

**HOTEL OCCUPANCY TAX REVENUE
RECIPIENT AGREEMENT**

BOTANICAL GARDENS

This **Hotel Occupancy Tax Revenue Recipient Agreement** ("**Agreement**") is made by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("**City**"), acting through its duly authorized City Manager or his designee ("**City Manager**"), and The Botanical and Nature Institute of South Texas, Inc. ("**Recipient**"), a Texas non-profit corporation.

Whereas, City desires to encourage and fund activities that promote the arts and, in doing so, serve to promote tourism and the convention and hotel industry within the City of Corpus Christi, in accordance with Chapter 351 of the Texas Tax Code ("**Tax Code**"); and

Whereas, Recipient desires to provide those activities that promote the arts and, in doing so, serve to promote tourism and the convention and hotel industry within the City of Corpus Christi.

Now, therefore, City and Recipient agree as follows:

I. Purpose. The City desires to expend funds from the City's Hotel Occupancy Tax Revenue to fund activities produced by non-profit, community-oriented organizations, specifically those programs that promote the arts and, in doing so, serve to promote tourism and the convention and hotel industry within the City of Corpus Christi.

II. Term. This Agreement commences on October 1, 2022, and terminates on September 30, 2023.

III. Funding. City agrees to reimburse Recipient up to \$70,000.00 out of FY 2022-2023 revenue from the City's Hotel Occupancy Tax Revenue fund for use in accordance with this Agreement and, more specifically, Section IV below (the "**Grant Funds**"). In no event will the City be liable for any amount expended by the Recipient in excess of the Grant Funds amount.

IV. Recipient's Duties; Eligible Activities. Use of the Grant Funds by Recipient is limited to those activities that, without exception, meet all three of the following requirements, referred to herein as the "Eligible Activities":

(A) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;

(B) are in the categories of art that are eligible for funding as described in Sections 351.101(a)(3) and (4) and Section 351.101(b) of the Tax Code, copy attached as **Exhibit "A"**; and

(C) promote both tourism and the convention and hotel industry within the territorial limits of the City of Corpus Christi.

V. Promotion of Tourism and the Convention and Hotel Industry. Recipient must actively promote tourism to the City and the City's hotel and convention industry as a goal of Recipient's Eligible Activities. This may be accomplished by working to increase the number of out-of-town program attendees through targeted promotions and by working with the local hotel-motel and condominium associations.

VI. Completion Report. Recipient must submit to the City's Director of Management and Budget ("Director") a completion report ("Report"), no later than 30 days following the earlier termination or expiration of this Agreement. The Director, or his/her designee, shall review the Report to verify whether the Grant Funds provided to the Recipient were spent in accordance with the requirements in this Agreement. The Report must include the following criteria:

- (A) Written assurance to City that all Eligible Activities funded by the City served to promote the arts in the community. This shall be evidenced by providing the City with a written description of Recipient's marketing or advertising strategy;
- (B) For all Eligible Activities funded by the City, Recipient must submit to the City a written estimate of the number of Recipient's arts program attendees that reside outside the territorial limits of the City of Corpus Christi. This may be accomplished by the use of a visitor log, by tallying the number of out-of-town billings, or by listing the out-of-town mailing addresses gathered through the ticket sales process.
- (C) An estimate of the total arts program attendance;
- (D) A statement of Recipient's arts program revenues and expenditures; and
- (E) The number of attendees that reside outside the City limits that attended the events described on Exhibit A.

VII. Records Retention. Recipient must at all times during the term of this Agreement, and for five years following the earlier termination or expiration of the Agreement, keep true, accurate, complete, and auditable records. Recipient agrees to:

- (A) at least annually make periodic reports to the City of its expenditures from the Grant Funds provided under this Agreement; and
- (B) make records of these expenditures available for review to the City.

VIII. Disbursement of Funds. Funds are to be disbursed by the City on a reimbursement basis. Recipient is responsible to send each written request for reimbursement along with supporting documentation to the Director. Recipient understands and agrees that payment by the City of any Grant Funds under this Agreement is contingent upon the Recipient's full compliance with the requirements of this Agreement. Should the Director determine within five years from the effective date of this Agreement that the Recipient has failed to comply with the requirements contained in this Agreement, all Grant Funds received by the Recipient must be repaid to the City.

IX. Unexpended funds. Upon the earlier termination or expiration of this Agreement, Recipient must submit all requests for reimbursement not later than 30 days following the earlier termination or expiration date.

X. Advertising. Recipient must recognize the City of Corpus Christi as a contributor on all advertisements and publications regarding Recipient's Arts Program. Recipient must provide the Director with a copy of all Recipient-sponsored advertising and promotion materials regarding its Eligible Activities.

XI. Modifications and Waivers. No provision of this Agreement may be altered, changed, modified, or waived.

XII. Relationship between Parties. Nothing in this Agreement shall constitute a partnership, joint venture, or principal-agent relationship between the parties.

XIII. Compliance with Laws. Recipient shall observe and comply with all applicable laws, ordinances, regulations, and rules of the federal, State, county and City governments, in particular, Chapter 351 of the Tax Code. This Agreement is also subject to applicable provisions of the City Charter and the City Code of Ordinances.

XIV. Non-discrimination. Recipient shall not discriminate nor permit discrimination against any person or group of persons as to employment or in the provision of services, activities, and programs. Discrimination, as it pertains to this section, includes discrimination on the basis of race, religion, national origin, sex, disability, or age, or in any other manner that is prohibited by the laws of the United States or the State of Texas. The Director retains the right to take any action deemed necessary to enforce this non-discrimination covenant. Any violation of this non-discrimination provision will result in the immediate termination of this Agreement.

XV. Indemnity. *Recipient fully agrees to indemnify and hold harmless the City of Corpus Christi, its officers, employees, representatives, and agents ("Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature due to personal injuries including, but not limited to, workers' compensation and death claims, or to any property loss or damage of any kind that arises out of or is in any manner connected with, caused by, either proximately or remotely, wholly or in part, or claimed to have arisen out of, been connected with, or have been caused by any act or omission, negligence, or misconduct on the part of Indemnitees or Recipient, or Recipient's agents, servants, employees, guests, contractors, patrons, licensees, or invitees participating in or observing Recipient's Eligible Activities. Recipient further agrees to indemnify and hold harmless Indemnitees in any situation in which injury or damage results from a violation by the Indemnitees or Recipient, or Recipient's agents, servants, employees, guests, contractors, patrons, licensees, or invitees, of any law, statute, ordinance, or government order of any kind pertaining to this Agreement or the Eligible Activities funded in part or in whole by this Agreement. Furthermore, Recipient shall indemnify and hold harmless Indemnitees where injury or damage results or arises out of the exercise, rights, or performance of obligations created by this Agreement.*

These terms of indemnification are effective regardless of whether said injuries or damages result from the sole negligence, contributory negligence, or concurrent negligence of Indemnitees. Recipient must, at its own expense, investigate all claims and demands; attend to their final resolution either by settlement or otherwise, defend all actions with counsel satisfactory to Indemnitees, and pay all costs and expenses related to such actions on account of liability, damage, loss, claims, demands, or actions, including attorney fees.

XVI. Termination.

(A) The City may terminate this Agreement for any of the following reasons:

(1) The City may immediately terminate the Agreement due to any violation by

Recipient of section XIII or XIV of this Agreement.

(2) The City may terminate the Agreement upon the expiration of 14 days' advance written notice, specifying that the Director has determined that Grant Funds were used for purposes other than those allowed under Section 351.101(a) of the Tax Code and require Recipient to reimburse the City all Grant Funds awarded.

(3) The City may terminate this Agreement due to the Recipient's use of Grant Funds to pay for activities other than those qualifying as Eligible Activities under section IV of this Agreement. The Director has the sole discretion to make the determination that the Grant Funds were used for activities other than those qualifying as Eligible Activities. The City may terminate the Agreement upon 14 days' advance written notice and require Recipient to reimburse the City all Grant Funds awarded.

(B) Recipient may terminate this Agreement without cause upon 30 days' advance written notice to the City. If Recipient chooses to terminate the Agreement, Recipient must repay all Grant Funds awarded, whether those funds were expended on Eligible Activities or not.

XVII. Severability. If any term or provision of this Agreement or its application to a person or circumstance is determined to be illegal, unenforceable or invalid, the remainder of this Agreement will not be affected by that illegality, unenforceability, or invalidity. To the extent possible, similar legal, valid, and enforceable terms will automatically be substituted for those that are found to be illegal, invalid, and unenforceable.

XVIII. Notices. All notices provided for or permitted under this Agreement by either party must be in writing and must be delivered by one of the following methods: (1) personal delivery or (2) deposit with the United States Postal Service (USPS) via certified mail, return receipt requested, postage prepaid. Notice deposited with the USPS in the manner described above will be deemed effective two business days after deposit with the USPS with proof of mailing. All notices must be made to:

If to City: City of Corpus Christi
Attn: Parks & Recreation Director
P.O. Box 9277
Corpus Christi, TX 78469-9277

If to Recipient: Botanical and Nature Institute
Attn: Executive Director
8545 S. Staples St.
Corpus Christi, TX 78413

Either party may change the address to which notice is sent by providing notice as described above. Recipient must notify the City of an address change within 10 days after Recipient's address has changed.

XIX. Waivers. The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights as enumerated in this Agreement.

XX. Entirety. This Agreement and all exhibits attached constitute the entire understanding and agreement between the parties regarding the subject matter described in this Agreement. No other written documents or oral representations have any force or effect on the subject matter of this Agreement.

XXI. Captions. The captions contained in this Agreement are not a part of this Agreement and do not in any way affect or alter the terms of this Agreement.

XXII. Assignment. This Agreement may not be, in whole or in part, assigned or transferred directly or indirectly by the Recipient without the prior written consent of the City Manager.

XXIII. Disclosure of Interests. Recipient agrees to comply with City Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this Agreement. Recipient agrees to comply with Texas Government Code Section 2252.908 and complete Form 1295 *Certificate of Interested Parties* form as part of this Agreement, if applicable. For more information, please review the information on the Texas Ethics Commission's website at <https://www.ethics.state.tx.us>. Recipient agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at : <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>.

This Agreement is effective upon the date of the last signature.

CITY OF CORPUS CHRISTI

ATTEST:

Peter Zanoni, City Manager

Rebecca Huerta, City Secretary

Date: _____

Date: _____

Approved as to legal form: _____

Assistant City Attorney

THE BOTANICAL AND NATURE INSTITUTE OF SOUTH TEXAS, INC.

Michael Womack
Signature

Name: MICHAEL WOMACK

Title: EXECUTIVE DIRECTOR

Date: 11/9/22

EXHIBIT A

Texas Tax Code, as amended.

§ 351.101. USE OF TAX REVENUE.

a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited 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) for a municipality located in a county with a population of one million or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity; and

* * * * *

(b) Revenue derived from the tax authorized by this chapter shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry as permitted by Subsection (a). That revenue may not be used for the general revenue purposes or general governmental operations of a municipality.

(c) The governing body of a municipality by contract may delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the tax authorized by this chapter. The governing body in writing shall approve in advance the annual budget of the person to which it delegates those functions and shall require the person to make periodic reports to the governing body at least quarterly listing the expenditures made by the person with revenue from the tax authorized by this chapter. The person must maintain revenue provided from the tax authorized by this chapter in a separate account established for that purpose and may not commingle that revenue with any other money. The municipality may not delegate to any person the management or supervision of its convention and visitors' programs and activities funded with revenue from the tax authorized by this chapter other than by contract as provided by this subsection. The approval by the governing body of the municipality of the annual budget of the person to whom the governing body delegates those

functions creates a fiduciary duty in the person with respect to the revenue provided by the tax authorized by this chapter.

(d) A person with whom a municipality contracts under this section to conduct an activity authorized by this section shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person and, on request of the governing body of the municipality or other person, shall make the records available for inspection and review to the governing body or other person.

(e) Hotel occupancy tax revenue spent for a purpose authorized by this section 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). If a municipal or other public or private entity that conducts an activity authorized under this section conducts other activities that are not authorized under this section, the portion of the total administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the authorized activities.

(f) Municipal hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.

(g) Nothing in this section shall prohibit any private entity, person, or organization from making subgrants by contract to any other person, entity, or private organization for expenditures under Section 351.101(a)(4). A subgrantee shall:

- (1) at least annually make periodic reports to the governing body of its expenditures from the tax authorized by this chapter; and
- (2) make records of these expenditures available for review to the governing body or other person.

THE ABOVE IS A SUMMARY OF A PORTION OF CHAPTER 351 OF THE TEXAS TAX CODE. IT IS THE RECIPIENT'S RESPONSIBILITY TO VERIFY THE CONTENT AND ACCURACY OF ANY APPLICABLE PROVISIONS OF TEXAS LAW IN ACCORDANCE WITH THIS AGREEMENT.



CITY OF CORPUS CHRISTI
DISCLOSURE OF INTEREST

Corpus Christi Code § 2-349, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See next page for Filing Requirements, Certification and Definitions.

COMPANY NAME: SOUTH TEXAS BOTANICAL GARDENS & NATURE CENTER
STREET ADDRESS: 8545 S. Staples P.O. BOX: _____
CITY: CORPUS CHRISTI STATE: TX ZIP: 78413

FIRM IS: 1. Corporation ☒ 2. Partnership ☐ 3. Sole Owner ☐
4. Association ☐ 5. Other ☐

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
<u>NA</u>	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>NA</u>	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>NA</u>	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>NA</u>	_____
_____	_____
_____	_____

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)].

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested, and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas, as changes occur.

Certifying Person: Michael Womack Title: Executive Director
Signature of Certifying Person: Michael Womack Date: 11/9/22

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee of the city, including the board of any corporation created by the city.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the city, whether under civil service or not, including part-time employees and employees of any corporation created by the city.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements.
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.