

**TOWN OF FULTON
AND
ACTS Aviation Non-Profit Fund – NCF Houston**

**An Agreement Concerning the Use of
Funds from the Hotel Occupancy Tax
Single-Sum Payment**

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

This Agreement is made by and between the Town of Fulton, a Texas home rule municipal corporation, hereinafter called “Town,” and ACTS Aviation Non-Profit Fund – NCF Houston, hereinafter called “Recipient.”

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

Conditioned upon Town Council approval, this Agreement shall become effective on the date signed by Recipient. This Agreement shall continue until Recipient has fulfilled all obligations to account for proper expenditure of hotel occupancy tax funds.

SECTION 3. SERVICES TO BE PROVIDED

The Town hereby agrees to pay to Recipient, from money received by the Town from local hotel occupancy tax, the sum of ***TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)***. Subject to the terms and conditions hereof, Recipient 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.

SECTION 4. INDEPENDENT CONTRACTOR

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

SECTION 5. MANAGEMENT OF FUNDS

- 5.1 It is understood and agreed by and between the parties that a fiduciary duty is created in the Recipient with respect to expenditure of the revenue provided.
- 5.2 The Recipient 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 Recipient for only those expenditures directly related to the promotion of tourism and the hotel industry in the Town of Fulton.
- 5.4 Recipient shall prepare and file with the Town Secretary a post event financial report, on a form prescribed by the Town (See attached Exhibit "A"), no later than 60 days after the event for which hotel occupancy tax funds were spent by the Recipient. This report shall identify a budget comparison of the hotel occupancy funds received by contract and the uses thereof as defined in the overall budget. It shall show the amount budgeted by category item and the actual expenditures of such. It shall compare the projected attendance and heads in beds from the application submitted prior to the event with the actual attendance and number of heads in beds generated by the event.

SECTION 6. TRANSFER OF FUNDS

Upon compliance with all condition's precedent, the Town Secretary shall remit to the Recipient hotel occupancy tax receipts as follows: **Lump-sum payment - \$2,500.00.**

SECTION 7. RETURN OF FUNDS UPON TERMINATION OF CONTRACT

Should this Agreement be terminated, the Recipient 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 8. INDEMNIFICATION

The Recipient 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 Recipient, its officers, agents and employees carried out in furtherance of this Agreement.

SECTION 9. TERMINATION

If Recipient is in breach of this Agreement, the Town may terminate the Agreement by

providing ten (10) days' written notice to Recipient to cure the breach. If the breach is not cured within the time provided, the Town Manager or Mayor may immediately declare Agreement terminated.

SECTION 10. NON-RENEWAL

It is understood and agreed that the Recipient 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 11. NOTICE

All communications required by this Agreement between the Town and the Recipient shall be in writing and addressed to the attention of the Town's City Secretary, P O Box 1130 or 201 N. 7th Street, Fulton, Texas 78358.

SECTION 12. COMPLIANCE WITH LAWS

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

SECTION 13. PROHIBITION AGAINST DISCRIMINATION

In the performance of this Agreement, the Recipient 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. Violation of this provision may be regarded as a material breach of this Agreement.

SECTION 14. 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 15. 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

**ACTS Aviation Non-Profit Fund
NCF Houston**

Kelli Cole, Mayor
Town of Fulton

_____, _____

ATTEST

ATTEST

Stephanie Garcia, City Secretary

_____ (please print name)

