

AMENDED CONSULTING SERVICES AGREEMENT  
BETWEEN  
CITY OF CORPUS CHRISTI  
AND  
CORPUS CHRISTI CONVENTION & VISITORS BUREAU

This Amended Consulting Services Agreement is executed by and between the City of Corpus Christi, Texas, a municipal corporation ("City") and the Corpus Christi Convention & Visitors Bureau ("CCCVB"), a private, Texas nonprofit corporation organized for the purpose of promoting convention and visitor activity in the Corpus Christi Bay area.

**WHEREAS**, the City desires to attract more visitors and conventioners to Corpus Christi;

**WHEREAS**, the City benefits directly by increased sales tax and hotel and motel occupancy tax income developed by visitors and conventioners;

**WHEREAS**, the City benefits indirectly through the economic activity of visitors and conventioners who come to our City; and

**WHEREAS**, CCCVB has professional personnel who are trained and experienced in the field of visitor and convention promotion, and the City desires to continue the professional promotion and advertising service through a contractual arrangement with CCCVB;

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

**1. SCOPE OF SERVICES.**

1.01. CCCVB shall perform the following services in a satisfactory and proper manner, as determined by the City Manager or the City Manager's designee.

1.02. The CCCVB shall, in accordance with the organization's mission, drive overnight visitors to the Corpus Christi area. Specific activities required include:

(A) Lead attraction and support of meetings, conventions and tradeshow within Corpus Christi, including the following specific activities:

- a. solicit various organizations and associations to conduct meetings/conventions/ tradeshow within Corpus Christi year-round;
- b. utilize various advertising/marketing techniques to promote City of Corpus Christi as a desirable year-round meeting and convention destination;
- c. provide support services to meetings and conventions in Corpus Christi;
- d. focus efforts on the City's Convention Center;

(B) promote the City of Corpus Christi as a year-round, leisure tourism destination;

(C) design and implement an advertising campaign with state, national, and international coverage to feature the Corpus Christi area as an attractive region for tourism;

- (D) support for special events that will create overnight visitors;
- (E) maintain high quality, updated website and printed materials for visitors;
- (F) serve as main point of information for inquiries related to tourism and convention-related business in the Corpus Christi area;
- (G) operate visitor information center(s);
- (H) research and advise the City on projected growth of tourism and convention-related business to assist City planning efforts, including expanding segments of the industry, such as sports tourism, cultural tourism and nature tourism;
- (I) provide feedback to City, as requested, to facilitate policy decisions made in the interest of tourism promotion;
- (J) act as a liaison for the City in its relationships with the music and film industries;
- (K) perform all responsibilities of tourism and marketing;
- (L) perform additional duties as agreed upon by both parties which are consistent with the organization's mission statement.

~~1.02. The CCCVB shall solicit various organizations and associations to conduct meetings/conventions/tradeshows within Corpus Christi year-round. These target organizations will be identified by CCCVB. In addition, CCCVB will utilize various advertising/marketing techniques to promote City of Corpus Christi as a desirable year-round meeting/convention destination.~~

~~1.03. CCCVB shall promote the City of Corpus Christi as a year-round tourism destination. Those services must include, but are not limited to, information services, web site, attendance at travel/trade/shows, e-mail requests, phone inquiries, advertising, public relations special promotions, and packaging.~~

~~1.04. CCCVB shall design and implement an advertising campaign with state, national, and international coverage to feature the Corpus Christi area as an attractive region in which to vacation or have conventions or group meetings.~~

~~1.05. CCCVB shall provide support services to conventions in Corpus Christi.~~

~~1.06. CCCVB shall operate visitor information centers, as CCCVB deems appropriate, which must make referrals to City attractions, including, but not limited to, the Texas State Aquarium, U.S.S. Lexington, Corpus Christi Museum of Science and History, American Bank Center and Whataburger Field, as well as other area attractions.~~

~~1.07. CCCVB shall provide information and advice to businesses interested in tourism and convention-related business in the Corpus Christi area.~~

~~1.08. CCCVB shall advise the City on projected growth of tourism and convention-related business for the next five years to assist City planning efforts.~~

## **2. APPROPRIATIONS AND AUDIT**

~~2.01. CCCVB shall make a quarterly presentation to the City Council regarding CCCVB's programs, projects, operations and expenditures. [AMB]~~

2.0201. The parties mutually agree and understand that funding under this Agreement is subject to annual appropriations by the City Council; that each fiscal year's funding must be included in the budget for that year; and the funding is not effective until approved by the City Council.

2.0302. CCCVB must maintain revenue provided under this Agreement in a separate account established for that purpose and may not commingle City funds with any other funds.

2.0403. Expenditures exceeding the total budgeted amount must be paid from clearly identified funds of CCCVB.

2.0504. Interest earned on funds contributed to CCCVB by the City must be clearly identified, credited, and reflected on the books as resulting from the investment of the funds and the interest earned must be available for CCCVB use within the convention and visitor fund account.

2.0605. The parties agree that receipt of these funds creates a fiduciary duty of the CCCVB.

2.0706. CCCVB shall provide an Independent audit for expenditures of funds allocated under this agreement for each year based on a fiscal year ending September 30.

2.0807. Accounting records and the necessary independent audits must conform to the accounting standards as promulgated by the American Institute of Certified Public Accountants and to the requirements of applicable state law, so as to include a statement of support, revenues, expenses, and balance sheets for all funds.

2.0908. Early reports of an independent audit of the CCCVB's expenditures and revenues during the previous fiscal year performed by a Certified Public Accountant under Generally Accepted Accounting Principles (GMP) must be submitted to the City Manager within ninety (90) days after the end of each fiscal year that this Agreement is in effect.

2.10-09. City shall have the right during each calendar year or fiscal year to authorize an audit of CCCVB's records pertaining to its revenues and expenditures of funds allocated under this agreement. Such audits shall be undertaken by City's staff or a firm of Certified Public Accountants satisfactory to City. The cost of such audit shall be paid by City.

### **3. RECORDS.**

3.01. The books of account of the convention and visitor fund held by CCCVB must be maintained in a form approved by the City's Director of Finance, and must be available for inspection and copying by the Director, and the Director's duly authorized agents and

representatives during regular business hours of CCCVB. Records must be maintained for at least 3 years after the expiration or termination of this agreement.

#### 4. REPORTS.

4.01. Business Plan: By ~~September~~ July 31 of each year the CCCVB shall provide City Manager with a Business/Marketing ~~p~~Plan that outlines the overall objectives of the CCCVB. The Plan must describe the plan of action for the upcoming year, including strategic markets; a line item budget; and significant initiatives. The Plan will be in a format similar to the City's Business Plan template.<sup>[AMB2]</sup> Opportunities to promote ~~e~~City ~~-~~funded venues must be specifically identified and included in the plan. Other information necessary to describe the CCCVB's efforts must be included, as well.

4.02 Required Quarterly Reports: The CCCVB shall provide quarterly reports to the City on expenditures of Hotel Occupancy Tax ("HOT") Ffunds, in accordance with Tax Code §351.101 (c).<sup>[AMB3]</sup>

4.0~~2~~3. Performance Reports: The CCCVB shall periodically report to the City Council on the activities and work accomplished. The CCCVB shall make any special presentations or prepare specific reports, if requested by the ~~members of the~~ City Council, within 30 days of the request.

4.0~~4~~3. Annual Reports. The CCCVB shall report annually on the outcomes of the performance measures presented in the Business/Marketing ~~plan~~ Plan for the previous year. The Annual Report is due within sixty (60) days after the end of each fiscal year while this Agreement is in effect. The Report shall also include the Annual Audit, referenced in Section 2-shall be provided promptly upon completion but in any event within ninety (90) days after the end of each fiscal year.

#### 5. PERFORMANCE MEASURES.

5.01. The performance of the CCCVB under this ~~agreement~~ Agreement is based on level of hotel occupancy tax earned.

5.02. CCCVB shall be deemed to have met its performance requirements for a particular fiscal year if the amount of the City's 7% portion of the hotel occupancy tax earned and received by City for that ~~CCCVB~~ fiscal year meets or exceeds the minimum threshold of \$6,200,000.

~~5.03. Subject to the approval of the City Manager, the CCCVB shall, before undertaking any special marketing campaign that is specifically funded by the Special Marketing Fund, project the percentage increase in anticipated increase in Hotel Occupancy Tax ("HOT") revenues are expected over the prior three year rolling average of HOT revenues.~~

~~5.04. CCCVB's fiscal year began August 1 and ended July 31. In fiscal year 2013-2014~~

~~the City adjusted its fiscal year to end on September 30. Beginning October 1, 2014, CCCVB's fiscal year runs from October 1 through September 30, accordingly.~~

## 6. CONDUCT OF SERVICES

6.01. All of the Services provided by the CCCVB under this Agreement must be in conformity with the purposes for which the HOT revenues may be expended as authorized in the laws of the State of Texas.

## 7. BOND.

7.01. The officers and employees of CCCVB designated to withdraw funds from the convention and visitor fund must be covered by a blanket fidelity bond in a penal sum of \$100,000. The bond ~~mi~~ust be provided by CCCVB, issued by a corporate surety designating CCCVB as named insured, the City as an additional named insured, and in the form as to be approved by the City Attorney.

## 8. COMPENSATION.

8.01. Hotel Occupancy Tax Share: The City agrees that for the convention and visitor services performed by CCCVB under this Agreement, the City shall pay CCCVB annually the sum of ~~40%~~44% of the City's 7% hotel occupancy tax receipts received by the City for the CCCVB's current fiscal year, but specifically excepting all hotel occupancy tax receipts received by the City that are generated from any and all districts of the Schlitterbahn Beach Country project described in the Chapter 380 Economic Development Incentive Agreement Between the City of Corpus Christi, Texas and Upper Padre Partners, LP and North Padre Waterpark Holdings, LTD approved by the City Council by Resolution No. 029487 on May 22, 2012 ("Schlitterbahn"), divided into monthly payments described in Section 8.02. The amount to be paid to CCCVB is referred to in this Agreement as the Contract Base Amount.

8.02 HOT Trigger of Renegotiation: ~~Provided, however, that should~~ Should hotel/motel tax receipts received by the City for the twelve months ending March 31 in any year fall below \$6,200,000, the ~~Base-Contract~~ Amount for the following fiscal year may be renegotiated. Each of the above amounts must be calculated based upon the amount of City hotel/motel tax receipts received by the City, excluding the two percent increase adopted in 1999 for convention center expansion and revenues authorized to clean and maintain public beaches by Chapters 156 and 351, Texas Tax Code.

8.032. Payment Schedule: During the term of this Agreement, the City shall pay to CCCVB a sum equal to one-twelfth of the ~~trial~~ annual amount payable to CCCVB for the convention and visitor services provided under this Agreement on or about the first of each month; provided however, the City Manager is authorized to alter the payment schedule to increase payments early in the year if the payments are justified by documentation provided by CCCVB.

~~8.03. CCCVB may be entitled to additional incentive payment, to be calculated as follows: excluding at hotel occupancy tax receipts received by the City that are generated from any and all districts of Schlitterbahn, and excluding the 2% dedicated to repay the debt on the American Bank Center and amounts authorized by State law for use to clean and maintain public beaches, CCCVB shall receive 55% of the City's 7% hotel tax receipts, only for amounts of the City's 7% hotel tax receipts that exceed the 3 year rolling average by more than 5%, adjusted for the rate of inflation or deflation as the reported in the Houston-Galveston-Brazoria, TX CPI. The 3 year rolling average is the average of the City's 7% hotel tax receipts for previous three fiscal years. For example, suppose the amount of hotel tax receipts for calendar years 2007 through 2009, after being adjusted for inflation or deflation, is as follows:~~

<del>Fiscal Year</del>	<del>Amount of 7% hotel tax receipts</del>
<del>2007</del>	<del>\$6,000,000</del>
<del>2008</del>	<del>\$6,180,000</del>
<del>2009</del>	<del>\$6,365,400</del>
<del>2010</del>	<del>\$6,750,000</del>

~~The 3 year rolling average for fiscal year 2010 is \$6,181,800, the average of the receipts for years 2007, 2008, and 2009. The amount that exceeds the three (3) year rolling average by more than 5% would be \$6,490,890 (\$6,181,800 X 105% equals \$6,490,890). Therefore, in this example, the incentive base to CCCVB in fiscal year 2010 would be the difference between collections of \$6,750,000 and \$6,490,890, which equals \$259,110. Therefore, 55% of \$259,110, or \$142,511, would be paid as an incentive to the CCCVB. Any year in which a limited number of ever-4's or groups cause a disproportionate increase in the HOT collections, the prior year's HOT collection plus 5% will be substituted for the actual collection for that year. (The example above does not reflect any adjustments for inflation or deflation.)~~

~~8.04. The City reserves the right to renegotiate in the second year of this agreement an increase in the threshold required to be surpassed for the CCCVB to be eligible for the increased incentive payment (i.e., current rate is 5%).~~

~~8.05. The City reserves the right to renegotiate the CCCVB's accountability for return on investment on the expenditures of the Special Marketing Fund in the second year of the agreement.~~

~~8.06. To receive an incentive payment, CCCVB must be in compliance with all terms of this Agreement.~~

~~8.07. For the convention and visitor services provided by CCCVB from August 1, 2014 through September 30, 2014, the City shall pay CCCVB \$659,120.00.~~

## **9. BOARD OF DIRECTORS**

9.01. The affairs of the CCCVB shall be governed by a board of directors ("Board"), which

must be composed of thirteen (13) members selected directly by the City Council of the City. The members must be representatives of the following groups:

- 3 members from the hotel industry;
- 3 members from the attraction industry;
- 2 members from the restaurant industry; and
- 5 members from the community at large.

9.02 The Mayor and City Manager, or their designees, shall serve as ex-Officio advisory non-voting members of the Board. In addition, the Council will appoint a representative from the Port of Corpus Christi Authority, a representative from the Corpus Christi International Airport, and a representative from the Regional Transportation Authority to serve as ex-officio advisory non-voting members

9.03. Appointments to the Board will be for staggered, two-year terms. Current members of the Board may serve until their current terms expire. No person may serve as a voting member of the Board for a period longer than six years consecutively, unless the service is required by virtue of the person's position or title or to complete an unexpired term.

9.04. The CCCVB may make recommendations to the City Council for directors as directors' terms expire, but the CCCVB always shall nominate two (2) more individuals than the total number of positions available. The City Council will provide serious consideration to the Board's recommendations, but is not restricted to select members submitted by the CCCVB or any other group.

9.05. Unexcused absences from more than twenty five (25) percent of regularly scheduled meetings during a term year must result in an automatic vacancy, which vacancy must be promptly reported to the City Council. An absence must be unexcused unless excused by the board for good cause no later than its next meeting after the absence. Any member, otherwise eligible, may not be precluded from reappointment by reason of the automatic vacancy.

9.06. CCCVB's Board of Directors may establish those standing committees it deems necessary. The Board is authorized to and must employ a President/Chief Executive Officer to exercise day to day management and administration of CCCVB.

9.07. The Board of Directors will operate under bylaws developed by the Board. Changes to the bylaws may be made only by a two-thirds vote of CCCVB's Board of Directors. No change in bylaws may be considered, which is inconsistent with any provision of this Agreement, The City Manager will be notified of any proposed changes to the bylaws at least two weeks prior to the adoption of the bylaws by the Board of Directors.

9.08. CCCVB agrees that meetings of its board of directors must be open to the public,

and the meetings may be closed only when the board determines that an executive session is necessary for the purpose of discussing proprietary business.

9.09. The City and CCCVB agree that in no event may the City be liable for any contracts made by CCCVB with any person, firm, corporation, association, or governmental body.

9.10. The City and CCCVB agree that in no event may the City be liable for any damages, injuries, or losses charged to or adjudged against CCCVB arising from its operations, or the use or maintenance of its facilities.

## 10. TERM AND TERMINATION

10.01. The term of the Agreement commences as of ~~November 1, 2010~~October 1, 2015 and continues until September 30, ~~2015~~2018, subject to termination as provided in this Agreement.

10.02. Either party may terminate this Agreement at any time for any reason by giving one year's prior written notice to the other party. In the event the City cancels this Agreement upon one year's notice, the City assumes any obligations of the convention and visitor's fund with a term of less than one year and any other obligation approved in advance by the City Manager. The City reserves the right to terminate the contract without notice for cause.

## 11. MISCELLANEOUS

11.01. This Agreement ~~constitutes a novation~~replaces and supersedes all other contracts and understandings previously made between the City and CCCVB.

11.02. CCCVB specifically reserves the right to change its name as a corporate entity and do business under one or more assumed names in compliance with the laws of the State of Texas. No change of name or use of additional names may be deemed a modification of this Agreement.

11.03. CCCVB shall comply with all applicable Federal, State, and local laws, rules and regulations in providing services under this agreement.

11.04. All notices, requests or other communications related to this Agreement must be made in writing and may be given by: (a) depositing same in the United States Mail, postage prepaid, certified, return receipt requested, addressed as set forth in this paragraph; or (b) delivering the same to the party to be notified. Notice given under (a) of the prior sentence are effective upon deposit in the United States mail. The notice addresses of the parties, until changed as provided in this Agreement, are as follows:

City: City of Corpus Christi, Texas  
Attention: Ronald L. Olson, City Manager  
1201 Leopard Street



P.O. Box 9277  
Corpus Christi, Texas 78469

CCCVB: Corpus Christi Area Convention & Visitors Bureau  
Attention: Chief Executive Officer  
1201 Shoreline Drive  
Corpus Christi, Texas 78401  
~~Attn: Chief Executive Officer~~

11.05. If for any reason any section, paragraph, subdivision, clause, phrase, word, or provision of this Agreement is held Invalid or unconstitutional by final judgment of a court of competent jurisdiction, it may not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this Agreement, for It is the definite intent of the parties that every section, paragraph, subdivision, clause, phrase, word, or provision of this Agreement be given full force and effect for its purpose.

11.06. No amendments, modifications, or other changes to this Agreement are valid or effective absent the written agreement of the parties. This Agreement may be executed in one or more counterparts, each of which are deemed an original, and all of which constitute but one and the same instrument.

11.07. It is understood and agreed that CCCVB may copyright, to the use and benefit of the City of Corpus Christi, any material or document it deems appropriate and qualified for copyright and may administer the copyrights for ti- City during the term of this Agreement.

11.08. CCCVB agrees to comply with attached Exhibit A regarding insurance requirements.

Executed on the dates indicated below binding the respective parties as of the date of last signature.

CITY OF CORPUS CHRISTI, TEXAS

CORPUS CHRISTI CONVENTION &  
VISITORS BUREAU

By: \_\_\_\_\_  
Ronald L. Olson  
City Manager

By: \_\_\_\_\_  
Paulette Kluge  
Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

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**EXHIBIT A- INSURANCE REQUIREMENTS**

**I. CCCVB'S LIABILITY INSURANCE**

A. CCCVB may not commence work under this agreement until all Insurance required in this Agreement has been obtained and the City has approved the insurance. CCCVB may not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.

B. CCCVB must furnish to the City's Risk Manager, two (2) copies of Certificates of Insurance, showing the following minimum coverage by insurance company(s) acceptable to the City's Risk Manager. The City must be named as an additional insured for the General liability policy and a blanket waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day written notice of cancellation, non-renewal, termination, or material change is required on all certificates	Bodily Injury and Property Damage Per occurrence/aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Form 2. Premises — Operations 3. Products/ Completed Operations 4. Contractual Liability	\$1,000,000 COMBINED SINGLE LIMIT
PROFESSIONAL LIABILITY: Coverage provided must cover officers, directors, employees and agents, including: 1. ERRORS and OMISSIONS	\$1,000,000 COMBINED SINGLE LIMIT

In the event of accidents of any kind, CCCVB must furnish the City's Risk Manager with copies of all reports of accidents within 10 days of any accident.

**II. ADDITIONAL REQUIREMENTS**

A. CCCVB's financial integrity is of interest to the City; therefore, subject to CCCVB's right to maintain reasonable deductibles in such amounts as approved by the City, CCCVB shall obtain and maintain in full force and effect for the duration of this Contract, and any extension of the Agreement, at CCCVB's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.

B. The City is entitled, upon request and without expense, to receive copies of the policies, declarations pages, and all endorsements to the policies, as they apply to the limits required by the City, and may require the deletion, revision, 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 to this Agreement or the underwriter of any such policies). CCCVB shall comply with any requests, and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. CCCVB shall pay any costs incurred resulting from the changes. All notices under this Exhibit must be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
Fax#: (361) 826-4555

C. CCVB agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

1. Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, with respect to operations and activities of, or on behalf of, the named Insured performed under this Agreement with the City, with the exception of the workers' compensation and professional liability policies.
2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi, where the City is an additional insured shown on the policy.
3. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

D. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, CCCVB shall provide a replacement Certificate of Insurance and applicable endorsements to City. The City shall have the option to suspend CCCVB's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance constitutes a material breach of this contract.

E. In addition to any other remedies the City may have upon CCCVB's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, the City has the right to order CCCVB to stop work under this Agreement, and may withhold any payment that becomes due to CCCVB under this Agreement until CCCVB demonstrates compliance with the requirements of this Exhibit.

F. Nothing in this Exhibit may be construed as limiting in any way the extent to which CCCVB may be held responsible for payments of damages to persons or property resulting from CCCVB's or its subcontractors' performance of the work covered under this Agreement.

G. It is agreed that CCCVB's Insurance is deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this Agreement.

H. It is understood and agreed that the insurance required by this Exhibit is in addition to and separate from any other obligation contained in this contract.