

**TOWN OF FULTON
AND
ROCKPORT-FULTON CHAMBER OF COMMERCE**

**An Agreement Concerning the Use of
Funds from the Hotel Occupancy Tax**

**STATE OF TEXAS §
 §
COUNTY OF ARANSAS §**

This Agreement is made by and between the Town of Fulton, hereinafter called “Town,” and the Rockport-Fulton Chamber of Commerce, a private non-profit association, hereinafter called “Chamber,” acting by and through its duly elected officers.

SECTION 1. LEGAL AUTHORITY

The Town collects a local hotel occupancy tax as authorized by Chapter 351 of the Texas Tax Code (“Act”). Pursuant to the Act, the Town expends funds collected for the purpose of advertising and encouraging growth of tourism and convention/hotel activity in the Town as outlined in the Town of Fulton Code of Ordinances (“Code”).

SECTION 2. TERM OF AGREEMENT

This Agreement shall become effective on October 1, 2023 and terminate on September 30, 2024.

SECTION 3. SERVICES TO BE PROVIDED

- 3.1 As authorized under the Act, the Town hereby agrees to pay to the Chamber **FIFTY THOUSAND DOLLARS (\$50,000.00)** of the money actually received by the Town from local hotel occupancy tax. Subject to the terms and conditions herein, the Chamber agrees to expend such funds received for advertising and promoting tourism for the out-of-town visitor market from which the hotel industry within the Town derives direct tourist income benefits.

- 3.2 The Chamber agrees to conduct a continuing program of advertising and promotion for the purpose of attracting visitors, tourists, and conventions to the Town by publishing and distributing brochures and community information packets, by advertising in various, appropriate tourist publications and general media publications, by representing the Town at travel shows and other such events, by participating with state and regional agencies in tourist development programs of benefit to the Town, and by using all appropriate means to increase the traveling public’s awareness of the resort and recreational advantages of the Town. The Chamber shall distribute information on all local accommodation establishments that pay hotel occupancy taxes to the Town via an accommodation guide to be updated by the Chamber annually.

SECTION 4. INDEPENDENT CONTRACTOR

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

SECTION 5. MANAGEMENT OF FUNDS

- 5.1 The Chamber shall maintain a separate financial account of the hotel occupancy tax funds received from the Town 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 Town, a fiduciary duty is created in the Chamber with respect to expenditure of the revenue provided.
- 5.2 The Chamber shall maintain complete and accurate financial records of each receipt and expenditure of the hotel occupancy funds and upon request of the Town Council or other person, shall make the records available for inspection and review during normal business hours in accordance with the provisions of the Texas Public Information Act (Texas Government Code, Chapter 552).
- 5.3 Hotel occupancy funds may be spent by the Chamber for day-to-day operations including supplies, salaries, office rental, travel expenses, and other administrative costs, only if such expenditures have been previously budgeted and approved by the Town in advance and shown to be directly related to promotion of tourism and the hotel industry. (See Exhibit "A".)
- 5.4 The Chamber shall submit an annual report of activities and provide therein a projected line-item budget to the Town Council for approval that will include itemized personnel costs by singular job descriptions and capital outlay expenses if any. Such report and budget shall be provided no later than June 1st of each year for the next fiscal 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 the activity and, in the following years, set forth the reasons for the salient changes from the previous year (as applicable) and any major budgetary revisions. Any subsequent budgetary revision exceeding 25% of any line item, or 10% of the entire budget, or \$10,000.00 will require Town Council approval. All items of expenses shall contain detailed narratives as to the basis of the expenditure.
- (2) A consolidated statement of anticipated receipts and expenditures for all funds.
- (3) Anticipated revenues shall be placed in parallel columns and display therein the:

- a) Actual amount for the last completed year;
- b) Estimated amount for the current fiscal year;
- c) Proposed amount for the ensuing fiscal year.

(4) Planned expenditures shall be placed in parallel columns opposite the various items of expenditures and display the:

- a) Actual amount of such items of expenditures for the last completed fiscal year;
- b) Estimated amount for the current fiscal year; and
- c) Proposed amount for the ensuing fiscal year.

5.5 Fiscal quarterly financial reports, on a form prescribed by the Town (See Exhibit "B"), are required to be submitted to the Town Secretary no later than sixty (60) days after the end of each fiscal quarter. These reports shall identify a budget comparison of the hotel occupancy funds received by agreement and the uses thereof as defined in the overall budget. It shall show the amount budgeted for the fiscal year by category item and the actual expenditures of such within the fiscal year quarter being reported. In addition, all administrative expenses shall be reported in detail comparing the current fiscal year expenses projection, the current fiscal year actual expenses and the percent of the fiscal year projection.

5.6 The Chamber shall upon request submit an audited financial report to the Town, showing in detail the disbursement and use of hotel occupancy funds paid to the Chamber pursuant to this Agreement, no later than sixty (60) days after the end of each fiscal year of this Agreement. In addition, the Town reserves the right to request an annual audited financial statement reflecting the financial position of the entire Chamber for the duration of this Agreement. The Chamber agrees to provide a current audit (current defined as no later than the last fiscal year), such copy to be delivered within twenty (20) days upon receiving a request from the Town Secretary or Mayor.

SECTION 6. TRANSFER OF FUNDS

Upon compliance with all conditions precedent, the Town Secretary shall remit to the Chamber **FIFTY THOUSAND DOLLARS (\$50,000.00)** of the hotel occupancy tax receipts in four (4) quarterly payments of **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00)** each. The Chamber shall receive its first quarterly payment on the effective date hereof or the date of final execution of this Agreement, whichever is later. Each quarterly payment thereafter shall be made to the Chamber within ten (10) business days after receipt of the required quarterly report, but not sooner than the 31st day after the end of each calendar quarter, and after approval of said report by the Town Council. The Town Council may not approve any quarterly report or portion thereof if it determines that any reported expense in the reporting quarter was an improper use of funds or outside the authorized use of hotel occupancy tax and may reduce subsequent quarterly payments by the amount determined improper or unauthorized.

SECTION 7. FORCE MAJEURE – SUFFICIENT FUNDS NOT AVAILABLE

The Town's obligation to make quarterly payments to the Chamber pursuant to this Agreement is contingent upon anticipated receipt of a minimal amount of hotel occupancy tax from the collecting entities within the Town. Based upon this anticipated, budgeted income, the total dollar figure to be paid to the Chamber pursuant to this Agreement was determined. Other agreements have also been made by the Town with local organizations, providing for disbursement of a portion of hotel occupancy tax funds collected. Should it happen, by act of nature or other means outside the control of the Town, that the actual hotel occupancy tax funds received are less than the anticipated and budgeted funds, the Town, upon prior notice to the Chamber, may unilaterally reduce the payment(s) to be made pursuant to this Agreement. Unless otherwise agreed by the Town, any reduction in payments pursuant hereto shall be made from the final (fourth) quarter payment. The Town shall reduce the actual payment pro rata by a percentage of the amount obligated as it relates to the total hotel occupancy tax dollars actually received.

SECTION 8. RETURN OF FUNDS UPON TERMINATION OF CONTRACT

Should this Agreement be terminated by either party hereto or by its own terms, and unless express agreement is otherwise made, the Chamber shall remit and return to the Town, with a final accounting thereof, all unused and unspent hotel occupancy tax funds in its possession, within thirty (30) days from the date of such termination.

SECTION 9. INDEMNIFICATION

The Chamber agrees to indemnify the Town, 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 of any person, or for damage to any property arising from or in connection with the operations or actions of the Chamber, its officers, agents and employees carried out in furtherance of this Agreement.

SECTION 10. 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 of not less than \$500,000.00. In addition, workers' compensation insurance coverage shall be provided by the Chamber in accordance with state law.

SECTION 11. 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. Should a dispute arise regarding the existence of a material breach, either party may request that the issue be presented to a licensed mediator.

SECTION 12. NON-RENEWAL

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 Act rests exclusively with the Town Council.

SECTION 13. NOTICE

All communications required by this Agreement between the Town and the Chamber shall be in writing and addressed to the attention of the Town Secretary, 201 N. 7th Street, Fulton, TX 78358 or to the President of the Rockport-Fulton Chamber of Commerce, 319 Broadway, Rockport, TX 78382.

SECTION 14. COMPLIANCE WITH LAWS

In performing its duties under this Agreement, the Chamber shall at all times comply with the Town of Fulton Code and all the State of Texas Acts. (See Sections 1 & 5.)

SECTION 15. PROHIBITION AGAINST DISCRIMINATION

In the performance of this 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 16. CONTROLLING 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 the law will control and supersede the terms set forth herein.

SECTION 17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relative to the hotel occupancy tax funds made the basis hereof.

IN WITNESS WHEREOF, the parties have herein unto set their hands on duplicate originals, in the Town of Fulton, Aransas County, Texas, on this ____ day of _____, 20__.

TOWN OF FULTON

**ROCKPORT-FULTON CHAMBER
OF COMMERCE**

Kelli Cole, Mayor

_____, Chair of the Board

ATTEST:

ATTEST:

Stephanie Garcia, Town Secretary

_____, President/Chief Executive Officer

EXHIBIT "B"

HOT FUNDING EXPENSE REPORT FY 2015-2016

Description of Expense	Approved Budget	1st Quarter Expenses	2nd Quarter Expenses	3rd Quarter Expenses	4th Quarter Expenses	TOTAL
TOTAL REQUESTED						

Description of Administrative Expenses	Current Fiscal Year Administrative Expenses Projection	Fiscal Year Administrative Actual Expenses	Percentage of Fiscal Year Projections
TOTALS			