

State of Texas           §  
§ TOURISM AGREEMENT  
County of Harris       §

This Agreement (agreement), is made and entered into by Bay Area Houston Convention and Visitors Bureau, hereinafter referred to as **BAHCVB**, having its principal place of business at 604 Bradford Ave., Kemah, TX 77565, and the CITY OF \_\_\_\_\_, hereinafter referred to as CITY, having its principal place of business at \_\_\_\_\_.

WITNESSETH:

WHEREAS, the CITY desires to contract for the management and supervision of the tourism programs described herein, as provided in TEXAS TAX CODE §351.101; and

WHEREAS, BAHCVB hereby agrees to perform the management and supervision of the programs hereinafter specified in accordance with the Agreement; and

NOW, THEREFORE, BAHCVB and the CITY do hereby agree as follows:

## ARTICLE I

### LEGAL AUTHORITY

Each party warrants that it possesses adequate legal authority to enter into this Agreement and any necessary amendments hereto.

## ARTICLE 2

### APPLICABLE LAWS

**BAHCVB** and the CITY agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, ordinances, and laws in effect or promulgated during the term of this Agreement by the State of Texas.

**ARTICLE 3**  
**WHOLE AGREEMENT**

The Agreement and any attachments, as provided herein, constitute the complete Agreement between the parties hereto, and supersede any all oral and written Agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

#### **ARTICLE 4 TERM**

Each party who has a signed contract will have the right to terminate this contract each year of the three year agreement (Agreement October 1, 2016 thru September 30, 2019). Notification of termination must be received in writing by July 1<sup>st</sup>. Termination may occur if the measurements are not met or exceeded (Refer to addendum). The written notice must be given to the Chairman of the Board of the **BAHCVB** who in turn will notify the current Board members of the **BAHCVB** and the Executive Director.

#### **ARTICLE 5 SCOPE OF WORK**

The services to be performed by BAHCVB are herewith outlined in Attachment "A" Scope of Services, which is hereby incorporated into and made a part of the Agreement.

#### **ARTICLE 6 COORDINATION OF MARKETING EFFORTS**

The BAHCVB and each City shall work together and coordinate their respective marketing activities to avoid duplication of efforts and to increase marketing efficiency. Thru its annual plan the **BAHCVB** will develop their marketing efforts with the guidance and recommendations of the Marketing Task Force. The task force will consist of the **BAHCVB** Executive Director and one individual from each member city that can in turn report back to their respective city on the plan and accomplishments. The Executive Director will also work closely with the local Chambers and Cities to align their efforts. The Executive Director will be responsible for providing an annual report to each city of the results of their efforts.

#### **ARTICLE 7 PAYMENTS**

In consideration of the marketing services provided by **BAHCVB**, the City shall compensate **BAHCVB** at the rate equal to fifteen percent (15%) of the respective Hotel Occupancy tax (HOT) revenues collected by the City. The fifteen percent (15%) shall only apply to HOT revenue collected by the City and paid to the **BAHCVB** within sixty {60} days of the end of each quarter. Each city will also receive and approve an annual budget from the BAHCVB no later than September 15 as a condition to the first payment of the fiscal year by the City.

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## **ARTICLE 8 REPORTING**

**BAHCVB** shall make an annual report to the City Council of the CITY, which report shall list the expenditures made by **BAHCVB** from the funds received from the CITY pursuant to this Agreement and an account of hotel occupancy, collateral, advertisement, and other programs that relate to this Agreement.

**BAHCVB**, as required by the Texas Tax Code, shall maintain all revenue received from the CITY under this Agreement in a separate account established for the receipt and expenditures of these funds. **BAHCVB** shall not commingle any funds received under this Agreement with other funds of **BAHCVB**. The CITY retains the right to inspect the books and records of the **BAHCVB** upon prior written notice and conduct or have conducted an independent audit of all funds received under this Agreement, which audit may be performed by the CITY's audit staff, a certified public accountant firm, or other auditors as designated by the CITY. Announcement of such audit requests must be given with a 60 day grace period. The audits will be conducted according to state law, regulations, generally accepted auditing standards, and established procedures and guidelines of the CITY.

## **ARTICLE 9 DEFAULT**

A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such a failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement shall be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice. If performance has not commenced within 30 days of the receipt of a notice of default, the complaining party may declare the Agreement in default and proceed to seek recovery of any and all damages suffered as a result of such breach.

## **ARTICLE 10 INDEPENDENT CONTRACTOR**

The parties intend that **BAHCVB**, in performing the specified services, shall act as an Independent Contractor and shall have control of the work and the manner in which it is performed. **BAHCVB** will perform **BAHCVB** services for the CITY in accordance with currently approved methods and standards applicable to **BAHCVB**'s business. **BAHCVB** shall be free to contract for similar services to be performed for other employers while **BAHCVB** is under contract with CITY.

## **ARTICLE 11 INDEMNITY**

**BAHCVB** agrees to and shall indemnify, hold harmless, and defend the CITY, its officers, agents and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, courts costs, attorneys' fees, for injury to or death of any person, or for any and all damages arising out of or in connection with the work performed or required to be performed by **BAHCVB**, its agents, servants, employees, and/or subcontractors pursuant to this Agreement, the conduct or management of **BAHCVB's** business or activities, or from any act or omission by **BAHCVB**, its agents, servants, and/or subcontractors on or about the property, where such injuries, death or damages are caused by the joint negligence of the CITY, its officers, agents and any other person or entity and/or by the joint or sole negligence of **BAHCVB**, its officers, agents, employees, and/or subcontractors. It is the expressed intention of the parties hereto, both the **BAHCVB** and the CITY, that the indemnity provided for in this paragraph is indemnity by the **BAHCVB** to indemnify and protect the CITY from the consequences of (1) the negligence of the CITY, its officers, agents and/or employees, where the negligence is a concurring cause of the resulting injury, death or damage and/or (2) **BAHCVB's** its agents', servants', employees' and or subcontractors' joint and/or sole negligence. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where the injury, death, or damage results from the sole negligence of the CITY, its offices, agents and/or employees unmixed with the fault of any other person or entity.

## **ARTICLE 12 CHANGES AND AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal and state law or regulations, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation. Otherwise, the parties hereto, may alter or amend this Agreement only by written amendments mutually agreed upon by **BAHCVB** and the CITY.

## **ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING**

**BAHCVB** may not sell, assign, or subcontract, all or part of its interest in this Agreement to another party or parties without written approval of the CITY of such sale, assignment, or subcontract. The CITY may require any records or financial statements necessary in its opinion to ensure such sale, assignment, or subcontract will be in the best interest of the CITY.

**ARTICLE 14  
WAIVER**

Failure of either party hereto to insist on the strict performance of any of the agreements contained herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder, to exercise any right or remedy occurring as a result of any future default or failure of performance.

**ARTICLE 15  
SEVERABILITY**

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**ARTICLE 16  
FORCE MAJEURE**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident judgment, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed.

**ARTICLE 17  
VENUE**

Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas.

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**ARTICLES 18  
NOTICES**

All notices required by this Agreement shall be delivered in person or by United States mail, postage prepaid, and shall be addressed:

To BAHCVB:

Bay Area Houston Convention and Visitors Bureau  
Attn: Executive Director  
604 Bradford Avenue  
Kemah, TX 77565

To CITY:

This instrument, in duplicate originals, has been signed by the parties hereto on the date previously indicated.

BAY AREA HOUSTON CONVENTION  
AND VISITORS BUREAU

CITY OF

BY:\_\_\_\_\_

BY:\_\_\_\_\_

DATE:\_\_\_\_\_

DATE:\_\_\_\_\_

ATTEST:\_\_\_\_\_

ATTEST:\_\_\_\_\_

## **ATTACHMENT "A"**

### **SCOPE OF SERVICES**

During the term of this agreement, Bay Area Houston Convention and Visitors Bureau ("**BAHCVB**") agrees to provide the following services. Each participating city will assist in the establishing of the guidelines with the **BAHCVB** Board and Marketing Task Force:

#### **I. Finance**

- Work with the BAHCVB Board and Executive Director to develop a budget
- Present the annual budget to member cities with a public relations plan

#### **II. Marketing and Communications**

- Develop a public relations plan outlining objectives, tactics, messaging, and priorities to promote the Bay Area Houston and participating cities
- Offer its members sponsored content and co-op advertising opportunities
- Maintain an internet presence with on-line booking engine that includes all accommodations within the member cities
- Maintain updated listing of all restaurants/retail/entertainment establishment and events as provided by their members
- Provide members with a dedicated page on the BAHCVB website in which each CITY will have the option to provide contact information, website address, photo, logo and marketing copy.
- Distribute press releases for events, articles of interest, and announcements relevant to the visitor destination industry, upon request. Press releases will be sent to the appropriate target market, gleaned from a distribution list that includes media outlets located throughout the drive market, the state, and the shoulder regions.
- Distribute calendar listing of events (as provided by the members) to statewide print and website media outlets.

#### **III. Collateral**

- **BAHCVB** will develop, print, and distribute regional visitors guides, including listings for all regional accommodation properties, major visitor attractions and key public events. In conjunction with this they will also help to develop and print a fun map and distribute to all accommodations, attractions, airports, Visitors Centers and Texas Welcome Centers.

#### IV. Brand Development

- Thru the Marketing Task Force, coordinate thru member cities on branding of the Bay Area Houston and incorporate city brands and promotional efforts with **BAHCVB** marketing initiative.
- Distribute member cities collateral {as provided by member} at no cost to the members to all leads generated by advertising and public relations programs.
- Provide a hospitality training/education event each year to benefit partners, members, and affiliates.

#### V. Industry Representation

- Fund membership and actively participate in the Texas Hotel and Lodging Association and its programs to ensure advocacy for the travel and hospitality industry within our region and member cities
- Exert the effort to visit with hotel management at the participating cities

#### VI. Accountability/Marketing

It is understood that the first year of the newly re-organized **BAHCVB** will be transitional with its main focus on marketing the member cities and regional area. The following are the areas of focus that will be defined in detail:

- Develop an Overall Marketing/Business plan for the **BAHCVB**
  - Number of tours, visits and meetings with narrative
- Maintain Website
  - Provide Google/Website Analytics
  - # of hits
  - # of unique visitors
  - # of page views
  - Top 10 pages viewed
  - Top 10 downloads
  - #of contacts that subscribe to e-mail blast
- Number and summary of promotions completed
- Work closely with the Houston First Organization
- Maintain the Visitors Center (# of walk-ins and call summary)
- Summary of promotions to increase reach
- List of social media outlets and report analytics
- Provide relevant and timely updated reports on current happenings, marketing reports etc. with member cities
- Maintain and advertise an area activities/events calendar
- Reserve the right to request additional reporting and/or special reporting that is capable as personnel and technology allow in the future