



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 *COPPERAS COVE CHAMBER OF COMMERCE* a 501c6 corporation formed in the state of Texas (hereinafter the "CHAMBER OF COMMERCE"). The CITY and CHAMBER OF COMMERCE 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 1/7 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 October 1, _____.

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;
- (6) expenses including promotional expenses, directly related to a sporting event in which the majority of participants are tourists. The event must substantially increase economic activity at hotels within the city or its vicinity;

- (7) funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations: the commercial center for the city; a convention center in the city; other hotels in or near the city; or tourist attractions in or near the city;
- (8) signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality; and
- (9) funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations: the commercial center of the city; a convention center in the city; other hotels in or near the city; or tourist attractions in or near the city.

ARTICLE 2
ALLOCATION AND PAYMENT OF HOT

2.1 The CITY shall not have any financial obligation to the CHAMBER OF COMMERCE 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 _____. 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 In consideration of the services specified in this agreement, CITY shall reimburse the CHAMBER OF COMMERCE in four (4) equal quarterly installments upon approval of the CITY governing body for the term of this agreement. Payment by CHAMBER OF COMMERCE shall be requested using the Post Event Report. All expenses requested for reimbursement must be documented. The CHAMBER OF COMMERCE shall make a good faith estimate of staff time, resources, and administrative expenses associated with services provided under this Agreement. This estimate shall be provided to the City in its Quarterly report. CHAMBER OF COMMERCE understands and agrees that hotel occupancy tax revenue may be spent for 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 authorized under Section 351.101 (a) of the Texas Tax Code. In the event an advance payment prior to expenses being incurred by the CHAMBER OF COMMERCE is requested, sufficient documentation is required prior to the release of HOT funds.

2.3 Any Annual Allocation, which is unencumbered or unexpended at the end of the City’s Budget Year shall be remitted to the City within 30 days from the last day of that Budget Year.

ARTICLE 3
CHAMBER OF COMMERCE USE OF HOT

3.1 Promotional Services. Pursuant to Section 351.101(c) of Texas Tax Code, the CITY hereby engages the CHAMBER OF COMMERCE, 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, advertising and solicitation for various 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 CHAMBER OF COMMERCE pursuant to this Agreement shall directly enhance and promote tourism and convention attendance in the City.

3.2 Branding. The CHAMBER OF COMMERCE recognizes the intent and desire of the CITY to establish and enhance a “brand identity” for the City of Copperas Cove. The CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE shall prepare and submit to City a proposed Marketing Plan or Plans annually to be submitted on or before _____ 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE hereunder that the CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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
CHAMBER OF COMMERCE DUTY TO CITY

The CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE.

ARTICLE 8
TERMINATION

8.1 CHAMBER OF COMMERCE Default. The CITY may terminate this Agreement by furnishing written notice to the CHAMBER OF COMMERCE if at any time during the term of this Agreement the CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE, provided that if such failure cannot reasonably be cured within such thirty (30) day period then the CHAMBER OF COMMERCE shall not be in default hereunder and City shall not have the right to terminate this Agreement unless and until the CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE may terminate this Agreement by written notice and sue for damages, subject to the limitations of Article 9.

ARTICLE 9

LIABILITY OF CHAMBER OF COMMERCE AND CITY

9.1 No Liability of City Personnel. The CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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, CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE to return such funds, then the CHAMBER OF COMMERCE agrees that any and all funds advanced to it by the city shall be reimbursed to the city.

9.4 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 CHAMBER OF COMMERCE. Further, the CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE for that budget year.

9.5 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 10
NOTICES

Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by: (i) delivering the same in person to the Party to be notified, (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the Party to be notified at the address herein specified, or (iii) delivery by private courier with proof of delivery required. If notice is deposited in the United States mail pursuant to (ii) of this Article, it will be effective from and after the date of receipt or delivery thereof if refused. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purpose of notice, the address of the parties shall be, until changed as hereinafter provided for, as follows:

ENTITY: CHAMBER OF COMMERCE

With Copy to:

CITY: The City of Copperas Cove

With Copy to: City Manager
914 S. Main Street, Suite D
Copperas Cove, Texas 76522
Fax #: (254) 547-4221

The PARTIES shall have the right, at any time, to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other PARTY. Each PARTY shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other PARTY fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that neither PARTY shall have the right to designate more than two (2) such additional parties. Notice required to be delivered hereunder to either PARTY shall not be deemed to be effective until the additional parties, if any, designated by such PARTY have been given notice in a manner deemed effective pursuant to the terms of this Article.

ARTICLE 11
RELATIONSHIP

The CHAMBER OF COMMERCE shall at all times be the independent contractor of the CITY and not the employee or agent of the CITY, with respect to the matters provided for herein. The CHAMBER OF COMMERCE shall have no right or power to contract with third parties for, on behalf of, or in the name of the CITY or to otherwise bind or obligate the CITY.

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 CHAMBER OF COMMERCE. The CHAMBER OF COMMERCE 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 on October 1, 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.

14.4 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.

14.5 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.

14.6 Authority. The person executing this Agreement on behalf of the CHAMBER OF COMMERCE 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.

14.7 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)

CHAMBER OF COMMERCE:

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

COUNTY OF CORYELL §

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, _____, by _____, President/CEO of CHAMBER OF COMMERCE, a nonprofit 503c6 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: _____
Ryan Haverlah, City Manager

Date: _____

ATTEST:

Lisa Wilson, City Secretary

APPROVED AS TO FROM:

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

STATE OF TEXAS §

COUNTY OF CORYELL §

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, _____, by RYAN HAVERLAH, City Manager of the City of Copperas Cove, Texas, on behalf of said City.

NOTARY PUBLIC, STATE OF TEXAS