

EXHIBIT "A"

FUNDING AGREEMENT PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE BETWEEN THE CITY OF BRYAN AND THE RESEARCH VALLEY PARTNERSHIP, INC. FOR THE AGGIES GO TO WAR EXHIBIT

THIS AGREEMENT is made between the **CITY OF BRYAN**, a Home Rule Municipal Corporation incorporated under the State of Texas (hereinafter referred to as the "City"), and the **RESEARCH VALLEY PARTNERSHIP, INC.**, a Texas Non-Profit Corporation (hereinafter referred to as the "Agency"):

WHEREAS, Texas Tax Code §§351.002 and 351.003(a) authorize 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;

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

WHEREAS, Texas Tax Code §351.101(a) authorizes City to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry, yet limits such revenue to uses such as but not limited to historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums;

WHEREAS, Agency is well equipped to perform those activities;

WHEREAS, Agency entered into a February 24, 2014, agreement with the Texas A&M University System ("TAMUS") for the design and production of a "Texas Aggies go to War" exhibition to be displayed initially in the City of Bastogne, Belgium and later relocated to the Research Valley, hereinafter defined as the "Project";

WHEREAS, Agency has agreed to pay \$375,000.00 to the Bastogne Memorial Association for the design and production of the Project and City desires to participate with the City of College Station, Texas, to provide funding to Agency for the design and production of the Project;

WHEREAS, City has determined that the funding provided Agency under this Agreement will promote tourism and the convention and hotel industry in Bryan, by encouraging visitors viewing the exhibition in Bastogne to visit Bryan and, more importantly, by encouraging visitors to Bryan from out-of-town once the exhibition is permanently relocated to the Bryan/College Station Community; and

WHEREAS, Texas Tax Code §351.101(c) authorizes City to delegate by contract with Agency; as an independent entity, the management or 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 Agency agree and contract as follows:

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ARTICLE I DEFINITIONS

1.1 The term "Agency" shall mean the Research Valley Partnership, Inc., a Texas Non-Profit Corporation to which the City has delegated the management or supervision of the Project as hereinafter defined.

1.2 The term "City" shall mean the City of Bryan, in the County of Brazos, and the State of Texas.

1.3 The term "Contract Quarter" shall refer to any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 The term "Financial Activity Report" shall mean a quarterly report which includes a summary of Agency's revenues and expenditures related to the Project for the current Contract Quarter as well as the current fiscal year to date, and a summary of Agency's assets and liabilities related to Project to be submitted to City on the form attached herein as Exhibit B.

1.5 The term "Financial Records" shall mean invoices, receipts, bank statements, reconciliations, cleared checks, financial statements and audit reports.

1.6 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 §351.003 (a) and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late payments of the tax revenue by the taxpayer.

1.7 The term "Narrative Summary of Activity Report" shall mean the quarterly summary report of the activities of Agency related to the Project including a summary of how funds from City have been utilized to accomplish the Project. Such report shall be submitted on the form attached herein as Exhibit C.

1.8 The term "Program Report" shall mean a report as required by Texas Tax Code §351.108 listing each of the Agency's scheduled activity, program, or Event related to the Project that: is directly funded with Hotel Tax Revenue and is directly enhancing and promoting tourism and the convention and hotel industry. Such report shall be submitted on the form attached herein as Exhibit A.

1.9 The term "Project" or "Texas Aggies go to War" exhibit shall mean a multimedia display commemorating the involvement of Aggies at the Battle of the Bulge as well as the economic ties that bind the Research Valley and the City of Bastogne, Belgium. The multimedia display will include both: "The Show", a video to be shown in Bastogne during the Memorial Day period and the commemoration of the 70th anniversary of the Battle of the Bulge period in December 2014, as well as in Brazos County and elsewhere; and "The Visiting Exhibition" a

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display initially exhibited in a total area of 5,000 square meters as part of a museum dedicated to World War II located in Bastogne beginning in December 2014, that will then be relocated to a permanent site in the Bryan/College Station community no later than December 31, 2016.

1.10 The term "Project Report" shall mean an annual report required by the Agency from its sub-grantee reporting line item expenses paid related to the Project from the City's Hotel Tax Revenue.

ARTICLE II HOTEL TAX REVENUE PAYMENT

2.1 Consideration and Payment. For and in consideration of the activities to be satisfactorily performed by Agency under this Agreement, City agrees to pay to Agency over the term of this Agreement a portion of the Hotel Tax Revenue collected by City in the total amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), based on the following milestones:

- (a) At completion of design and production of The Show
- (b) At completion of design of The Visiting Exhibition

2.2 The City shall receive all reports required herein from Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contact year).

2.3 Other limitations regarding consideration.

- (a) It is expressly understood that this Agreement in no way obligates the General Fund or any other monies or credits of City.
- (b) City may withhold allocations if City determines that expenditures of Agency deviate materially from their approved budget subject to §4.1 hereof or if the reports required herein are not submitted in a complete and timely manner.

ARTICLE III USE OF HOTEL TAX REVENUE

3.1 Use of Funds.

(a) For and in consideration of the payment by City to Agency of the agreed payments of Hotel Tax Revenue specified above, Agency agrees to manage or supervise the use of the Hotel Tax Revenue provided herein for the Project pursuant to Texas Tax Code §351.101(c). Use of the funds shall be limited to direct costs associated with the design and construction of the Project.

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(b) The Bryan City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City to promote tourism and the convention and hotel industry at no additional cost to the City.

ARTICLE IV RECORDKEEPING AND REPORTING REQUIREMENTS

4.1 Budget.

(a) Prior to execution of this Funding Agreement, Agency shall submit to City Manager an annual budget to be approved by City Council for each fiscal year, for such operations of Agency funded by Hotel Tax Revenues. This budget shall specifically identify proposed expenditures of Hotel Tax Revenue by Agency. In other words, City should be able to audit specifically the purpose of each individual expenditure of Hotel Tax Revenue from the separate account relating to Hotel Tax Revenue. City shall not pay to Agency any Hotel Tax Revenues as set forth in Article II of this Agreement during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Bryan City Council. Approval of the budget by the City Council shall not preclude the Agency from reasonably reallocating funds within the budget among line items to meet changing conditions. Such reallocation shall not necessitate a new approval by the City Council. Failure to submit an annual budget may be considered a breach of contract, and if not remedied is considered grounds for termination of this Agreement as stated in §6.2 of this Agreement.

(b) Agency acknowledges that the approval of such budget by the Bryan City Council creates a fiduciary duty in Agency with respect to the Hotel Tax Revenue paid by City to Agency under this Agreement. Agency shall expend Hotel Tax Revenue only in the manner and for the purposes specified in this Agreement, Texas Tax Code §351.101(a), and in the budget as approved by City.

4.2 Separate Accounts. Agency shall maintain Hotel Tax Revenue paid to Agency 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.

4.3 Financial Records. Agency shall maintain a complete and accurate financial record of each expenditure of the Hotel Tax Revenue made by Agency. These funds shall be classified as restricted funds for audited financial purposes.

4.4 Agency shall maintain such records, accounts, reports, files or other documents for a minimum of five (5) years after the expiration of this agreement. City's right to access Agency's files shall continue during this five (5) year period and for as long as the records are retained by Agency.

4.5 Upon written request of the Bryan City Council, or other person, Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that financial records and any other records relating to this Agreement shall

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be subject to the Public Information Act, Texas Government Code, Chapter 552, as hereafter amended.

4.6 Program Report. Agency understands that such report shall be completed in its entirety and the original report shall be submitted to City annually on the anniversary date of this Agreement.

4.7 Quarterly Reports. Agency shall submit the following to City on a quarterly basis as provided in this Agreement:

- (1) Financial Activity Report
- (2) Narrative Summary of Activity Report

Agency shall respond promptly to any request from City Manager of City, or designee, for additional information relating to the activities performed under this Agreement.

4.8 The Financial Activity Report and Narrative Summary of Activity Report shall be submitted to City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

4.9 A copy of Agency's annual financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.10 If requested, Agency shall make an annual report and presentation to the Bryan City Council.

4.11 Agency shall comply with the requirements of Texas Tax Code §351.101, as amended, including but not limited to: maintaining accurate financial records and making such records available to the City for inspection and review upon request, and providing a Project Report to City annually.

ARTICLE V TERM AND TERMINATION

5.1 Term. The term of this Agreement shall commence on the date the Agreement is fully executed and terminate upon completion of the Project or on December 31, 2016, whichever is earlier. Only those expenditures authorized by §351 of the Texas Tax Code which are actually incurred during the term for the Project are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

5.2 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.

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(b) In the event this Agreement is terminated by either party pursuant to §5.2(a) of this agreement, City agrees to reimburse Agency for any contractual obligations undertaken by Agency in satisfactory performance of those activities specified in hereinabove and that were approved by the Bryan City Council through the budget, as noted in §4.1 above. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in §§3.1 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

(c) Further, upon termination pursuant to §5.2(a) of this agreement, Agency 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 City Council for approval within ten (10) business days after receipt by City. If formal approval is not given within ten (10) business days and 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. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency 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 §§3.1 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

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

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

(b) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency 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 Agency for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party;

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(d) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of such breach; or

(e) The failure of Agency to submit a Quarterly Financial Activity Report as required by Texas Tax Code §351.101(c) within thirty (30) days from the date City notifies Agency of such breach.

5.4 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.

5.5 In the event that this Agreement is terminated pursuant to §§5.3 or 5.4 of this agreement, Agency 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.

ARTICLE VI INDEMNIFICATION AND RELEASE

6.1 Agency agrees to indemnify and hold harmless the City, its officers, agents, and employees from and against any and all loss, costs, or damage of any kind, nature, or description that may arise out of or in connection with this Agreement whether or not the claim or cause of action results from any negligence of the City or any of its officers, agents, or employees.

6.2 Agency assumes full responsibility for the work to be performed and services to be provided hereunder, and hereby releases, relinquishes and discharges the City, its officers, agents, and employees from any and all claims, demands, causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death of, any person (whether employees or agents of either of the parties hereto or third persons) and any loss of or damage to property (whether the property is that of either of the parties hereto or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Agency's work or services provided hereunder whether or not said claims, demands, or causes of actions are covered in whole or part by insurance.

ARTICLE VII GENERAL PROVISIONS

7.1 Subcontract for Performance of Services. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in §3.1 above.

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7.2 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 Agency and their respective successors and assigns.

7.3 The City and Agency attest that, to the best of their knowledge, no member of the City of Bryan City Council and no other officer, employee or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

7.4 Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability. Agency will take affirmative action to ensure that applicants who are employed are treated, during employment, without regard to their race, color, religion, sex, national origin or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination requirement.

7.5 Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

7.6 Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will provide no religious instruction or counseling, conduct no religious worship or services, and engage in no religious proselytizing in the provision of services or the use of facilities or furnishings assisted in any way under this Agreement.

7.7 No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

7.8 This Agreement has been made under and shall be governed by the laws of the State of Texas.

7.9 Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

7.10 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

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7.11 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7.12 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

7.13 This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.

7.14 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

7.15 If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

7.16 It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

7.17 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City: City of Bryan
Attn: Joe Hegwood
Fiscal Services Department
P.O. Box 1000
Bryan, Texas 77805

Agency: Research Valley Partnership
1500 Research Parkway
College Station, TX 77845

Executed this the _____ day of _____, 20____.

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RESEARCH VALLEY PARTNERSHIP

CITY OF BRYAN

By: _____

Printed Name: _____

Jason P. Bienski, Mayor

Title: _____

Date: _____

APPROVED:

City Attorney

Date