

ORDINANCE NO. 2015-22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING THE ATTACHED HOTEL OCCUPANCY TAX (HOT) POLICY OF THE CITY OF COPPERAS COVE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, The Texas Tax Code Sec. 351.002. authorizes a municipality by ordinance to impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping; and

WHEREAS, The City of Copperas Cove has included in the City's Code of Ordinances, Chapter 18.5 (Use Taxes), Article II (Hotel Occupancy Tax), Section 18.5-7 (Levy of tax, rate; exceptions) to impose a tax equal to seven percent (7%) of the price for occupancy of any room or space furnished by any hotel located within the city limits of the city and to hotels in the extraterritorial jurisdiction (ETJ) of the City pursuant to state law; and

WHEREAS, The City of Copperas Cove City Council has determined adopting a policy that imposes procedures for requesting allocation of hotel occupancy tax funds, expending the allocated funds and accounting for the use of the funds to the governing body is necessary to ensure fairness to all entities receiving such funds and to provide guidance for those entities utilizing such funds.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:

Section 1.

That the Hotel Occupancy Tax (HOT) Policy dated July 21, 2015, hereinafter set forth and included with this Ordinance as Exhibit "A" is hereby adopted;

Section 2.

That any additions, deletions or other amendments to the Hotel Occupancy Tax (HOT) Policy shall be made in a manner similar to process by which this policy is originally approved and only after compliance with the Texas Open Meetings Act and approved by the City Council of the City of Copperas Cove.

City of Copperas Cove Hotel Occupancy Tax (HOT) Policy

- I. **Operation.** The Hotel Occupancy Tax Revenues for the City of Copperas Cove are collected by the City of Copperas Cove in accordance with Chapter 18.5, Article II of the City Code and Chapter 351 of the Texas Tax Code. Chapter 18.5-17 of the City Code created the levy of the hotel occupancy tax and such Code addresses the collection of the tax, report filing requirements, use of proceeds and penalties.

- II. **Purpose.** The purpose of this policy is to set forth guidelines for the allocation, use, reporting and auditing of the City's Hotel Occupancy Tax revenues. The City's levy and collection of the Hotel Occupancy Tax is recorded in Fund 14 on the City's general ledger. There are no legal requirements to allocate a set amount or percentage to a specific entity. The City's governing body is responsible for ensuring with the assistance of the City Manager that both the City Code and Texas Tax Code are complied with.

- III. **Objectives.**
 - a. To promote tourism in Copperas Cove.
 - b. To support the hotel industry located within the City limits of Copperas Cove.
 - c. To assist with the operational expenses directly associated with activities provided by outside entities that either promote tourism in the City or support the hotel industry located in Copperas Cove.
 - d. To provide funding for the promotion of arts as authorized by City Code and the Texas Tax Code.
 - e. To support events that generate tourism dollars within Copperas Cove.
 - f. To support other authorized activities in accordance with the Texas Tax Code.
 - g. To ensure the HOT Funds allocated by the City's governing body are expended in a manner directly enhancing and promoting tourism and the convention and hotel industry of Copperas Cove, Texas.

- IV. **Allocation of HOT Funds.**
 - a. Annual Allocation
 - i. Each fiscal year during the annual budget process, entities will be required to submit funding allocation requests, in accordance with *Exhibit B* attached to this policy, for governing body consideration in accordance with the City's budget calendar established for that fiscal year. Should an entity fail to meet the required deadline for submittal of request(s), the request(s) shall not be considered for allocation.

ii. Should an entity fail to comply with any of the requirements of this policy, the entity may be placed on probation by the governing body. While on probation, an entity shall not receive any allocation of HOT funds until the probationary period has expired.

ii. Payment of Allocated Funds

i. No payment of allocated funds shall be made prior to submission of appropriate forms and receipts without approval by the governing body of a formal request to prepay allocated funds. If a prepayment of allocated funds is approved, the entity will be required to complete all reporting requirements set by this policy. Should an entity fail to comply with the reporting requirements, the entity may be placed on probation by the governing body and considered ineligible for allocation of funds during the probationary period and will be required to return the prepaid allocated funds to the City within 30 days of written request from the City of Copperas Cove.

ii. Upon receipt of a fully executed Marketing Agreement and all required forms and receipts, the governing body shall consider approval of a payment to the entity. Upon governing body approval, the City will make payment to the entity in accordance with the prompt payment act.

V. Use of HOT Funds

- a. A qualifying entity shall expend HOT funds for promotional and tourist advertising for the City.
- b. All uses and expenditures of HOT funds shall be conducted in accordance with the uses permitted by Chapter 351 of the Texas Tax Code and all other applicable laws and regulations.
- c. HOT Funds may be applied toward administrative expenses incurred directly by fulfilling activities in accordance with the Texas Tax Code § 351.101(e).
 - i. Such expenses may be reimbursed if incurred directly for tourism promotion activities.
 - ii. A qualify entity shall track all administrative expenses related to tourism promotion activities, including allocation of personnel resources, and report such expenses to the City.
- d. Each entity shall submit only those expenditures that are in conformance with the allocation made by the City's governing body.
- e. Each entity acknowledges that the City's appropriation of HOT Funds creates a fiduciary duty of the entity with respect to the HOT Funds allocated by the City.

VI. Qualifying Entity Responsibilities.

- a. Entities shall maintain complete and accurate financial records of each expenditure of the HOT Funds and, at the request of the City Council or City Council's designee, or as may be required by law, shall make the records available for inspection and review during normal business hours.
- b. Entities receiving prepayments or advance payments shall maintain the HOT Funds provided by the City in a separate account and shall not commingle the Funds in the account with any other money, or maintain them in any other account.
- c. Each year, entities shall submit to the City a proposed annual budget for the use of all requested HOT Funds in accordance with the City's budget calendar.
- d. Each entity shall provide a list of expenditures made by the entity with the advance payment of HOT Funds.
- e. Each entity shall provide all reporting in the format prescribed by the City and attached to this policy as *Exhibit A*.
- f. The sufficiency of detail or any financial report required by this policy shall be determined by the City Council of the City.
- g. All entity records pertaining to the activities and funds under this policy shall be available for inspection by the City Council and the City's designated auditor at any time during normal business hours.
- h. The City may require an audit of the financial data provided by a qualifying entity at any time at the Entity's expense.
 - i. Should the Council direct an entity to conduct an audit, a copy of the audit report shall be delivered to the City in accordance with the deadline established by the City's governing body.
- i. Any HOT Funds allocated and paid in advance to an entity which are unexpended at the end of the City's fiscal year or other date authorized by the governing body shall be remitted to the City within 30 days of receipt of the City's written request.
- j. It shall be the duty of funded entities to provide a marketing plan annually in accordance with Exhibit D of this policy.
 - i. All entities that are directly funded by the local hotel occupancy tax are annually required to provide a marketing plan (see Exhibit D).
 - ii. The plan is to be provided annually to the city manager, in the format prescribed by *Exhibit C*, or his/her designee as part of the annual budget process.
 - b. An entity may request to amend the marketing plan at any time with prior approval of the city's governing body. The city will determine the required format for requesting amendments.
 - iii. If an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel

and convention industry, it is not eligible for local hotel occupancy tax funding.

- iv. If only a portion of an entity's programs fit this criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.

VII. Probation Terms and Procedures

The governing body of the City of Copperas Cove may place an entity on probation for noncompliance of the above prescribed reasons and shall take official action to place a qualifying entity on probation by stating the reason(s), probationary period and the terms of the probation.

Any entity placed on a prior probation must have an audit of the HOT Funds conducted at the sole expense of the qualifying entity for two consecutive future years after eligibility is re-established and HOT Funds are appropriated.

Any entity placed on probation twice during a five year period may be classified as ineligible by the governing body for appropriation of HOT Funds in any future years.

VIII. Indemnification.

All entities receiving HOT Funds from the City of Copperas Cove agree to act as an independent contractor. Accordingly, the officers and property of the Entity used or involved in the program under this Policy shall not be considered, for any purpose, to be the officers or property of the City. Each entity agrees to indemnify the City of Copperas Cove from any and all claims by the officers of said entity or by any other persons which may occur as a result of the program conducted by the Entity or as a result of any activities contemplated by this Policy.

IX. Entity submissions.

- a. An Entity shall submit all required documents to the City of Copperas Cove through the City Manager as addressed as follows:

City Manager
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, TX 76522

X. Policy Compliance.

To ensure compliance with this policy, all entities receiving HOT Funds from the City of Copperas Cove will be required to execute a Marketing Agreement (attached as Exhibit D).

XI. Modifications to policy content and exhibits.

Any additions, deletions or other amendments to the Hotel Occupancy Tax (HOT) Policy shall be made in a manner similar to process by which this policy is originally approved by the City Council of the City of Copperas Cove.



Cash Report FY2015-16

Beginning Cash Balance

Cash Receipts

- Current quarter cash sales revenue
- Current quarter credit card receivables, collections
- Previous quarter credit card receivables, collections
- Previous quarter accounts receivables, collections

Total Cash Available

Cash Disbursements

- Cash Purchases
- Accounts Payable
- Payroll and related expense
- Supplies and other expense
- Utilities expense
- Mortgage / Rent expense
- Cash disbursements, Operating activities
- Loan repayment, financing activities

Total Cash Disbursements

Ending Cash Balance

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Beginning Cash Balance		\$0.00	\$0.00	\$0.00
<u>Cash Receipts</u>				
Current quarter cash sales revenue				
Current quarter credit card receivables, collections				
Previous quarter credit card receivables, collections				
Previous quarter accounts receivables, collections				
<hr/>				
Total Cash Available	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Cash Disbursements</u>				
Cash Purchases				
Accounts Payable				
Payroll and related expense				
Supplies and other expense				
Utilities expense				
Mortgage / Rent expense				
Cash disbursements, Operating activities				
Loan repayment, financing activities				
<hr/>				
Total Cash Disbursements	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
Ending Cash Balance	\$0.00	\$0.00	\$0.00	\$0.00

Effective Date July 21, 2015



City of Copperas Cove
Chamber of Commerce and Visitors Bureau

Entity Revenue and Expenditures Summary
Fiscal Year 2015-16, Quarterly Report

Effective Date July 21, 2015

Categories	Previous Quarter	Current Quarter Actual	Current FY Projected	Next FY Proposed
General Revenue				
Event Revenue - Rabbit Fest				
Event Revenue - Sporting Events				
Event Revenue - Krist Kindl Markt				
Event Revenue - Downtown Garage Sale				
Event Revenue - Circus				
Grand Total Revenue	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Operating Expenses				
Rabbit Fest Expenses				
Sporting Event Expenses				
Kris Kindl Markt Expenses				
Downtown Garage Sale Expenses				
Circus Expenses				
Grand Total Expenses	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>



City of Copperas Cove
 Chamber of Commerce and Visitors Bureau

Entity Revenue and Expenditures
 Fiscal Year 2015-16, Quarterly Report

Effective Date July 21, 2015

Categories	Previous Quarter	Current Quarter Actual	Current FY Projected	Next FY Proposed
General Revenue				
New Membership Dues				
Renewals				
Hotel Tax Proceeds				
Event Revenue - Rabbit Fest				
Vendor Booth Fees				
Admission Fees				
Parking Fees				
Sponsor Support Revenue				
Event Revenue - Sporting Events				
Registration Fees				
Sponsor Support Revenue				
Parking Fees				
Event Revenue - Krist Kindl Markt				
Vendor Booth Fees				
Parking Fees				
Sponsor Support Revenue				
Event Revenue - Downtown Garage Sale				
Vendor Booth Fees				
Parking Fees				
Sponsor Support Revenue				
Event Revenue - Circus				
Vendor Booth Fees				
Parking Fees				
Sponsor Support Revenue				
Grand Total Revenue	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Operating Expenses				
Salaries				
Overtime				
Payroll Taxes				
Benefits				
Worker's Compensation				



City of Copperas Cove
Chamber of Commerce and Visitors Bureau

Entity Revenue and Expenditures
Fiscal Year 2015-16, Quarterly Report

Effective Date July 21, 2015

Categories	Previous Quarter	Current Quarter Actual	Current FY Projected	Next FY Proposed
Other Personnel Expense				
Supplies				
Utilities				
Internet				
Marketing				
Maintenance				
Design				
Postage				
Printing				
Furniture				
Repairs and Maint - Bldg				
Repairs and Maint - Equipment				
Travel				
Association Memberships				
Total Operating Expenses	\$ _____ -	\$ _____ -	\$ _____ -	\$ _____ -
Rabbit Fest Expenses				
Promotional Advertising				
Supplies				
Food				
Equipment				
Photography/Video				
Security Overtime Budget				
Sporting Event Expenses				
Promotional Advertising				
Supplies				
Food				
Equipment				
Photography/Video				
Kris Kindl Markt Expenses				
Promotional Advertising				
Supplies				
Food				
Equipment				
Photography/Video				



City of Copperas Cove
Chamber of Commerce and Visitors Bureau

Entity Revenue and Expenditures
Fiscal Year 2015-16, Quarterly Report

Effective Date July 21, 2015

Categories	Previous Quarter	Current Quarter Actual	Current FY Projected	Next FY Proposed
Downtown Garage Sale Expenses				
Promotional Advertising				
Supplies				
Food				
Equipment				
Photography/Video				
Circus Event Expenses				
Promotional Advertising				
Supplies				
Food				
Equipment				
Photography/Video				
Total Event Expenses	\$ -	\$ -	\$ -	\$ -
Grand Total Expenses	\$ -	\$ -	\$ -	\$ -

MARKETING AGREEMENT

This Agreement (the "Agreement") is made and entered into by and between *the CITY OF COPPERAS COVE, TEXAS* ("hereinafter the "CITY"), a Texas home rule municipal corporation, and the ***INSERT ENTITY HERE*** a 501c3 corporation formed in the state of Texas (hereinafter the "INSERT ENTITY NAME HERE"). The CITY and INSERT ENTITY NAME HERE may jointly be referred to herein as the "PARTIES" and individually as a "PARTY."

RECITALS:

Whereas, the CITY has made it a priority to promote economic development through tourism, including efforts to attract to the community out of town visitors, travelers, businesses, organizations and groups whether for purposes of business or pleasure; and

Whereas, tourism and tourism related industries and the money spent by tourists and visitors to the community are essential components of a diverse local economy aiding in the creation of jobs for local residents, increased revenues for local businesses and increased local sales tax revenue; and

Whereas, the CITY currently levies a local Hotel Occupancy Tax, as defined herein; and

Whereas, in accordance with Section 351.103 of the Texas Tax Code, currently 15% of Hotel Occupancy Tax collected by the City must be used for "*advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity,*" (hereinafter the "*Section 351.(a) (3) requirement*") and

Whereas, the PARTIES agree that the INSERT ENTITY NAME HERE possess expertise in marketing and promotional activities and will be actively engaged in promoting tourism in the CITY, including promoting travel to the CITY by residents of other areas for festivals and similar events; and

Whereas, the PARTIES concur that inasmuch as INSERT ENTITY NAME HERE is a private organization to which the governing body of the City is delegating the management and/or supervision of only those programs approved in advance by the City, this Agreement is authorized by Section 351.101(c) of the Texas Tax Code.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties below, the PARTIES do mutually agree as follows:

ARTICLE 1

Definitions.

Agreement Effective Date shall mean _____, 201__.

Local Hotel Occupancy Tax or *HOT* means a tax currently levied by the City of Copperas Cove pursuant to Chapter 351, Texas Tax Code.

Statutorily Authorized Promotional Programs or *SAPP(s)* means programs authorized by Texas Tax Code Section 351.001 (a) that promote tourism and the convention and hotel industry, and that are limited, by that section, to the following:+

- (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;
- (2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;
- (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;
- (4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;
- (5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - (A) at or in the immediate vicinity of convention center facilities or visitor information centers; or
 - (B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates;

ARTICLE 2

ANNUAL ALLOCATION OF HOT

2.1 The CITY shall not have any financial obligation to the INSERT ENTITY NAME HERE under this AGREEMENT unless and until the CITY'S elected Council allocates HOT funds for each budget year this AGREEMENT is in effect. The Annual Allocation of HOT for the Budget Year this AGREEMENT became effective is \$_____.00. The City Council shall be under no obligation to fund this Agreement in any subsequent Budget Year; and any allocation of funds for subsequent Budget Years shall be at City Council's sole discretion.

2.2 Any Annual Allocation, which are unencumbered or unexpended at the end of the City's Budget Year. For which the allocation occurred shall be remitted to the City within 30 days from the last day of that Budget Year.

ARTICLE 3 **ENTITY'S USE OF HOT**

3.1 Promotional Services. Pursuant to Section 351.101(c) of Texas Tax Code, the CITY hereby engages the INSERT ENTITY NAME HERE, on the terms and conditions provided in this Agreement, for the management and supervision of certain promotional services, programs and activities that are eligible to be funded with revenue derived by City from Hotel HOT (collectively "Statutorily Authorized Promotional Programs" or "SAPP(s)") specifically permitted under the Texas Tax Code Section 351.101(a) (1-5), as amended by the legislature during the term of this Agreement, including, by way of example advertising and solicitation for Rabbit Fest, and other promotional programs promoting visitor attractions, points of interest, entertainment opportunities, recreational facilities, and historical sites to attract tourists and convention delegates or registrants to the City of Copperas Cove. All Hotel HOT revenue expended by the INSERT ENTITY NAME HERE pursuant to this Agreement shall directly enhance and promote tourism and convention attendance in the City.

3.2 Branding. The INSERT ENTITY NAME HERE recognizes the intent and desire of the CITY to establish and enhance a "brand identity" for the City of Copperas Cove. The INSERT ENTITY NAME HERE shall ensure that SAPPs are compatible with and enhance the "branding" efforts of the CITY and shall assist the CITY in developing strategies for coordinating the CITY'S marketing efforts with the INSERT ENTITY NAME HERE marketing programs, so that the CITY'S marketing efforts may be enhanced and maximized, to the extent reasonably possible.

ARTICLE 4 **MARKETING PLAN**

4.1 Preparation of Proposed Marketing Plan. The INSERT ENTITY NAME HERE shall prepare and submit to City a proposed Marketing Plan or Plans annually to be submitted on or before _____ of the preceding year through the term of this Agreement before the expenditure of funds for any SAPP, which Marketing Plan or Plans shall include:

- (a) A narrative description of the various programs and activities which the ENTITY NAME HERE proposes to carry out, which description shall include, without limitation, an explanation of the basis on which each such proposed program or

activity qualifies as a SAPP for purposes of this Agreement and the basis on which such programs and activities are compatible with and enhance the “branding” efforts of the City;

- (b) A budget indicating how much of the Hotel HOT available to the INSERT ENTITY NAME HERE hereunder that the INSERT ENTITY NAME HERE proposes to spend on each particular SAPP; and

4.2 Approval of Marketing Plan. The City, through its City Manager, shall approve, disapprove or request modifications to any Marketing Plan submitted by the INSERT ENTITY NAME HERE within thirty (30) days after the City’s receipt of said Marketing Plan. The City’s approval shall not be unreasonably withheld or delayed. The Marketing Plan shall be delivered to the City by Certified Mail Return Receipt Requested. If the City has not approved, disapproved or requested modifications to the initial submitted Marketing Plan within thirty (30) days of receipt, the submitted Marketing Plan may be submitted to City Council for consideration. Parties agree and acknowledge that they have a duty to act in good faith to work diligently toward developing an acceptable Marketing Plan. In the event that the City Manager fails to take action on a subsequent Marketing Plan, within thirty (30) days after the CITY’S receipt of said Marketing Plan, the prior year’s approved Marketing Plan will remain in effect until a subsequent Marketing Plan is approved.

4.3 Marketing Plan Amendments. Should the approved Marketing Plan be determined by the INSERT ENTITY NAME HERE to provide insufficient flexibility to address applicable facts and circumstances as they develop, it may, at any time, propose and request City’s approval of an amendment thereto. No such amendment shall be effective until approved by the City in the same manner defined in Section 4.2 hereof, which approval by the City shall not be unreasonably withheld.

ARTICLE 5
ENTITY’S DUTY TO CITY

The INSERT ENTITY NAME HERE acknowledges that, pursuant to the terms of this Agreement and Section 351.101 (c) of the Texas Tax Code, it has a fiduciary duty to the City with respect to its handling and use of the HOT expended in accordance with this Agreement and the City of Copperas Cove Hotel Occupancy Tax (HOT) Policy.

ARTICLE 6
RECORDS

The ENTITY NAME HERE shall maintain (or cause to be maintained) current and complete books and records reflecting expenditures of funds from the HOT hereunder in accordance with applicable law and prudent accounting procedures. Further, such book and records shall be made available to the City for inspection during normal business hours upon reasonable advance notice. All such records to the extent considered public records which fall within the provisions of the Texas Government Code, Section 552.001, *et seq.*, may be subject to disclosure and the INSERT

ENTITY NAME HERE shall cooperate fully with City in timely producing all such records in response to any public request for same.

ARTICLE 7
CITY'S RIGHT TO AUDIT

The CITY reserves the right for CITY'S internal audit department personnel, or an independent certified public accounting firm selected by CITY, to conduct examinations, during normal business hours, of the books and records maintained by INSERT ENTITY NAME HERE with respect to its expenditures hereunder, which books and records shall be made available to City upon at least thirty (30) days' notice to the INSERT ENTITY NAME HERE of CITY'S inspection and audit. Any and all reasonable costs incurred by the CITY associated with any audit described herein shall be shared equally by the CITY and INSERT ENTITY NAME HERE.

ARTICLE 8
TERMINATION

8.1 INSERT ENTITY NAME HERE Default. The CITY may terminate this Agreement by furnishing written notice to the INSERT ENTITY NAME HERE if at any time during the term of this Agreement the INSERT ENTITY NAME HERE fails to perform any of its obligations hereunder and such failure to perform such covenant continues for thirty (30) days after written notice given by CITY to the INSERT ENTITY NAME HERE, provided that if such failure cannot reasonably be cured within such thirty (30) day period then the INSERT ENTITY NAME HERE shall not be in default hereunder and City shall not have the right to terminate this Agreement unless and until the INSERT ENTITY NAME HERE fails to commence curing such failure within such thirty (30) day period and prosecute such cure to completion with diligence.

8.2 Unspent Funds. In the event this Agreement is terminated by the CITY pursuant to the terms of this Agreement and unspent Hotel HOT reserved for SAPP costs and expenditures remains, then such unspent amounts shall be eligible for use by the CITY in any manner permitted by Chapter 351 of the Texas Tax Code and INSERT ENTITY NAME HERE shall have no further right or entitlement to the receipt of such funds, except for the payment of eligible costs and expenses reasonably incurred by the INSERT ENTITY NAME HERE up to and including the date of termination.

8.3 CITY Default. CITY Default shall mean the failure of the CITY to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, and the CITY fails to cure such failure within thirty (30) days after written notice from the INSERT ENTITY NAME HERE describing such failure, or if such failure cannot be cured within such 30-day period in the exercise of all due diligence, then if the CITY fails to commence such cure within such 30-day period or fails to continuously thereafter diligently prosecute the cure of such failure.

8.4 If the CITY is in default of this Agreement, the INSERT ENTITY NAME HERE may terminate this Agreement by written notice and sue for damages, subject to the limitations of Article 9.

ARTICLE 9
LIABILITY OF ENTITY AND CITY

9.1 No Liability of City Personnel. The INSERT ENTITY NAME HERE agrees that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the CITY may have to immunity under the laws of the State of Texas. Further, the INSERT ENTITY NAME HERE agrees that it may assert claims only against the assets of CITY and that under no circumstances shall any officer or employee of CITY ever be personally liable for any of the obligations of CITY under this Agreement.

9.2 **INDEMNIFICATION.** The **INSERT ENTITY NAME HERE** AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, **INSERT ENTITY NAME HERE** WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR ENTITY 'S MISUSE OF HOT REVENUE AND/OR THE MISMANAGEMENT OF SUCH REVENUES.

9.3 **REIMBURSEMENT OF FUNDS.** IF THIS AGREEMENT OR THE USE OF HOT AS PROVIDED HEREIN IS DEEMED TO BE IMPERMISSIBLE BY A COURT HAVING JURISDICTION OVER THE PARTIES AND SUBJECT MATTER, AND A FINAL NON-APPEALABLE JUDGEMENT REQUIRES THE **INSERT ENTITY NAME HERE** TO RETURN SUCH FUNDS, THEN THE **INSERT ENTITY NAME HERE** AGREES THAT ANY AND ALL FUNDS ADVANCED TO IT BY THE CITY SHALL BE REIMBURSED TO THE CITY

9.04 City's Liability Limitations. Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Act of Default by City and City shall have thirty (30) days to cure and remove the Default upon receipt of written notice to do so from the INSERT ENTITY NAME HERE. Further, the INSERT ENTITY NAME HERE specifically agrees that City's liability under this Agreement shall in no event exceed the Annual Allocation of HOT for the budget year in which the default is alleged to have occurred, less any HOT distributed to the INSERT ENTITY NAME HERE for that budget year

9.05 Attorney's Fees. Neither Party shall be liable to the other for any Attorney's Fees or costs incurred in the enforcement of this Agreement.

ARTICLE 12
SUCCESSORS AND ASSIGNS; ASSIGNABILITY

12.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of PARTIES and their respective heirs, representatives, successors and permitted assigns.

12.2 **Assignment by INSERT ENTITY NAME HERE.** The INSERT ENTITY NAME HERE shall not be permitted to assign this Agreement, in whole or in part, unless such assignment is first approved by the City Council of Copperas Cove.

ARTICLE 13
TERM

13.1 Unless earlier terminated under the terms of this Agreement, this Agreement shall renew annually, subject to the CITY'S Annual Allocation obligations parameters set out in ARTICLE 2.

13.2 In addition to any other right of termination set out herein, either PARTY may terminate this AGREEMENT by giving the other 30 days' notice prior to renewal.

ARTICLE 14
MISCELLANEOUS

14.1 **Amendments.** This Agreement may be amended only by a written instrument so stating which is executed by the PARTIES hereto.

14.2 **Severability.** If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby, but shall be enforced to the greatest extent permitted by law.

14.3 **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.5 **Waivers.** No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

14.6 **Governing Law and Venue.** This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by, the laws applicable to the State of Texas. Venue for any disputes arising under this Agreement shall be in Coryell County, Texas.

15.7 **Authority.** The person executing this Agreement on behalf of the INSERT ENTITY NAME HERE and the CITY each represents that he/she has the power and authority to do so and to bind his/her principal to the terms of this Agreement.

15.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(SIGNATURES ON FOLLOWING PAGES)

INSERT ENTITY NAME HERE:

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

COUNTY OF CORYELL §

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2015, by INSERT NAME, INSERT TITLE of the INSERT ENTITY NAME HERE, a nonprofit 503c3 corporation, for and on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

CITY:

CITY OF COPPERAS COVE, TEXAS

By: _____
Andrea Gardner, City Manager

Date: _____

ATTEST:

Mariela Altott, City Secretary

APPROVED AS TO FORM:

Denton Navarro Rocha Bernal Hyde
& Zech, P.C., City Attorney

STATE OF TEXAS §

COUNTY OF CORYELL §

This instrument was acknowledged before me, the undersigned authority, on the _____ day of _____, 2014, by ANDREA GARDNER, City Manager of the City of Copperas Cove, Texas, on behalf of said City.

NOTARY PUBLIC, STATE OF TEXAS