

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR THE PAYMENT AND USE OF PROGRAM YEAR 2026 HOTEL TAX REVENUE IN SUPPORT OF PROGRAMMING AND EVENTS IN THE CITY BETWEEN THE CITY OF DENTON AND DENTON BLACK CHAMBER OF COMMERCE, (\$48,000), DENTON BLACK FILM FESTIVAL INSTITUTE, INC., (\$62,500), DENTON COUNTY, OFFICE OF HISTORY AND CULTURE, (\$300,000), DENTON DAY OF THE DEAD FESTIVAL, INC., (\$80,000), DENTON FESTIVAL FOUNDATION, INC., (\$94,000), DENTON HOLIDAY FESTIVAL ASSOCIATION (\$30,000), DENTON MAIN STREET ASSOCIATION (\$121,680), DENTON PARKS FOUNDATION, DOG DAYS OF DENTON, (\$30,000), DENTON PARKS FOUNDATION, JUNETEENTH CELEBRATION, (\$30,800), NORTH TEXAS STATE FAIR ASSOCIATION, (\$417,200), TEJAS STORYTELLING ASSOCIATION (\$59,055), TEXAS FILMMAKERS CORPORATION (\$70,000), THEATRE DENTON, INC., (\$35,100), TEXAS VETERANS HALL OF FAME, (\$70,000), AND DENTON MUSIC AND ART COLLABORATIVE (AMPLIFY DENTON), (\$9,900); PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, TEX. TAX CODE §351.101(a) authorizes the CITY to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes the CITY to contract with independent entities, for programs and activities of the type funded with revenue from the municipal hotel occupancy tax; and

WHEREAS, the agreements and amounts have been reviewed and approved by the Community Partnership Committee and the City Council deems use of the funds are in the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals set forth above are hereby incorporated as if set out fully herein.

SECTION 2. The agreements in the attached Exhibits listed in this section and the corresponding amounts to be provided are hereby incorporated as if set out fully herein and approved, and the City Manager, or designee, is authorized to execute the Agreements and to carry out the duties and responsibilities of the City under the Agreements, including the expenditure of funds in accordance with the terms of the Agreements.

Exhibit A – Denton Black Chamber of Commerce - \$48,000

Exhibit B – Denton Black Film Festival Institute, Inc., - \$62,500

Exhibit C – Denton County, Office of History and Culture - \$300,000

Exhibit D – Denton Day of the Dead Festival, Inc., - \$80,000  
 Exhibit E – Denton Festival Foundation, Inc., - \$94,000  
 Exhibit F – Denton Holiday Festival Association - \$30,000  
 Exhibit G – Denton Main Street Association - \$121,680  
 Exhibit H – Denton Parks Foundation, Dog Day of Denton - \$30,000  
 Exhibit I – Denton Parks Foundation, Juneteenth Celebration - \$30,800  
 Exhibit J – North Texas State Fair Association - \$417,200  
 Exhibit K – Tejas Storytelling Association - \$59,055  
 Exhibit L – Texas Filmmakers Corporation - \$70,000  
 Exhibit M – Theatre Denton, Inc., - \$35,100  
 Exhibit N – Texas Veterans Hall of Fame - \$70,000  
 Exhibit O – Denton Music and Art Collaborative, Amplify Denton - \$9,900

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by [\_\_\_\_\_] and seconded by [\_\_\_\_\_].

The ordinance was passed and approved by the following vote [\_\_ – \_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.


\_\_\_\_\_  
 GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: **Susan**  
**Keller** \_\_\_\_\_

 Digitally signed by  
Susan Keller  
Date: 2025.12.04  
09:32:51 -06'00'

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON BLACK  
CHAMBER OF COMMERCE (PROGRAM YEAR 2026) PROVIDING FOR THE  
PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Black Chamber of Commerce, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: one and twenty-two hundredths percent (1.22%) of the annual Base Payment Amount, or the fixed contract amount of Forty-Eight Thousand Dollars (\$48,000). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 1.22% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.



## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Vincent Jackson  
Treasurer  
DENTON BLACK CHAMBER OF  
COMMERCE  
P.O. Box 51026  
Denton, TX 76206

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON BLACK CHAMBER OF COMMERCE

\_\_\_\_\_  
Treasurer

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON BLACK FILM FESTIVAL INSTITUTE, INC. (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Black Film Festival Institute, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: one and fifty-nine hundredths percent (1.59%) of the annual Base Payment Amount, or the fixed contract amount of Sixty-Two Thousand Five Hundred Dollars (\$62,500). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 1.59% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).



### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Harry Eaddy  
Executive Director  
DENTON BLACK FILM FESTIVAL  
INSTITUTE, INC.  
P.O. Box 1217  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON BLACK FILM FESTIVAL INSTITUTE,  
INC.

\_\_\_\_\_  
Executive Director

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON COUNTY  
(PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX  
REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton County, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late



payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: seven and sixty-two hundredths percent (7.62%) of the annual Base Payment Amount, or the fixed contract amount of Three Hundred Thousand Dollars (\$300,000). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 7.62% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

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(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

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### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

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(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Peggy Riddle  
Director  
DENTON COUNTY  
OFFICE OF HISTORY AND CULTURE  
110 West Hickory Street  
Denton, TX 76201

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON COUNTY

\_\_\_\_\_  
County Judge



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON DAY OF THE DEAD FESTIVAL (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Day of the Dead Festival, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: two and three hundredths percent (2.03%) of the annual Base Payment Amount, or the fixed contract amount of Eighty Thousand Dollars (\$80,000). This amount will be paid in one lump sum equal to 100% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year, and will be the unpaid remainder of the 2.03% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The lump sum payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may

withhold the payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

#### **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

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(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

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CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

David Pierce  
Executive Director  
DENTON DAY OF THE DEAD  
FESTIVAL  
PO Box 157  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON DAY OF THE DEAD FESTIVAL

\_\_\_\_\_  
Executive Director

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON FESTIVAL FOUNDATION, INC. (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Festival Foundation, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: two and thirty-nine hundredths percent (2.39%) of the annual Base Payment Amount, or the fixed contract amount of Ninety-Four Thousand Dollars (\$94,000). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 2.39% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.



## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Kevin Lechler  
Executive Director  
DENTON FESTIVAL FOUNDATION,  
INC.  
733 Fort Worth Dr. #99  
Denton, TX 76205

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON FESTIVAL FOUNDATION, INC.

\_\_\_\_\_  
Executive Director

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON HOLIDAY FESTIVAL ASSOCIATION, INC., (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Holiday Festival Association, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: seventy-six hundredths percent (0.76%) of the annual Base Payment Amount, or the fixed contract amount of Thirty Thousand Dollars (\$30,000). This amount will be divided into two payments equal to 50% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The second payment will represent 50% of the Contract Amount or the unpaid remainder of the 0.76% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of April 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) The Second payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the second Contract Quarter. If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may

be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**



(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Marybeth Reinke  
Chair  
DENTON HOLIDAY FESTIVAL  
ASSOCIATION, INC.,  
PO Box 2765  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON HOLIDAY FESTIVAL ASSOCIATION,  
INC.,

\_\_\_\_\_  
Chair

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON CENTRAL BUSINESS DISTRICT, INC. DBA DENTON MAIN STREET ASSOCIATION (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Central Business District, Inc. DBA Denton Main Street Association, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late



payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: three and nine hundredths percent (3.09%) of the annual Base Payment Amount, or the fixed contract amount of One Hundred Twenty-One Thousand Six Hundred Eighty Dollars (\$121,680). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 3.09% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

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## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

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(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

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**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Kristen Kendrick-Bigley  
President  
DENTON CENTRAL BUSINESS  
DISTRICT, INC. DBA DENTON MAIN  
STREET ASSOCIATION  
PO Box 2017  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON CENTRAL BUSINESS DISTRICT, INC.  
DBA DENTON MAIN STREET ASSOCIATION

\_\_\_\_\_  
President



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON PARKS  
FOUNDATION, INC., (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND  
USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Parks Foundation, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: seventy-six hundredths percent (0.76%) of the annual Base Payment Amount, or the fixed contract amount of Thirty Thousand Dollars (\$30,000). This amount will be divided into two payments equal to 50% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The second payment will represent 50% of the Contract Amount or the unpaid remainder of the 0.76% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) The Second payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the first Contract Quarter. If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be

held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.



**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Stephanie Lamb  
Treasurer  
DENTON PARKS FOUNDATION, INC.,  
PO Box 75  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON PARKS FOUNDATION, INC.,

\_\_\_\_\_  
Treasurer

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON PARKS  
FOUNDATION, INC., (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND  
USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Parks Foundation, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: seventy-eight hundredths percent (0.78%) of the annual Base Payment Amount, or the fixed contract amount of Thirty Thousand Eight Hundred Dollars (\$30,800). This amount will be divided into two payments equal to 50% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The second payment will represent 50% of the Contract Amount or the unpaid remainder of the 0.78% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) The Second payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the first Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.



#### **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Stephanie Lamb  
Treasurer  
DENTON PARKS FOUNDATION, INC.,  
PO Box 75  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON PARKS FOUNDATION, INC.,

\_\_\_\_\_  
Treasurer

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE NORTH TEXAS STATE  
FAIR ASSOCIATION, INC., (PROGRAM YEAR 2026) PROVIDING FOR THE  
PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the North Texas State Fair Association, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: ten and sixty hundredths percent (10.60%) of the annual Base Payment Amount, or the fixed contract amount of Four Hundred Seventeen Thousand Two Hundred Dollars (\$417,200). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 10.60% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).



### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

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(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Carl Anderson  
President  
NORTH TEXAS STATE FAIR  
ASSOCIATION, INC.,  
PO Box 1695  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

NORTH TEXAS STATE FAIR ASSOCIATION,  
INC.,

\_\_\_\_\_  
President

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE TEJAS  
STORYTELLING ASSOCIATION (PROGRAM YEAR 2026) PROVIDING FOR THE  
PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Tejas Storytelling Association, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late



payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: one and fifty hundredths percent (1.50%) of the annual Base Payment Amount, or the fixed contract amount of Fifty-Nine Thousand Fifty-Five Dollars (\$59,055). This amount will be paid in one lump sum equal to 100% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year, and will be the unpaid remainder of the 1.50% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The lump sum payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may

withhold the payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Rick Davis  
President  
TEJAS STORYTELLING ASSOCIATION  
PO Box 2806  
Denton, TX 76202

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

TEJAS STORYTELLING ASSOCIATION

\_\_\_\_\_  
President



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE TEXAS FILMMAKERS CORPORATION (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Texas Filmmakers Corporation, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: one and ninety-one hundredths percent (1.91%) of the annual Base Payment Amount, or the fixed contract amount of Seventy-Five Thousand Dollars (\$75,000). This amount will be paid in one lump sum equal to 100% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year, and will be the unpaid remainder of the 1.91% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The lump sum payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may

withhold the payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.



**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Joshua Butler  
President  
TEXAS FILMMAKERS CORPORATION  
1501 South Loop 288 Suite 104 PMB 147  
Denton, TX 76205

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

TEXAS FILMMAKERS CORPORATION

\_\_\_\_\_  
President

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON  
COMMUNITY THEATER, INC., (PROGRAM YEAR 2026) PROVIDING FOR THE  
PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Community Theater, Inc., a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: eighty-nine hundredths percent (0.89%) of the annual Base Payment Amount, or the fixed contract amount of Thirty-Five Thousand One Hundred Dollars (\$35,100). This amount will be divided into quarterly payments equal to 25% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year. The fourth quarterly payment will represent 25% of the Contract Amount or the unpaid remainder of the 0.89% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The initial payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) Each quarterly payment shall be paid upon receipt of the required reports, and after the 25<sup>th</sup> day following the last day of the Contract Quarter. If any quarterly financial report is not

received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

## **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

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**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (e.g., copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

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## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Caleb Norris  
President  
DENTON COMMUNITY THEATER,  
INC.,  
214 W Hickory Street  
Denton, TX 76201

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON COMMUNITY THEATER, INC.,

\_\_\_\_\_  
President

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE TEXAS VETERANS  
HALL OF FAME (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND  
USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Texas Veterans Hall of Fame, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late

payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: one and seventy-eight hundredths percent (1.78%) of the annual Base Payment Amount, or the fixed contract amount of Seventy Thousand Dollars (\$70,000). This amount will be paid in one lump sum equal to 100% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year, and will be the unpaid remainder of the 1.78% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The lump sum payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may

withhold the payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

## **II. USE OF HOTEL TAX REVENUE**

### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

### **2.3 Specific Restrictions on Use of Funds.**



(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

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(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

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CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Gary Steele  
President  
TEXAS VETERANS HALL OF FAME  
PO Box 51288  
Denton, TX 76205

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

TEXAS VETERANS HALL OF FAME

\_\_\_\_\_  
President

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT

**AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON MUSIC AND ART COLLABORATIVE (PROGRAM YEAR 2026) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE**

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the Denton Music and Art Collaborative, a non-profit corporation incorporated under the laws of the State of Texas (the “ORGANIZATION”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the city of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax only to promote Tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, ORGANIZATION is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with ORGANIZATION; as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and ORGANIZATION agree, and contract as follows:

**I. HOTEL TAX REVENUE PAYMENT**

**1.1 Consideration.** For and in consideration of the activities to be performed by ORGANIZATION under this Agreement, CITY agrees to pay to ORGANIZATION a portion of the Hotel Tax Revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to ORGANIZATION sometimes herein referred to as the “Agreed Payments” or “Hotel Tax Funds”).

**1.2 Definitions.**

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “Hotel Tax Revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late



payments of the tax revenue by the taxpayer. The collection period of the CITY's fiscal year will include Hotel Tax Revenue due to the CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(ii) The term "Base Payment Amount" shall mean a net amount of money equal to the total Hotel Tax Revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such relevant period of time for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iii) The term "Contract Quarter" shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each contract year.

(iv) The term "Tourism" as used in this Agreement means attracting individuals to travel from a residence outside the City of Denton to Denton for business, pleasure, recreation, education, or culture that promotes the convention and hotel industry.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to ORGANIZATION an amount of money in each contract year equal to the lesser amount of: twenty-five hundredths percent (0.25%) of the annual Base Payment Amount, or the fixed contract amount of Nine Thousand Nine Hundred Dollars (\$9,900). This amount will be paid in one lump sum equal to 100% of the Contract Amount, unless CITY can show with reasonable certainty that the annual Base Payment Amount will be less than originally estimated for the fiscal year, and will be the unpaid remainder of the 0.25% of the Base Payment Amount, whichever is less.

(c) If CITY's Chief Financial Officer determines that hotel tax receipts by the CITY are not meeting the anticipated budget projection, CITY may reduce the ORGANIZATION's current budget at any time during the contract period. Each quarterly payment is subject to immediate refund upon request by the CITY for any unused or improperly expended funds, .

### **1.3 Dates of Payments.**

(a) The lump sum payment will be on or after the 25<sup>th</sup> day of January 2026, upon receipt and closeout of any prior year agreement reports.

(b) The term "quarterly payments" shall mean payments by CITY to ORGANIZATION of those amounts specified in Section 1.2, above, as determined by the Hotel Tax Revenue collected.

(c) If any quarterly financial report is not received within thirty (30) days of the end of the applicable Contract Quarter, the recipient may be held in breach of this Agreement. CITY may

withhold the payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

#### **1.4 Other limitations regarding consideration.**

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of ORGANIZATION.

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that ORGANIZATION's expenditures deviate materially from their approved budget.

### **II. USE OF HOTEL TAX REVENUE**

#### **2.1 Use of Funds.**

(a) For and in consideration of the payment by CITY to ORGANIZATION of the Agreed Payments of Hotel Tax Funds specified above, ORGANIZATION agrees to use such Hotel Tax Funds only for (1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity, as well as the promotion of Tourism through 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 arts forms,, as authorized by TEX. TAX CODE §351.101(a)(4). Funds for any calendar year which are unused by midnight December 31<sup>st</sup> of that year shall be refunded to CITY within thirty (30) days.

(b) Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

**2.2 Administrative Costs.** The Hotel Tax Funds received from CITY by ORGANIZATION may be spent for day-to-day operations, office supplies, salaries, travel expenses and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if: (i) specified in ORGANIZATION's budget attached hereto as Exhibit "A" and incorporated herein for all purposes; and (ii) each such expenditure is directly attributable to work on programs which promote Tourism and the hotel and convention industry; and (iii) promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

#### **2.3 Specific Restrictions on Use of Funds.**

(a) ORGANIZATION agrees to demonstrate strict compliance with the record keeping and apportionment limitations imposed by TEX. TAX CODE §351.101(f) and §351.108 (c) and (d). ORGANIZATION shall not utilize Hotel Tax Funds for any expenditure, which has not been specifically documented to satisfy the purposes set forth in Sections 2.1 and 2.2 above.

(b) Hotel Tax Funds may not be spent for travel for a person to attend an event or conduct an activity except where such travel is directly related to the performance of the person's job in an efficient and professional manner and the primary purpose of which is directly related to the promotion of local Tourism and the convention and hotel industry.

(c) City's standard HOT Funding contract terms, including use of the funds only for events, festivals and shows that attract overnight tourists to the city, and not for use of direct funding of operations that do not serve the Tourism purpose of HOT funds, and including reporting requirements.

(d) ORGANIZATION to review rental rates, sponsorships, and memberships for additional revenue.

### **III. RECORDKEEPING, REPORTING & ADDITIONAL REQUIREMENTS**

#### **3.1 Budget.**

(a) ORGANIZATION shall adhere to the budget (Exhibit "A") as approved by the City Council for each calendar year, for all operations of ORGANIZATION in which the Hotel Tax Funds shall be used by ORGANIZATION. The CITY may audit specifically the purpose of each individual expenditure of Hotel Tax Funds from the separate account relating to Hotel Tax Funds. CITY shall not pay to ORGANIZATION any Hotel Tax Revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) ORGANIZATION acknowledges that approval of the budget (Exhibit "A") by the Denton City Council creates a fiduciary duty in ORGANIZATION with respect to the Hotel Tax Funds paid by CITY to ORGANIZATION under this Agreement. ORGANIZATION shall expend Hotel Tax Funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of ORGANIZATION, the City Manager or their designee may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in Section 1.2(b), extend the term, or otherwise alter the performance obligations of ORGANIZATION, without approval of the City Council by ordinance.

**3.2 Separate Accounts.** ORGANIZATION shall maintain any Hotel Tax Funds paid to ORGANIZATION by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

**3.3 Financial Records.** ORGANIZATION shall maintain complete and accurate financial records of each expenditure of the Hotel Tax Funds made by ORGANIZATION. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or their designee, or any other person, ORGANIZATION shall make such financial records available for inspection and review by the party making the request. ORGANIZATION understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, Ch. 552, as hereafter amended.

**3.4 Quarterly Reports.** After initial receipt of Hotel Tax Funds, and within thirty (30) days after the end of every Contract Quarter, ORGANIZATION shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to Hotel Tax Funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). ORGANIZATION shall prepare and deliver all reports in a form and manner approved by the City Manager or their designee. ORGANIZATION shall respond promptly to any request from the City Manager of CITY, or their designee, for additional information relating to the activities performed under this Agreement.

**3.5 Notice of Meetings.** ORGANIZATION shall give the City Manager of CITY, or their designee, reasonable advance written notice of the time and place of all meetings of ORGANIZATION's Board of Directors, as well as any other meeting of any constituency of ORGANIZATION, at which this Agreement or any matter subject to this Agreement shall be considered.

**3.6 Other Sources of Support Funds.** ORGANIZATION shall perform its best efforts to review rental rates, ORGANIZATION sponsorships and memberships to raise additional revenue to support the existing ORGANIZATION programs and the Public Art program.

#### **IV. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence on January 1, 2026, and terminate at midnight on January 31, 2027. However, the program period shall commence on January 1, 2026, and terminate at midnight on December 31, 2026. Only those expenditures authorized by Chapter 351 of the Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures unspent funds shall be forfeited to CITY upon termination of this Agreement.

## **4.2 Termination Without Cause.**

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to Section 4.2(a), CITY agrees to reimburse ORGANIZATION for any contractual obligations undertaken by ORGANIZATION in satisfactory performance of those activities specified in Sections 2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in Section 3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse ORGANIZATION, or to assume the performance of any contractual obligations of ORGANIZATION, for or under any contract entered into by ORGANIZATION as contemplated herein, shall not exceed 66 2/3% of the current quarterly payment.

(c) Further, upon termination pursuant to Section 4.2(a), ORGANIZATION will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget, the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. ORGANIZATION will be obligated to return any unused funds and funds used in violation of this Agreement or the Texas Tax Code. Any use of remaining funds by ORGANIZATION after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Sections 2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

**4.3 Automatic Termination.** This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of ORGANIZATION;

(b) The insolvency of ORGANIZATION, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by ORGANIZATION for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or ORGANIZATION for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of ORGANIZATION to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by Section 1.3 hereof.

**4.4 Right to Immediate Termination Upon Litigation.** Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

**4.5** In the event that this Agreement is terminated pursuant to Sections 4.3 or 4.4, ORGANIZATION agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

## **V. GENERAL PROVISIONS**

**5.1 Subcontract for Performance of Services.** Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by ORGANIZATION with another private entity, person, or organization for the performance of those services described in Section 2.1 above. In the event that ORGANIZATION enters into any arrangement, contractual or otherwise, with such other entity, person or organization, ORGANIZATION shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE Ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the Agreed Payments and Hotel Tax Funds.

**5.2 Independent Contractor.** ORGANIZATION shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. ORGANIZATION shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and ORGANIZATION shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. ORGANIZATION shall not be considered a partner or joint venture with CITY, nor shall ORGANIZATION be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

**5.3 Indemnification.** ORGANIZATION AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY ORGANIZATION OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR ANY FEES, FINES OR PENALTIES ASSESSED AGAINST CITY DUE TO MISUSE OF FUNDS BY ORGANIZATION.

**5.4 Assignment.** ORGANIZATION shall not assign this Agreement without first obtaining the written consent of CITY.

**5.5 Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

Sara Hensley  
City Manager  
CITY OF DENTON  
215 E. McKinney  
Denton, TX 76201

ORGANIZATION

Jennifer Kapinos  
President  
DENTON MUSIC AND ART  
COLLABORATIVE  
624 W University Dr. #113  
Denton, TX 76201

**5.6 Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and ORGANIZATION and their respective successors and assigns.

**5.7 Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

**5.8 Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

**5.9 Duplicate Originals.** This Agreement may be executed in duplicate originals.

**5.10 Headings.** The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

**5.11 Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

**5.12 Insurance.** ORGANIZATION shall, at a minimum, provide insurance for the term of this Agreement as follows:

1. \$1,000,000 Commercial General Liability, or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
  2. \$500,000 Liquor/Dram Shop Liability for any event occurring on City-owned property where alcohol will be provided or served, and
  3. \$500,000 Business Automobile Liability on any owned, non-owned or hired vehicles.
- CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment made to ORGANIZATION by CITY.

**5.13 Incorporation.** The recitals in the preamble of this Agreement are incorporated herein as if fully set forth herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

DENTON MUSIC AND ART COLLABORATIVE

\_\_\_\_\_  
President



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Finance  
DEPARTMENT