



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NO. 15

MEETING DATE: **January 12, 2021**

AGENDA PLACEMENT:

- Ceremonial
- Consent
- Individual
- Closed Session

CAPTION:

Discussion of and action on a Hotel Occupancy Tax Funding Agreement between the City of Johnson City, Texas and the Johnson City Chamber of Commerce for, generally, the operation of the Johnson City Visitor Information Center, advertising and promotional programs, promotion of the arts, historical restoration and preservation projects, sporting event activities, and signage for automatic one (1) year renewal terms in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per calendar quarter. (Staff)

EXECUTIVE SUMMARY:

Mayor Stell and City Staff met with Chamber of Commerce representatives on December 17, 2020 to discuss revisions to an existing Hotel Occupancy Tax (HOT) Funding Agreement between the City and Chamber of Commerce.

Proposed Agreement details follow:

1. In accordance with Texas Tax Code 351.101, expands the available use of HOT funds from the Johnson City Visitor Center to:
 - a. Advertising and promotional programs to attract tourists to Johnson City;
 - b. Promotion of the arts;
 - c. Historical restoration and preservation projects;
 - d. Sporting event activities; and
 - e. Signage.
2. Retains quarterly payments of \$12,500.00.
3. Provides for payment reconciliation at the end of each fiscal year whereby unexpended or unqualified expenditures must be paid back to the City within 60 calendar days. Doing so ensures the City's continued financial oversight of HOT fund expenditures, while allowing the Chamber to more effectively budget on an annual basis.

4. Mandates the creation of an expanded and dedicated website / URL for the Johnson City Visitor Center. See preliminary website: <https://www.johnsoncitytexasvisitorcenter.com/>
5. Provides for quarterly reports and an annual financial report from a third-party reviewer.
6. Provides for advanced City Council approval of the Johnson City Chamber of Commerce's HOT funds budget.
7. Provides for automatic one (1) year renewals, assuming City Council approval of the Chamber's annual HOT funds budget.
8. Requires the provision of worker's compensation, fire, casualty, public liability, and property damage insurances by the Chamber of Commerce.
9. Provides for indemnification for both the City and Chamber of Commerce.

FINANCIAL: \$12,500.00 quarterly / \$50,000.00 annually from Fund No. 2 *Hotel Occupancy*

ATTACHMENTS:

- Proposed Agreement

The City Attorney is reviewing the proposed Agreement. City Staff will forward recommendations, if any, to the Chamber for approval and incorporation into the Agreement. Upon receipt, City Staff will forward the agreed upon Agreement to City Council.

SUGGESTED ACTION:

Motion to approve a Hotel Occupancy Tax Funding Agreement between the City of Johnson City, Texas and the Johnson City Chamber of Commerce for, generally, the operation of the Johnson City Visitor Information Center, advertising and promotional programs, promotion of the arts, historical restoration and preservation projects, sporting event activities, and signage for automatic one (1) year renewal terms in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per calendar quarter; and authorizing Mayor Stell to execute said Agreement on behalf of the City Council of the City of Johnson City, Texas.

PREPARED BY: City Staff

DATE SUBMITTED: 1/10/21

HOTEL OCCUPANCY TAX FUNDING AGREEMENT
between the City of Johnson City, Texas and
the Johnson City Chamber of Commerce

This Hotel Occupancy Tax Funding Agreement (“Agreement”) is entered into by and between the City of Johnson City, Texas (the "City") and the Johnson City Chamber of Commerce (the "Chamber"), collectively the "Parties" or individually "Party", as follows:

WHEREAS, the City has assessed a hotel occupancy tax (the "HOT") on occupants of hotels within the City limits and its Extraterritorial Jurisdiction, in accordance with Texas Tax Code Chapter 351 *Municipal Hotel Occupancy Taxes*; and

WHEREAS, the stated purpose of Tax Code Section 351.101(a), as amended, is to promote tourism and the convention and hotel industry; and

WHEREAS, Texas Tax Code Section 351.101, as amended, authorizes the City Council to allocate HOT funds for programs and activities that meet the stated purpose above; and

WHEREAS, pursuant to Texas Tax Code Section 351.101(c), as amended, the City Council may delegate the management or supervision of HOT-funded programs and activities to another entity, such as the Chamber; and

WHEREAS, the Chamber is a domestic, 501(c)6 nonprofit corporation registered as such with the Texas Secretary of State and the Internal Revenue Service.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are adopted as facts and are incorporated fully herein.

2. **Agreement.**

- (a) In accordance with Tax Code Section 351.101, as amended, the City delegates and agrees to compensate the Chamber for the following activities:
 - a. The construction, improvement, enlarging, equipping, repairing, operation, and maintenance of the Johnson City Visitor Information Center (the “Center”); and
 - b. Advertising and conducting solicitations and promotional programs to attract tourists to the City or its vicinity; and
 - c. The encouragement, promotion, improvement, and application of the arts within the City; and
 - d. Historical restoration and preservation projects, activities, or advertising to encourage tourists to visit preserved historic sites or museums located within the City or its vicinity that would be frequented by tourists; and

- e. Expenses, including promotional expenditures, directly related to a sporting event in which most participants are tourists who substantially increase economic activity at hotels within the City or its vicinity; and
 - f. Signage directing the public to sights and attractions that are visited frequently by hotel guests in the City.
- (b) In accordance with Tax Code Section 351.101, as amended, and in consideration of the HOT funding provided by the City, the Chamber accepts and agrees to operate the abovementioned activities, as outlined and defined herein.

3. **Compensation.** In accordance with Tax Code Section 351.101, as amended, HOT funds shall be issued by the City to the Chamber as follows:

- (a) *Quarterly Payments.* The City shall remit to the Chamber a quarterly payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) for qualifying HOT expenses within thirty (30) days following the first (1st) of each calendar quarter in January, April, July, and October. The quarterly compensable amount may be amended from time to time through the written authorization and approval of the City Council.
- (b) *Reconciliation of Payments.* Each fiscal year quarter, the Chamber is expected to fully expend the City's quarterly payment of \$12,500.00 for qualifying HOT expenses. Should the Chamber not fully expend the quarterly payment on qualifying HOT expenses, however, the difference between the City's quarterly payment and qualifying HOT expenses shall be applied to the Chamber's subsequent quarter expenditures. At the end of each fiscal year, quarterly payments shall be reconciled against qualifying HOT expenditures, and any unexpended payments shall be reimbursed to the City within sixty (60) calendar days following the Chamber's September fiscal year end.
- (c) *Maximum Allocation.* The total amount issued during the term of this Agreement shall not exceed the total amount budgeted by the City in each fiscal year's budget, nor shall the total amount issued during the term of this Agreement exceed each fiscal year quarter's total HOT revenue collected by the City.
- (d) *Administrative Costs.* As provided in Tax Code Section 351.101(e), as amended, HOT funding may include the day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures of the compensable HOT activities described herein. If the Chamber conducts other non-HOT related activities along with a HOT activity or service, the portion of the total administrative costs for HOT services and activities may not exceed the portion of those administrative costs actually incurred in conducting authorized HOT activities.

4. **Johnson City Visitor Information Center.** The Parties agree that the Chamber shall operate, at a minimum, the Center as follows:

- (a) Maintain public operation and access to the Center on reasonable dates and times, as agreed to by the Parties; and
- (b) Create an advertising and solicitation campaign to attract tourists to the City and local area; and
- (c) Create and submit online and in-print advertisements, based on the advertising and solicitation campaign, to National, Statewide, and/or Regional publications; and
- (d) Create and publish pamphlets, handouts, and maps, based on the advertising and solicitation campaign, as promotional pieces for handouts at the Center; and
- (e) Establish and maintain a dedicated Uniform Resource Locator (URL) and website or webpage for the Center; and
- (f) Establish and maintain a year-round internet wireless network (wi-fi) at the Center to assist tourists.

5. **Management of Funds.** In accordance with Tax Code Section 351.101, as amended, the following financial activities shall be conducted:

- (a) *Quarterly Reports.* The Chamber shall submit a quarterly report to the City listing its qualifying HOT expenditures and associated services and activities performed during the previous quarter. The report shall describe how the service or activity furthered the HOT objective of promoting tourism and the convention and hotel industry. Quarterly reports shall be due to the City on April 30th, July 31st, October 31st, and January 31st.
- (b) *Annual Report.* The Chamber shall maintain accurate and separate financial records of the receipt and expenditure of the HOT funds. The Chamber shall submit to the City an annual report from a third-party reviewer accounting for the expenditure of the HOT funds for each fiscal year (October – September). The report shall be provided to the City by December 31st of each year.
- (c) *Annual Budget.* On or about August 1st of each fiscal year, the Chamber shall submit an annual budget estimating HOT revenues and expenditures for the upcoming fiscal year. The City Council shall review and approve, in advance and in writing, the annual budget for the Chamber's following fiscal year.
- (d) *Fiduciary Duty.* Approval by the City Council of the Chamber's fiscal year budget creates a fiduciary duty in the Chamber with respect to the HOT funds provided by the City to the Chamber. The Chamber acknowledges and accepts this statutory duty.
- (e) *Separate Accounts.* The Chamber shall maintain HOT revenue provided from the City in a separate account established for that purpose. The Chamber may not commingle that revenue with any other money.
- (f) *Document Review.* Upon request by the City Council, the Chamber shall make available for inspection and review the Chamber's records on the receipt and expenditure of HOT revenue received.

6. **Independent Contractor.** It is understood by the Parties that the Chamber is an independent contractor and not an employee, agent, or officer of the City. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, including worker's compensation insurance, for the benefit of the Chamber. The City shall not be responsible for the day to day supervision of the Chamber, its officers, agents, or employees.

7. **Term; Termination.**

- (a) *Term.* This Agreement shall be effective upon execution and shall end on September 30th thereafter, unless terminated as provided for herein.
- (b) *Renewal.* Upon the approval of the Chamber's fiscal year budget, as required herein, the Agreement shall automatically renew for one (1) additional year on October 1st of the City and Chamber's fiscal year. In the event the City Council disapproves the Chamber's fiscal year budget, this Agreement shall terminate on September 30th of the current fiscal year.
- (c) *Termination.* This Agreement may be terminated upon failure by either Party to cure a default within thirty (30) calendar days of notice of the default from the other Party. Default shall consist of a breach of any term of this Agreement.

8. **Notice.** Any notice required by this Agreement shall be in writing, addressed to the Parties at the addresses provided herein, and shall be deemed given and delivered when deposited in the United States mail, postage prepaid.

9. **No Assignment.** This Agreement may not 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.

10. **Controlling Law; Venue.** This Agreement shall be subject to the laws and statutes of the State of Texas. Venue for any legal disputes arising under this Agreement shall be in Blanco County.

11. **Indemnification and Insurances.**

- (a) Chamber Insurance Obligations. Chamber, at its sole cost and expense, shall be responsible for Worker's Compensation, Fire, and Casualty Insurance on National Park Service property in or about the leased premises. Chamber, at its sole cost and expense, shall be responsible for Public Liability and Property Damage Insurance with respective limits of \$2,000,000 aggregate and \$1,000,000 per occurrence. All insurance policies required by Chamber shall be issued by insurance companies certified to do business by the State of Texas and its regulatory bodies and shall include both Chamber and City as parties insured. Certificates of insurance shall be delivered to City within ten (10) days after the Execution Date. All policies must provide for twenty (20) days written notice to City prior to cancellation or any changes in coverage.
- (B) **INDEMNIFICATION OF CHAMBER. CITY AGREES TO ADD CHAMBER AS AN ADDITIONAL INSURED FOR INJURY TO PERSONS**

OR DAMAGE TO PROPERTY IN, UPON, OR ABOUT THE LEASED PREMISES.

- (C) INDEMNIFICATION OF CITY. CHAMBER AGREES TO INDEMNIFY AND HOLD CITY HARMLESS FOR ANY AND ALL LOSS, DAMAGE, AND EXPENSE OCCASIONED BY OR ARISING OUT OF CLAIMS FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY IN, UPON, OR ABOUT THE LEASED PREMISES CAUSED BY OR CONTRIBUTED TO BY THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF CHAMBER OR OF ANY PERSON ACTING ON CHAMBER'S BEHALF, AND TO DEFEND ON BEHALF OF CITY ANY SUIT BROUGHT AGAINST CITY FOR ANY SUCH LOSS OR INJURY.**
- (d) Waiver of Subrogation. Chamber and City each waive any and all right to recover, claim, action, or cause of action against the other, its agents, directors, officers, or employees, for any loss or damage to the premises, or any improvements thereto, or the building, or any personal property therein, by reason of fire, the elements, or any other cause which could be insured against under the terms of their policies, regardless of cause or origin, including negligence of the other Party, its agents, directors, officers, or employees, and covenants that no insurer shall hold any right of subrogation against such other party. All insurance policies shall include a subrogative endorsement.

12. Entire Agreement. This Agreement represents the entirety of the agreement between the Parties, unless otherwise approved in writing by both Parties and made a part of this Agreement. This Agreement may be amended only by a signed writing by the Parties.

WHEREBY, the Parties agree and accept this Agreement by their signatures as indicated below.

CITY OF JOHNSON CITY, TEXAS:

Rhonda Stell, Mayor
City of Johnson City
P.O. Box 369
Johnson City, Texas 78636

Date

Attest:

Rick Schroder, CAO/City Secretary

Date

JOHNSON CITY CHAMBER OF COMMERCE:

President _____ Date _____
City of Johnson City Chamber of Commerce
P.O. Box 485
Johnson City, Texas

Attest:

Secretary _____ Date _____