

RESOLUTION NO. R2023-87

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AUTHORIZING HOTEL OCCUPANCY TAX FUNDS TO BE EXPENDED FOR THE HIGHLAND LAKES SQUADRON OF THE COMMEMORATIVE AIR FORCE, INC.(CAF) PROGRAM OPERATION.

Whereas, the City currently levies a local Hotel Occupancy Tax (HOT), as authorized by Texas Tax Code Chapter 351; and

Whereas, Section 351.001(a) thereof, inter alia authorizes the City to expend HOT for SAPP activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit museums at or in the immediate vicinity of conference center facilities or visitor information centers; or located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; and

Whereas, pursuant to the Hangar Use Agreement the CAF operates the Museum at the Airport displaying WWII gun turrets, photographs, uniforms, side arms, long arms and memorabilia; and

Whereas, the CAF has on display in the Hangar numerous WWII vintage aircraft, including a PT-26, SNJ-4 Texan, L-17 Navion, and C-47 Skytrain Texas Zephyr; and

Whereas, tourists from Texas, across the nation and other parts of the world visit the museum, and WWII vintage aircraft; and

Whereas, City Council finds the use of HOT as contemplated by this Agreement is authorized by Texas Tax Code Chapter 351; and

Whereas, the Parties concur that financial assistance authorized by this Agreement will allow the Museum, display of WWII vintage aircraft; and airshow be a more successful endeavor to the benefit of promotion of the City of Burnet.

NOW THEREFORE BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Approval. The CAF PROGRAMS OPERATION HOT FUNDING AGREEMENT attached hereto is hereby approved.


Section two. Authorization. The mayor is hereby authorized to execute an agreement in substantial form as the attachment hereto and take such further action, and execute such ancillary documents, as may be reasonably necessary to facilitate the purpose of this resolution.

Section three. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Section four. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

PASSED AND APPROVED this the 12th day of December 2023.

CITY OF BURNET, TEXAS

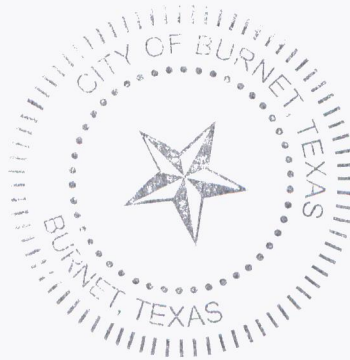


Gary Wideman, Mayor

ATTEST:



Kelly Dix, City Secretary



CAF PROGRAMS OPERATION HOT FUNDING AGREEMENT

This Agreement is made and entered into by and between the City of Burnet and the Highland Lakes Squadron of the Commemorative Air Force, Inc., The City and CAF may jointly be referred to herein as the "Parties" and individually as a "Party."

RECITALS:

Whereas, the City currently levies a local Hotel Occupancy Tax (HOT), as authorized by Texas Tax Code Chapter 351; and

Whereas, Section 351.001(a) thereof, inter alia authorizes the City to expend HOT for SAPP activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit museums at or in the immediate vicinity of conference center facilities or visitor information centers; or located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; and

Whereas, pursuant to the Hangar Use Agreement the CAF operates the Museum at the Airport displaying WWII gun turrets, photographs, uniforms, side arms, long arms and memorabilia; and

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Whereas, tourists from Texas, across the nation and other parts of the world visit the museum, and WWII vintage aircraft; and

Whereas, City Council finds the use of HOT as contemplated by this Agreement is authorized by Texas Tax Code Chapter 351; and

Whereas, the Parties concur that financial assistance authorized by this Agreement will allow the Museum, display of WWII vintage aircraft; and airshow be a more successful endeavor to the benefit of promotion of the City of Burnet.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations set out, the Parties do mutually agree as follows:

ARTICLE 1 - DEFINITIONS

The terms in italics (*italics*) have the meanings that follow:

Agreement means this CAF Programs Operation HOT Funding Agreement.

Airport means the Burnet Municipal Airport.

Appropriation means the appropriation, approved by City Council, of HOT Funds, in an amount sufficient to service the City's obligation as a line-item expenditure in the City's annual budget each Fiscal Year during the term of this Agreement.

CAF means the Highland Lakes Squadron of the Commemorative Air Force, Inc., a not-for-profit corporation form under the laws of Texas.

City means the City of Burnet, Texas incorporated in Burnet County, Texas as a home rule municipality.

City Council means the governing body of the City.

City Manager means the individual appointed by City Council to serve as the chief executive officer of the City.

Effective Date means the date this Agreement becomes effective, said date being October 1, 2023.

Fiscal Year means the City's fiscal year which begins each year on October 1 and ends on September 30 of the subsequent year.

Funds means any money received by the CAF from the City under this Agreement.

Hangar Use Agreement means that certain Airport Facility Use Agreement authorizing the operation of the Museum and housing of WWII vintage aircraft in a hangar at the airport.

HOT means tax proceeds received by the City pursuant to Chapter 351 Texas Tax Code.

Museum means the Highland Lakes Squadron WWII Aircraft & Museum located at the Airport.

Program means collectively CAF's operation of the Museum, Hangar and WWII vintage aircraft display.

Rent means the annual amount CAF is obligated to pay City for under the Hangar Use Agreement.

Rent Subsidy means the use of HOT to subsidize the Hangar Use Agreement rent as provided by Article 2 herein.

ARTICLE 2 - FUNDING

2.1 **Rent.** Pursuant to the Hangar Use Agreement rent that the CAF shall pay is as follows:

- Year One \$32,000.00;
- Year Two \$35,000.00; and
- Year Three \$38,000.00.

2.2 **Rent Subsidy.** During the Term of this Agreement, HOT shall be expended as a Rent Subsidy. All payments under this section shall be subject to the following:

- (a) Subject to prior Appropriation each year the amount of Rent Subsidy shall be \$15,000.00 annually; and
- (b) All payments shall be made to the CAF the beginning of each year of the Hangar Use Agreement for the purpose of payment of rent due that year.

ARTICLE 3 CAF'S PROGRAM REQUIREMENTS

CAF covenants and agrees to administer and operate the Museum, Hangar, WWII vintage and aircraft display in a manner substantially in accordance with, or better than, these Program components were administered and operated during the year immediately preceding the Effective Date. Further, CAF covenants and agrees to make a good faith effort to enhance each Program components to provide a more inviting experience for visiting tourists. In that regard, CAF

covenants and agrees to be receptive to recommendations made by City Council or the City Manager.

ARTICLE 4 - OTHER REQUIREMENTS

4.1 **Expenditure verification.** CAF's payment of rent may be confirmed by the City's Director of Finance.

4.2 **Visitor logs.** The CAF shall maintain visitor logs showing basic information regarding visitors to the Program Components included the visitors' hometown. Copies of the visitor logs shall be provided to the City Manager on a quarterly basis.

4.3 **Reports.** The parties acknowledge and agree that the Hangar Use Agreement imposes a periodic reporting requirement on the CAF. Such reporting requirement is incorporated in this Agreement.

4.4 **Fiduciary Duty.** The CAF acknowledges that, pursuant to the terms of this Agreement it has a fiduciary duty to the City with respect to its handling and use of Funds received and expended pursuant to this Agreement.

4.5 **Records.** The CAF shall maintain (or cause to be maintained) current and complete books and records reflecting expenditures of funds received under this Agreement. Further, such book and records shall be made available to the City for inspection during normal business hours upon reasonable advance notice. All such records to the extent considered public records which fall within the provisions of the Texas Government Code, Section 552.001, *et seq.*, may be subject to disclosure and the CAF shall cooperate fully with City in timely producing all such records in response to any public request for same. This section shall survive Termination and shall remain enforceable by City for four years after Termination.

ARTICLE 5 - ANNUAL APPROPRIATION

Notwithstanding any provision of this Agreement to the contrary the City's monetary obligations for **Fiscal Year 2023-24, Fiscal Year 2024-25 and Fiscal Year 2025-26** shall be subject to annual Appropriation and this Agreement shall terminate on **September 30, 2023**, should Funds not be appropriated for Fiscal Year **2023-24**, or **September 30, 2024**, should Funds not be appropriated for **Fiscal Year 2024-25**, or on September 30, 2025, should the Funds not be appropriated for **Fiscal Year 2025-26**. Should this Agreement terminate due to non-Appropriation neither party shall have any further obligation to the other in regard to this Agreement.

ARTICLE 6 - TERMINATION

6.1 **CAF Default.** The City may terminate this Agreement by furnishing written notice to the CAF if at any time during the term of this Agreement the CAF fails to perform any of its obligations hereunder.

6.2 **Unspent Funds.** In the event this Agreement is terminated by the City pursuant to the terms of this Agreement the Rent Subsidy shall be prorated for the year of default any unspent City Funds shall be returned to the City.

6.3 **City's Default.** City Default shall mean the failure of the City to comply with or to perform its obligation to provide Appropriated Funds as stated in Article 2, subject to the right to cure as provide below in this Article.

6.4 **Notice of default.** If the either party is in default of this Agreement, the non-defaulting party may terminate this Agreement by written notice and sue for damages, subject to the limitations of Article 7; and subject to the right to cure as provided in the section immediately below.

6.5 **Right to cure.** Subject to Force Majeure a defaulting party shall have no more than 30 days after written notice is given by the non-defaulting party to cure a default or defaults.

6.6 **Termination of Hangar Use Agreement.** Notwithstanding any provision of this Agreement to the contrary, the termination of the Hangar Use Agreement shall cause the immediate termination of this Agreement, and, in such event, the CAF shall return any Unspent Funds to the City as provided in Section 6.2.

ARTICLE 7 - LIABILITY OF CAF AND CITY

7.1 **Immunity and City Personnel Liability protection.** The CAF agrees that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas. Further, the CAF agrees that it may assert claims only against the assets of City and that under no circumstances shall any officer or employee of City or the City ever be personally liable for any of the obligations of City under this Agreement.

7.2 **INDEMNIFICATION.** THE CAF AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, TH CAF'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR CAF'S MISUSE OF FUNDS AND/OR THE MISMANAGEMENT OF SUCH FUNDS.

7.3 **REIMBURSEMENT OF FUNDS.** IF THIS AGREEMENT OR THE USE OF FUNDS AS PROVIDED HEREIN IS DEEMED TO BE IMPERMISSIBLE BY A COURT HAVING JURISDICTION OVER THE PARTIES AND SUBJECT MATTER, AND A FINAL NON-APPEALABLE JUDGEMENT REQUIRES THE CAF TO RETURN SUCH FUNDS, THEN THE CAF AGREES THAT ANY AND ALL FUNDS ADVANCED TO IT BY THE CITY SHALL BE REIMBURSED TO THE CITY

7.4 **City's Liability Limitations.** Subject to Article V, should City fail to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Act of Default by City and City shall have 30 days to cure and remove the Default upon receipt of written notice to do so from the CAF. Further, the CAF specifically agrees that City's liability under this Agreement shall in no event exceed \$15,000.00.

7.5 **Attorney's Fees.** Neither Party shall be liable to the other for any Attorney's Fees or costs incurred in the enforcement of this Agreement.

ARTICLE 8 - NOTICES

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

CAF: Commemorative Air Force, Inc.
P.O. Box 866
Burnet, TX 78611

CITY: Burnet Economic Development Corporation
Attn. David Vaughn, City Manager
P.O. Box 1369
Burnet, Texas 78611

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

ARTICLE 9 - RELATIONSHIP

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

ARTICLE 10 - SUCCESSORS AND ASSIGNS; ASSIGNABILITY

10.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Parties and their respective heirs, representatives, successors and permitted assigns.

10.2 **Assignment by CAF.** The CAF shall not be permitted to assign this Agreement, in whole or in part, unless such assignment is first approved by City Council.

ARTICLE 11 - TERM

This Agreement shall be effective as of its Effective Date. Unless earlier terminated under the terms of this Agreement, this Agreement shall terminate on September 30, 2026.

ARTICLE 12 - MISCELLANEOUS

12.1 **Amendments.** This Agreement may be amended only by a written instrument so stating which is executed by the Parties hereto.

12.2 **Severability.** If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby but shall be enforced to the greatest extent permitted by law.

12.3 **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

12.4 **Waivers.** No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

12.5 **Governing Law and Venue.** This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by the laws applicable to the State of Texas. Venue for any disputes arising under this Agreement shall be in Burnet County, Texas.

12.6 **Authority.** The person executing this Agreement on behalf of the CAF and the City each represents that he/she has the power and authority to do so and to bind his/her principal to the terms of this Agreement.

12.7 **Recitals.** The recitals set out above are incorporated herein by reference for all purposes.

12.8 **Force Majeure.** It is expressly understood and agreed by the Parties that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

12.9 **Recitals.** The recitals set out above are incorporated herein by reference for all purposes.

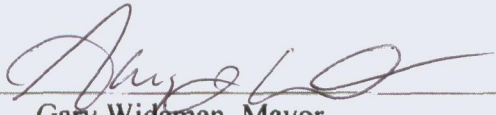
12.10 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

SIGNATURES ON FOLLOWING PAGE

CAF LA City 

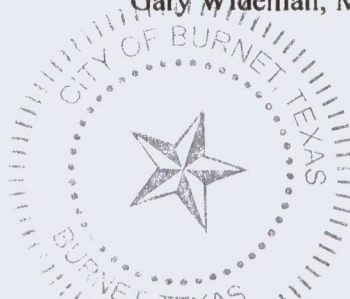
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the day and year first above written.

CITY OF BURNET

By: 
Gary Wideman, Mayor

ATTEST:


Kelly Dix, City Secretary



**HIGHLAND LAKES SQUADRON OF THE
COMMEMORATIVE AIR FORCE, INC.**

By: 
Lance Linguist, Chief Financial Officer

Date: 12/4/23