

**MUNICIPAL HOTEL OCCUPANCY TAX FUNDING AGREEMENT  
FOR TOURISM AND PROMOTIONAL SERVICES**

This **Municipal Hotel Occupancy Tax Funding Agreement for Tourism and Promotional Services** (the “Agreement”) is entered into by and between the City of Breckenridge, a Texas home-rule municipality (the “City”) and the Breckenridge Chamber of Commerce, a Texas non-profit corporation (the “Chamber”) on the \_\_\_\_ day of \_\_\_\_\_, 2023.

**WHEREAS**, the City assesses a municipal hotel occupancy tax of seven percent (7 %) within the City pursuant to Chapter 351 of the Texas Tax Code;

**WHEREAS**, Section 351.101(a) of the Texas Tax Code 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 tourists, the furnishing of facilities, personnel and materials for convention registration, and operating and maintaining a visitor information center;

**WHEREAS**, Section 351.101(c) of the Texas Tax Code authorizes the City to delegate management of hotel occupancy tax revenue to a third party by contract, provided that the City approves the budget of the third party annually, the third party provides reports showing expenditures from the revenue at least quarterly, and that the third party maintain the revenue in a separate bank account from other funds, and Section 351.101(d) requires said third party to maintain “complete and accurate financial records of each expenditure of hotel occupancy tax revenue” made by the party;

**WHEREAS**, certain administrative costs associated with the management of programs using hotel occupancy tax revenues can be paid for with those tax revenues pursuant to Section 351.101(e) of the Texas Tax Code, and specific travel can be funded with said revenues pursuant to Section 351.101(f); and

**WHEREAS**, the City and the Chamber wish to enter into an agreement delegating to the Chamber the oversight of the use of a certain amount of hotel occupancy tax receipts collected by the City in exchange for the Chamber agreeing to use the funds for purposes authorized by law and providing financial transparency in the use and maintenance of said funds.

**NOW, THEREFORE**, the City and the Chamber agree as follows.

**1. Definitions.**

Terms defined in the preamble have their assigned meanings and each of the following terms shall mean as follows:

1.1 “Fiscal Year” means the twelve-month period beginning October 1 and ending September 30.

1.2 “Hotel Tax Revenue” means the revenue from the municipal hotel occupancy tax that is levied and collected by the City in accordance with Chapter 351 of the Texas Tax Code.

1.3 “Tourism Activities” means activities to directly enhance and promote tourism and the convention and hotel industry by:

- (a) Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City;
- (b) Furnishing facilities, personnel, and materials for the registration of convention delegates or registrants;
- (c) Encouraging, promoting, improvement, and applying the arts;
- (d) Engaging in historical restoration and preservation projects or activities and advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums in the City; and
- (e) Installing signage directing the public to sights and attractions that are visited frequently by hotel guests in the City.

1.4 “Tourism Funds” is defined in Section 3.1.

## **2. Term and Termination.**

2.1 Term. The term of this Agreement begins on October 1, 2023 and ends on September 30, 2024. Thereafter, the term of this Agreement shall renew for successive one (1) year terms if the Chamber is in compliance with this Agreement, unless one party notifies the other party in writing at least ninety (90) days prior to the expiration of the then current term.

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

2.3 Return of Funds. In the event that this Agreement is not renewed pursuant to Section 2.1 or is terminated pursuant to Section 2.2, the Chamber agrees to return any unencumbered or unused Tourism Funds to the City no later than sixty (60) days following the termination of this Agreement or the end of the last term of this Agreement. Contractual obligations undertaken by the Chamber in good faith and in satisfactory performance of the Tourism Activities that were approved by the City Council through the Chamber budget shall be considered as encumbered Tourism Funds for purposes of this Section.

## **3. Tourism Funds.**

3.1 Allocation. Subject to the provisions of this Agreement, the City agrees to allocate one hundred percent (100%) of Hotel Tax Revenue, except for amounts necessary to reimburse the City for its costs in administering and collecting the Hotel Tax itself (the “Tourism Funds”).

3.2 Disbursement. The Tourism Funds shall be paid to the Chamber in four (4) quarterly installments during this Agreement.

## **4. Use of Tourism Funds.**

4.1 Generally. In accordance with Section 351.101 of the Texas Tax Code, the Chamber shall use the Tourism Funds solely for the Tourism Activities.

4.2 Administrative Costs. The Chamber may spend Tourism 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 Tourism Activities. The portion of the total administrative costs of the Chamber for which Tourism Funds may be used may not exceed the portion of those administrative costs actually incurred in conducting the Tourism Activities.

4.3 Restrictions on Travel Expenditures. In accordance with Section 351.101(f) of the Texas Tax Code, Tourism 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.

4.4 Promotion of the City. In all promotional material generated or used by the Chamber in the performance of the Tourism Activities, the Chamber shall include reference to the City's funding of the Tourism Activities.

## **5. Recordkeeping and Reporting Requirements.**

5.1 Fiduciary Relationship. The Chamber acknowledges that the approval of this Agreement by the City Commission creates a fiduciary duty in the Chamber with respect to the Tourism Funds. The Chamber shall spend Tourism Funds only in the manner and for the purposes specified in this Agreement and Section 351.101 of the Texas Tax Code.

5.2 Separate Account. The Chamber shall maintain the Tourism Funds in a separate account. The Chamber shall not commingle Tourism Funds with any other money.

5.3 Financial Records. The Chamber shall maintain complete and accurate financial records of each expenditure of Tourism 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.

5.4 Audit. The Chamber shall furnish the City an independent audit of the Tourism Funds for the preceding Fiscal Year not later than January 1<sup>st</sup> of the following year. Said audit shall be done by a qualified accountant selected by, and at the expense of, the Chamber.

5.7 Quarterly Reports. The Chamber shall submit a quarterly report to the City Manager, in a mutually acceptable format, no later than thirty (30) days after the end of each quarter. Said report shall describe the activities of the Chamber using Tourism Funds and the Tourism 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. The City will review the quarterly reports to ensure that the Tourism Funds have been used for purposes allowed by this Agreement.

**6. General Provisions.**

6.1 **Governing Law.** The laws of Texas govern all matters relating to this Agreement, including torts, without regard to its conflict of law principles. The venue for any disputes concerning this Agreement shall be in Stephens County, Texas.

6.2 **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.

6.3 **Merger.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements. Specifically, this Agreement supersedes and replaces the Contract between the parties dated January 7, 2022.

6.4 **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.

6.5 **Successors and Assigns.** This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.6 **Amendments.** The parties shall not amend this Agreement, except by an agreement in writing signed by both parties.

6.7 **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.

6.8 **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.

6.9 **Notice.** The parties must send all notices required by this Agreement in writing by certified mail. A notice 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:

<b>City:</b>	City of Breckenridge	<b>Chamber:</b>	Breckenridge Chamber of Commerce
	Attn: City Manager		Attn: Executive Director
	105 N. Rose		100 E. Elm
	Breckenridge, TX 76424		Breckenridge, TX 76424

*Execution Page Follows*

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF BRECKENRIDGE**

\_\_\_\_\_  
Bob Sims, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Sutter, City Secretary

**BRECKENRIDGE CHAMBER OF COMMERCE**

\_\_\_\_\_  
\_\_\_\_\_, President