE CHAMBER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND 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, COURT 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 THIS AGREEMENT. THE CHAMBER SHALL CARRY OR CAUSE TO BE CARRIED INSURANCE IN THE TYPES AND AMOUNTS REQUIRED BY THE CITY FROM TIME TO TIME. SAID POLICIES, OR DUPLICATE ORIGINALS THEREOF, SHALL BE FILED WITH THE CITY AT THE BEGINNING OF EACH CHAMBER FISCAL YEAR AND BEFORE ANY OPERATIONS CONTEMPLATED BY THIS AGREEMENT ARE BEGUN.**

**ARTICLE XI**

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to the other persons or circumstances shall not be affected thereby.

**ARTICLE XII**

This Agreement shall be amended only by the mutual written consent of the parties to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date and year first above written.

**CITY OF SCHERTZ**

By: \_\_\_\_\_  
City Manager

**THE CHAMBER (SCHERTZ-CIBOLO-SELMA AREA)**

By: \_\_\_\_\_  
President