

AGREEMENT BETWEEN THE CITY OF AUSTIN AND AUSTIN CONVENTION AND VISITORS BUREAU

This Agreement is entered into between the City of Austin, a Texas home-rule Municipality (“City”), and the Austin Convention and Visitors Bureau, a Texas non-profit ACVB (“ACVB”), pursuant to the authorizing legislation found at Chapter 351 of the Texas Tax Code, as amended from time to time (“Authorizing Legislation”).

WHEREAS, the City of Austin City Council created the Austin Convention and Visitors Bureau (ACVB) on August 15, 1996, and empowered the ACVB with the authority to plan and develop convention and tourism promotional activities and projects on behalf of the City, and

WHEREAS, the City of Austin City Council voted on November 18, 1999, to allocate a portion of the city’s Hotel and Occupancy Tax -- as described at today’s City Code Section 11-2-7 -- for these convention and tourism activities, and those tax dollars are the source of funds for this contract, and

WHEREAS, in 2016 the estimated tax collection will result in a \$16,472,944 allocation, with future year allocations dependent on future tax collection amounts, and

WHEREAS, this Agreement describes ACVB duties and obligations, which include marketing , soliciting, and advertising for conventions, tourism, and other gatherings, in a manner that maximizes use of the Austin Convention Center, commercial lodging facilities, and tourism facilities consistent with the adopted marketing plan, as further described below.

In furtherance of the purposes of the Authorizing Legislation, and in consideration of the mutual covenants in this Agreement, the City and the ACVB agree as follows:

1. Definitions.

- (a) “Commencement Date” is October 1, 2016, the date this Agreement goes into effect.
- (b) “Fiscal Year” means the twelve-month period beginning October 1 and ending September 30.
- (c) “Hotel Tax Revenue” means the money paid by the City to the ACVB from the hotel occupancy tax levied and collected by the City in accordance with the Authorizing Legislation (Tax Collections).

- (d) "Work" means the efforts undertaken by ACVB under the terms of this Agreement and funded by the hotel occupancy tax ACVB receives from the City, including an annual marketing plan and annual budget.

2. Work.

- (a) ACVB's Work under this Agreement will market and sell Austin as a premier business and leisure destination, enriching Austin's hospitality industry and the community's overall quality of life. This Work includes:
 - (i) Provide registration, housing and information services for convention groups. Develop public awareness of the desirability, benefits and importance of the travel industry to the Austin area economy.
 - (ii) Market and distribute materials promoting Austin as a preferred destination city consistent with the marketing plan,
 - (iii) Demonstrate the advantages the Austin area has to offer visitors from other parts of the state, the nation and the world.
 - (iv) Perform all responsibilities of Heritage Tourism.
 - (v) Market and promote conventions and tourism among minority markets in accordance with performance criteria set forth in each year's marketing plan.
 - (vi) Perform additional duties agreed upon by both parties which are consistent with ACVB's mission statement.
- (b) This Agreement excludes sponsorships that involve any tax-exempt bond funded City facilities and assets; efforts related to such sponsorships, if any, will be addressed in a separate agreement.
- (c) No later than June 15, or 30 days after the ACVB receives funding estimates for the ensuing Fiscal Year from the City, whichever is later, of each year the ACVB shall provide to the City a proposed written **budget and marketing plan** for the Work, which shall reflect consultations between the ACVB and appropriate City staff concerning, with respect to the budget, projected available Tax Collections for the ensuing Fiscal Year, and estimated costs of the Work. Any material proposed changes to the approved marketing plan must be approved in writing by the City Manager or his designee.
- (d) The ACVB agrees to perform the Work in accordance with Authorizing Legislation, all other applicable laws and regulations, this Agreement,

and the applicable marketing plan and the budget. Agreement performance will commence on Commencement Date.

- (e) The City Council shall have the right to approve any budget and marketing plan, per Texas Tax Code Section 351.101(c). The City and the ACVB shall negotiate in good faith to reach agreement on a marketing plan and budget for a Fiscal Year by September 1 of the preceding Fiscal Year. Failure to reach an agreement shall authorize the City or the ACVB to terminate this agreement on 90 days' notice.
- (f) The Work shall ensure that the marketing plan and budget include the following:
 - (i) The marketing plan shall have separate work statements for, and the budget shall separately state and account for
 - (A) new "Class "A" Bookings" for the period commencing 18 months after the commitment date,
 - (B) Convention Sales,
 - (C) Marketing, Advertising, and Communications,
 - (D) Tourism,
 - (E) Convention Services including Housing,
 - (F) Visitor Services,
 - (G) Austin Sports Commission, and
 - (H) other Work (which may include music and film activities, heritage, cultural, and minority marketing).
 - (ii) The marketing plan and the budget shall be consistent with the required allocation of uses of tax collections as set forth in the Authorizing Legislation and the applicable city code, and shall identify those scheduled activities, programs or events that will directly enhance and promote tourism and the convention and hotel industry.
 - (iii) The marketing plan shall be consistent with the policy that the primary role of the ACVB is to market space in the Austin Convention Center and related City facilities, beyond 18 months from the first day of use, with the intent to maximize hotel occupancy tax and use of the Austin Convention Center. Marketing of this space within 18 months of the first day of use is the primary role of the Austin Convention Center Department.
 - (iv) The marketing plan shall include, but not be limited to, a description of the proposed program of action for the Fiscal Year. It shall contain a specific numerical goal regarding the

Class "A" bookings for the Austin Convention Center and quantifiable goals against which success may be measured. In addition, the annual budget document of the ACVB shall be presented in such a way as to associate direct costs, where applicable, to the programs presented in the marketing plan. The marketing plan shall contain convention marketing goals and convention marketing programs. In addition, the marketing plan shall include convention services, tourism, marketing and communication, housing, visitor services, Austin Sports Commission, and other work. Upon approval of the marketing plan and the budget by the Austin City Council, the ACVB shall implement the plan and allocate funds within budgeted limits without further action on the part of the City.

- (g) As part of the Work, the ACVB shall provide, at a minimum, the following services, activities, and functions:
 - (i) Market, solicit, and advertise for conventions, tourism, and other gatherings to maximize use of the Austin Convention Center, commercial lodging facilities and tourism facilities consistent with the adopted marketing plan.
 - (ii) Provide registration, housing, and information services for convention groups.
 - (iii) Act as a liaison for the City in its relationships with the music and film industries.
 - (iv) Develop public awareness of the desirability, benefits, and importance of the travel, music, and film industries to the Austin area economy.
 - (v) Market and distribute materials promoting Austin as a preferred destination city consistent with the marketing plan.
 - (vi) Demonstrate the advantages the Austin area has to offer visitors from other parts of the state, the nation and the world.
 - (vii) Perform all responsibilities of Tourism and Marketing.
 - (viii) Market and promote tourism and conventions among heritage, cultural, and minority markets.
 - (ix) Perform additional duties as agreed upon by both parties which are consistent with the services, activities, and functions outlined in the agreement.
 - (x) Act as the City's Local Organizing Committee for events that utilize the Texas Event Trust Fund.

- (h) The following criteria shall be used for goal measurement Reports:

- (i) Convention Sales
 - (A) Class A Rooms – Groups utilizing the Austin Convention Center.
 - (B) Class B Rooms – Groups of more than 151 rooms that do not utilize the Austin Convention Center.
 - (C) Class C Rooms – Groups of 10-150 rooms that do not utilize the Austin Convention Center.
 - (D) Total Room nights
 - (E) City Wide Conventions Booked, (1,000 room nights peak *is the current criteria.*)
 - (F) Room nights generated through Leads
 - (G) Number of Group Leads Sent
 - (H) Other Industry Standards
- (ii) Austin Sports Commission
 - (A) Room Nights – including Class A, Class B and Class C Rooms
 - (B) Event Leads Sent
 - (C) Site Visits
 - (D) Media Coverage/Press Communications
 - (E) Other Industry Standards
- (iii) Tourism
 - (A) Product Placed with Tour Operators
 - (B) Destination Training
 - (C) Tourism Partner Leads
 - (D) Online Package Development
 - (E) Other Industry Standards
- (iv) Marketing Communications
 - (A) Press Releases/Pitches
 - (B) Media Outlets Contacted
 - (C) Dollar Impact of Media
 - (D) Unique Website Visitors
 - (E) Visitors Guide Fulfillment
 - (F) Other Industry Standards
- (v) Convention Services
 - (A) Meetings Serviced
 - (B) Housing Assigned
 - (C) Registration Hours
 - (D) Other Industry Standards
- (vi) Visitor Services
 - (A) Visitor Guide Requests
 - (B) Downtown Visitors
 - (C) Phone Calls/Email Inquiries
 - (D) Historic Walking Tour Participants

- (E) Retail Revenue
- (F) Other Industry Standards

3. Fiscal Reporting.

Within 45 days after the end of each quarter in the Fiscal Year, the ACVB shall deliver to the Austin Convention Center Department a written report of its expenditures relating to the Work, and unaudited financial statements for the quarter just ended, including at a minimum a balance sheet and an income statement. Within 45 days after the end of each quarter in the Fiscal year, the ACVB shall conduct a meeting (on at least 3 days advance published notice) to present the financial report for the quarter just ended to Council per Texas Tax Code Section 351.101(c) and obtain public input on it and the Work.

4. Performance Reporting.

The ACVB will provide the City with monthly reports containing detailed information on performance of the Work, including performance reports listing all groups and/or events added to the Austin Convention Center Department schedule in that period with accompanying information such as names, dates booked, estimated attendance and estimated room nights. The ACVB shall also provide City with any reports or documentation required by federal or state law, as such laws may be amended from time to time during the term of this Agreement.

5. Budget and Accounting.

- (a) The ACVB shall adopt an October 1 to September 30 Fiscal Year as its fiscal year unless the City otherwise agrees.
- (b) It is the intention of the City and the ACVB that the budgets for the Work reflect the amount of Tax Collections available for the Work and that Tax Collections equal to 1.45 cents for each dollar of hotel revenue that is taxable and collected under the Authorizing Legislation and Article I, Chapter 5-3 of the City Code, be available for the Work. During a fiscal year, if actual hotel occupancy tax collections exceed the budgeted collections, the excess will carry forward for appropriation in future fiscal years, in accordance with City of Austin ordinances, policies and procedures. If, by mid-fiscal year, estimated collections are 10% or more below the budgeted collections for that fiscal year and will cause the ACVB to adjust their marketing plan for the current fiscal year, the ACVB shall submit a revised marketing plan to the Director of the Austin Convention Center Department. The

Director will review and either accept or propose Plan changes. The City Manager or the Manager's designee will resolve any disputed Plan adjustments. Once the revised Plan is approved as outlined above, the ACVB shall affect Plan revisions as soon as practicable.

- (c) The ACVB shall maintain complete and accurate books and records of its activities and finances, which the City may audit at any time upon reasonable notice. Financial records shall be maintained on a regular basis in accordance with generally accepted accounting principles, subject to any variations as are required by State law, or are agreed to in writing by the City. Specifically, the ACVB shall account separately for the Hotel Tax Revenue, and shall account separately for the receipts and expenditures related to each of the following activities; (A) Convention Sales, (B) Convention Services and Housing, (C) Tourism, (D) Marketing and Communications, (E) Visitor Services, (F) Administration, (G) Advertising, (H) the Austin Sports Commission and (I) other Work. On request of the City, the ACVB shall make the records relating to the handling and expenditure of Hotel Tax Revenue available to the City or any other person designated by the City.
- (d) The ACVB shall engage an independent firm of certified public accountants to audit its annual financial statements. The independent, certified audit reports of the ACVBs' activities for the previous fiscal year shall be dated by January 31st of the current fiscal year. The ACVB shall deliver to the Agreement Administrator a copy of its audited annual financial statements, consisting of a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements. The engagement letter from the independent firm of certified public accountants shall contain a statement that the ACVB may request a copy of all audit work papers produced either by the client or the firm during the annual audit of the financial statements. The notes to the audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. Should the certified audit report contain any findings, within thirty (30) days after the release of the audit report, the ACVB shall provide to the City a written response to the findings and an action plan on how and when the findings will be remedied. In addition to the audited annual financial statements, upon request, the ACVB shall deliver a copy of all audit work papers that underlie the audited annual financial statements.

6. Payments by the City.

- (a) In addition to any particular limitations and conditions that may be specifically stated in this Agreement, all obligations of the City are subject to annual appropriation by the City for this Agreement from proceeds of the hotel occupancy tax that are available to pay for the Work under this Agreement, and further subject to the ability of the City to collect these tax proceeds. This Agreement imposes no obligation upon the City to levy and collect this tax. The City does agree that, subject to adequate appropriations and collections, the City will utilize the portion of the Tax Collections to pay for Work performed by the ACVB in accordance with the budget approved by the City.
- (b) The City shall pay to the ACVB monthly in arrears from Hotel Tax Revenue appropriated for this Agreement the amounts invoiced by the ACVB for actual expenses incurred during the preceding month in performing the Work, not to exceed the amounts budgeted for the Work in the approved budget including applicable overages. If the ACVB submits a conforming invoice by the third business day of the month following the month in which the Work was performed, the City shall pay the invoiced amount on or before the 15th day of the month in which the invoice was submitted. The parties agree, however, that if an invoice is incomplete or does not contain adequate information, the City may request additional information from the ACVB within ten (10) working days after receipt of the invoice, and City's payment deadline shall be extended to five (5) working days following receipt of such additional information. Prior to expending Hotel Tax Revenue, the ACVB shall hold these Hotel Tax Revenues in a segregated account not commingled with any other funds, and invested and collateralized as required by the City's Department of Financial Services. Any bank account balances funded by hotel occupancy tax in excess of \$250,000 must be moved into repurchase agreements in accordance with terms in the Master Repurchase Agreement between the ACVB and the bank. Hotel Tax Revenue shall be spent solely to perform the Work and to fund compliance with this Agreement, including the preparation of reports and financial statements, and the auditing of the latter.

7. Term.

- (a) This Agreement shall be effective and binding upon the parties beginning on October 1, 2016, and shall remain in effect until September 30, 2021, subject to early termination as described below. Following this five-year term, the City may elect to extend this Agreement under the same terms for an additional five-year term. To

exercise its option to extend the Agreement for an additional five-year term, the City shall notify the ACVB in writing at least ninety (90) days prior to the Agreement expiration date. Except as otherwise expressly provided in this Agreement, any written notice or other written communication requested or permitted to be given under this Agreement shall be delivered to the Agreement Administrator specified below, or sent by United States registered or certified mail, postage prepaid, or by express carrier, to:

Austin Convention and Visitors Bureau
Agreement Administrator: President and CEO
111 Congress Avenue, Suite 700 Austin, Texas 78701

City of Austin Convention Center Department
City of Austin
Agreement Administrator: Department Director
P.O. Box 1088
Austin, TX 78767

- (b) Unless another address is substituted by notice delivered or sent as provided in this paragraph. Unless specifically noted in this Agreement, any notice is deemed given when received.
- (c) Either party may terminate this Agreement by written notice to the other party if such other party breaches any of its obligations hereunder and does not cure such breach within 30 days after receiving written demand from the other party specifying the breach in question and demanding that it be cured. Such right to terminate this Agreement shall be without prejudice to the other legal and equitable rights of the parties.
- (d) Upon expiration or termination hereof for any reason, the ACVB shall cooperate with the City to ensure a smooth transition and completion of the Work. Without limiting the generality of the foregoing, the ACVB shall promptly, but not more than sixty (60) days following termination, turn over to the City without charge all unspent Hotel Tax Revenue, including the balance of reserve fund, and all property purchased with Hotel Tax Revenue and, upon request, shall assign to the City all contracts, rights and claims relating to the Work. Termination of this Agreement shall not impair the rights of the City under state law, the articles of ACVB or bylaws of the ACVB or under any other contract between the City and the ACVB.

8. Agreement Administration.

- (a) This Agreement shall be administered by the City through its Convention Center Department, and all communications from the ACVB to the City concerning this Agreement and the Work shall be directed to the Director of such Department, unless otherwise specified herein or in the ACVB's bylaws. The ACVB shall deliver to such Director simultaneously a copy of any notice required by this Agreement or such bylaws to be delivered to another City official.
- (b) This Agreement may not be amended without the written consent of the parties. This Agreement is for the benefit of the City and the ACVB only and no other party may seek to enforce it or assert any rights under it. The ACVB may not assign this Agreement without the prior written consent of the City.
- (c) Delay by a party in enforcing, or failure by such party to enforce, a right under this Agreement shall not be deemed a waiver of the same. A waiver of party's rights shall be effective only if in writing and shall be limited to the single event or occurrence specified. This Agreement may be executed in one or more counterparts. This Agreement, including its exhibits, attachments, and applicable City-approved budget and marketing plan, represents the entire agreement between the parties regarding the subject matter hereof, and there are no other representations, understandings, or agreements between the parties relative to such subject matter.

9. Insurance & Indemnification.

- (a) The ACVB shall carry insurance in the following types and amounts for the duration of this Agreement and, prior to the Commencement Date, shall furnish the City's Purchasing Director with Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof:
 - (i) Statutory Workers' Compensation and Employers' Liability coverage with minimum policy limits for Employers' Liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit, and \$100,000 bodily injury by disease each employee;
 - (ii) Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy shall provide contractual liability coverage for liability

- assumed under this Agreement, products and completed operations coverage and independent contractors coverage;
- (iii) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability;
 - (iv) Directors and Officers coverage with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such; and
 - (v) "All risk" property coverage (excluding flood and earthquake) at 100% replacement cost value for contents in the ACVB's care, custody, or control. The coverage will be primary and the City will be shown as loss payee on the policy.
- (b) If coverage is written on a claims-made basis, the coverage, including renewals, shall have a retroactive date coincident with or prior to the date of this Agreement, and the certificate of insurance shall state that coverage is claims-made and the retroactive date. This coverage shall be continuous for not less than 24 months following completion of services under this Agreement. The ACVB shall provide that all provisions of this Agreement concerning liability, duty, and standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies. The ACVB shall not commence work under this Agreement until it has obtained all required insurance and until the Purchasing Office of the City of Austin has reviewed such insurance coverage. The required insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued. In any event, the Company must be rated by A.M. Best at B+VII or better and acceptable to the City. The ACVB shall produce an endorsement to each affected liability policy that: names the City as an additional insured (except workers' compensation), with right of subrogation against the City, waived, and obligates the insurance company to notify the City at the following address, of any non-renewal, cancellation or material change to the policy, at least 30 calendar days before the change or cancellation.
- City of Austin
Director – Austin Convention Center Department
City of Austin
P.O. Box 1088
Austin, TX 78767
- (c) The ACVB shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or the twenty-

four-month period following completion, in the case of a claims-made policy. The City reserves the right to review the insurance requirements of this section during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, their limits when deemed necessary, based upon changes in statutory law, court decisions or the claims history of the industry or financial condition of the insurance company, as well as that of the ACVB. The City shall be entitled, upon request, and without expense to the City, to receive copies of the requisite insurance policies and all endorsements thereto and may make any reasonable requests for deletion or revisions or modification of particular policy terms, conditions, limitations, or exclusions. (Except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.)

- (d) The ACVB is an independent entity, and the relationship between the ACVB and City is and shall remain that of independent contractors. The City is not and shall not be liable for any of the ACVB's debts or obligations, including any operating deficit that may arise. The ACVB shall not hold itself out as an agent of the City, nor in any way purport to bind the City with respect to any Agreement or other obligation. The ACVB shall defend, indemnify and hold the City harmless against any cost, claim, expense, liability, award or judgment (Claim) arising in whole or in part out of, or alleged to arise in whole or in part out of the operations or activities of the ACVB. The City may set-off and apply against any such Claim (or against the city's cost of defending against any such Claim) any amount the City owes the ACVB.
- (e) The ACVB's Treasurer and Assistant Treasurer, if any, shall be bonded in a minimum amount of \$100,000.00 each.

10. Related Considerations.

- (a) Except as provided in the ACVB's Bylaws, articles of ACVB or in this Agreement, the ACVB may conduct its affairs and engage in such other activities as it deems appropriate, so long as such actions are consistent with its purposes as stated in this Agreement and in its articles of ACVB, comply with applicable laws, and do not impair its ability to carry out its duties under this Agreement.
- (b) The City shall have the right to approve any proposed changes to the ACVB's Articles of ACVB or Bylaws.

- (c) The City Council has approved the booking policy for the Austin Convention Center, and retains the exclusive right to change that policy. Pursuant to that policy, the Austin Convention Center Department of the City has sole responsibility and authority for booking and contracting all events at the Austin Convention Center. The ACVB's authorized representatives shall have the ability to view and identify tentative dates. The Convention Center Department shall provide a written response for space availability after receiving a written request from the ACVB for tentative space. Should the ACVB present a written request for space over dates with an existing tentative or definite hold on the space, the Convention Center shall weigh the value of the request and, when it determines that the new request would provide a greater benefit to the community, the Convention Center shall aggressively pursue the opportunity of accommodating both business opportunities and shall keep the ACVB apprised of the efforts.
- (d) All requests by the ACVB to the City for funds, services, or other items of value shall be directed in writing for approval to the City Manager or appropriate Assistant City Manager.
- (e) The ACVB acknowledges that the City Council has adopted as a logo and motto "Austin, the Live Music Capital of the World" which may be used on ACVB stationery, bulletins, displays, posters and media and press releases. The ACVB is authorized to use any trade or service marks of the City in connection with its performance of the Work. Promotional material should contain the logo "Austin, the Live Music Capital of the World" and the ACVB can use any additional logo adopted by its Board of Directors.

IN WITNESS WHEREOF, The City of Austin and the Austin Convention and Visitors Bureau have caused this Agreement to be executed and delivered by their duly authorized representatives as of the dates specified below:

CITY OF AUSTIN, a Texas home-rule municipality

By: _____

Name: Marc Ott

Title: City Manager

Date: _____

AUSTIN CONVENTION AND VISITOR'S BUREAU, a Texas non-profit ACVB

By: _____

Name: _____

Title: _____

Date: _____

DRAFT