

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 13, 2015		DATE SUBMITTED: December 30, 2014	
DEPARTMENT OF ORIGIN: CMO		SUBMITTED BY: Joey Dunn	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of a resolution approving the proposed Fiscal Year 2015 (FY2015) budget for the AdventGX hosted International Artist in Residence program; and authorizing the Mayor to execute a Funding Agreement with AdventGX, Inc. in the amount of \$5,000 for the International Artist in Residence Program, located in the SEAD Gallery of the Federal Building, 216 W. 26 th Street, Bryan, Brazos County, Texas.			
SUMMARY STATEMENT: The SEAD Gallery is located on the first floor of the Federal Building and is managed by Advent GX as an integral part of the Innovation Underground, a business and technology incubator in Downtown Bryan. Designed as a multi-use space, the SEAD Gallery facilitates research, dialogue, and communication among the disciplines of science, engineering, art and design.			
<p>From January 12 through February 12, 2015, the SEAD Gallery will host an Artist in Residence Program for Marie-Renee Hoeks, an artist from Amsterdam. Marie-Renee will be living and painting for a month in Downtown Bryan, and the subject of her collection featured in the Gallery is entitled "Characters."</p> <p>The Amsterdam/Bryan Artist in Residence Program is an arts-related draw for Downtown Bryan. During the residency period, the artist will hold open studio hours with programming to include presentations and live demonstrations. The goal of the program is to establish an international cultural exchange where international artists come to Downtown Bryan while local artists are provided opportunities to exhibit their art in other places throughout the world.</p> <p>To help offset the costs of the Program, including planned marketing and promotional activities, Advent GX requests \$5,000 in HOT funds from the City of Bryan. More specifically, the funds will be used for:</p> <ul style="list-style-type: none"> • Artist transportation • Transportation of art works • Statewide and national exhibit and artist residency promotion • Receptions, lectures, interviews and other special events held during Marie-Renee's stay in Downtown Bryan 			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of this agreement and HOT funding request. State law allows up to fifteen percent (15%) of HOT fund collections to be used for the Arts. The City of Bryan currently allocates \$66,000 for the Arts, which represents approximately 5.5 percent of HOT fund collections estimated and budgeted for Fiscal Year 2015 (FY2015). This request would bring the percentage up to 5.9 percent for FY2015, which is still well below the 15 percent (15%) allowed by State statute.			
The International Artist in Residence Program with Advent GX will involve wide-area promotion to attract a broad level of interest throughout the state, the country, and internationally. The program also promotes the recent			

designation of Downtown Bryan as a Cultural District by the Texas Commission on the Arts, thereby generating economic interest, spurring new business activity, attracting tourists, stimulating cultural development, fostering civic pride, and improving quality of life.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve request and agreement as submitted
2. Reduce funding to an amount less than the requested \$5,000 and approve agreement
3. Do not approve agreement

ATTACHMENTS:

1. Resolution and exhibits
2. Funding agreement exhibits (separate pdf)
3. Proposal from Jose Quintana with Advent GX (separate pdf)

FUNDING SOURCE: Fiscal Year 2015 Hotel Occupancy Tax (HOT) Fund, Unspecified Events line item

APPROVALS: Joey Dunn, 01-02-15; Hugh R. Walker, 01/05/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12-5-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 1-05-2015

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BRYAN, TEXAS APPROVING A BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014, AND ENDING SEPTEMBER 30, 2015, INCLUSIVE, FOR THE ADVENTGX, INC. HOSTED INTERNATIONAL ARTIST IN RESIDENCE PROGRAM WITH TOTAL EXPENDITURES OF \$19,000 AND REVENUES IN THE COMBINED TOTAL AMOUNT OF \$19,000; AND AUTHORIZING THE MAYOR TO SIGN A FUNDING AGREEMENT WITH ADVENTGX, INC. TO PROVIDE FUNDING FOR FISCAL YEAR 2015 IN THE AMOUNT OF \$5,000; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, from January 12 through February 12, 2015, AdventGX, Inc. will host an Artist in Residence Program for Marie-Renee Hoeks, an artist from Amsterdam at the SEAD Gallery, located in Downtown Bryan. Marie-Renee will be living and painting for a month in Downtown Bryan, and the subject of her collection featured in the Gallery is entitled "Characters"; and

WHEREAS, the International Artist in Residence program is an arts-related draw for Downtown Bryan. During the residency period, the artist will hold open studio hours with programming to include presentations and live demonstrations. The goal of the program is to establish an international cultural exchange where international artists come to Downtown Bryan while local artists are provided opportunities to exhibit their art in other places throughout the world; and

WHEREAS, the International Artist in Residence program also promotes the recent designation of Downtown Bryan as a Cultural District by the Texas Commission on the Arts, thereby generating economic interest, spurring new business activity, attracting tourists, stimulating cultural development, fostering civic pride, and improving quality of life;

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

1.

The budget for the fiscal year beginning October 1, 2014, and ending September 30, 2015, with combined expenditures in the sum of **\$19,000.00** and combined revenues in the sum of **\$19,000.00** be approved as indicated in the accompanying "Exhibit A", the AdventGX International Artists in Residence program FISCAL YEAR 2014-2015 Budget.

2.

Expenditures shall conform to the provisions of Chapter 351.101 of the Texas Revised Civil Statutes.

3.

The Mayor is authorized to sign the FUNDING AGREEMENT between the City of Bryan and AdventGX, Inc., attached hereto as Exhibit "B", providing for funding in the amount of \$5,000.

This Resolution shall go into effect January 13, 2015.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, at a meeting held on the 13th day of January, 2015.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A"

International Artist In Residence Program Budget

<i>Expenses:</i>	Amount
Artist Transportation	\$2,500
Transportation of art works	\$1,700
Statewide and national exhibit and Artist residency promotion	\$4,600
Digital Media Production	\$2,700
Receptions, lectures, interviews and other special events	\$4,800
Lodging (covered in-kind)	\$2,700
<i>Total Expenses:</i>	\$19,000
<i>Revenues:</i>	
AdventGX	\$10,350
AdventGX Private Sponsors	\$950
City of Bryan	\$5,000
Lodging (in kind) Sponsors	\$2,700
<i>Total Revenues:</i>	\$19,000

EXHIBIT “B”

FUNDING AGREEMENT
CITY OF BRYAN AND ADVENTGX, INC.
ARTIST IN RESIDENCE – MARIE-RENEE HOEKS

This Agreement is made by and between the City of Bryan, Texas (“City”) a Texas home rule municipal corporation, and AdventGX Corporation, a corporation operating pursuant to the laws of the State of Texas (“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; and

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%); and

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; and

WHEREAS, Texas Tax Code §351.101(a)(4) specifically authorizes, the encouragement, promotion, improvement, and application of the arts, and Texas Tax Code §351.103(c) authorizes the use of up to fifteen percent (15%) of the hotel tax revenue collected by the City for those purposes; and

WHEREAS, Agency is interested in providing funding for an International Artist in Residence, who will live and work in downtown Bryan, display work for the public, provide demonstrations, and participate in other activities that will foster a cultural exchange with local artists and patrons; and

WHEREAS, Texas Tax Code §351.101(c) authorizes the City to delegate by contract with an independent entity, the management or supervision of programs and activities of the type described above and funded with revenue from hotel tax; and

WHEREAS, Agency is well equipped to provide such management or supervision over the use of hotel tax funds to support an International Artist in Residence;

NOW THEREFORE IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree as follows:

ARTICLE I DEFINITIONS

- 1.1 The term “Agency” shall mean AdventGX Corporation, a Texas 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 March 31st, June 30th, September 30th and December 31st, 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 the Project to be submitted to the 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” shall mean the International Artist in Residence program, which will provide funding for an artist to live and work in downtown Bryan, display work for the public, provide demonstrations, and participate in other activities that will foster a cultural exchange with local artists and patrons

- 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 PAYMENT**

- 2.1.1 For and in consideration of the activities to be performed under this Agreement, City agrees to pay within ten (10) business days of this Agreement, a portion of the hotel tax revenue collected by the City in the amount of five thousand dollars (\$5,000.00).
- 2.1.2 It is expressly understood that this Agreement in no way obligates the General Fund or any other monies or credits of the City.

**ARTICLE III
USE OF HOTEL TAX REVENUE**

- 3.1 Agency agrees to use the hotel tax funds provided under this Agreement to provide financing for the International Artist in Residence. The funds shall be used for the following:
- a. Artist transportation;
 - b. Transportation of art works;
 - c. Statewide and national exhibit and artist residency promotion; or
 - d. Receptions, lectures, interviews, and other special events featuring the artist and/or art work.
- 3.2 Funds may only be used as permitted by Texas Tax Code §351.101(a)(4) and must be spent as provided in §351.101(c).

**ARTICLE III
RECORDS OF EXPENDITURES**

- 3.1. Funds provided pursuant to this Agreement may only be used for those activities listed in section 2.1. Use of funds for any other purpose may be considered a breach of this Agreement.
- 3.2. Agency shall maintain hotel tax funds provided by the City pursuant to this Agreement 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. Agency shall maintain a complete and accurate financial record of each expenditure of hotel tax revenue made pursuant to this Agreement. These funds shall be classified as restricted funds for audited financial purposes.
- 3.4. Agency shall provide a copy of such records to the City before close of business on February 27th 2015. City is entitled to request and Agency is required to provide back-up

documentation in the form of receipts, invoices, or other similar documentation evidencing specific expenditures. This obligation survives for five (5) years following expiration of this Agreement.

- 3.5. Agency understands and accepts that the records required by this Agreement are subject to the Public Information Act, Texas Government Code Chapter 552, as may be amended. Agency shall comply with the requirements of Texas Tax Code §351.101, as amended.
- 3.6. If requested, Agency shall make a report and presentation on the use of hotel tax funds to the City Council.

ARTICLE IV TERM AND TERMINATION

- 4.1. The Term of this Agreement shall be from execution through February 28th, 2015. Only those expenditures where are authorized by this Agreement and actually incurred within the term are eligible for funding under this Agreement. Upon termination of this Agreement, any unspent funds shall be returned to the City.
- 4.2. In the event that Agency is unable or unwilling to perform its obligations under this Agreement, Agency may terminate this Agreement by providing written notice accompanied by any and all funds provided by the City under this Agreement.
- 4.3. In the event that Agency is in breach of any obligation set forth in the Agreement, City shall provide written notice of such breach and Agency shall have fifteen (15) calendar days to cure same. If Agency fails to cure such breach within that time, Agency shall be in default and this Agreement shall terminate.
- 4.4. It shall be an automatic event of default, without the requirement that the City provide notice, if any of the following occur:
 - a. Agency terminates its legal existence.
 - b. Agency becomes insolvent and/or files a petition in bankruptcy.
 - c. Agency assigns all, or substantially all, of its assets for the benefit of creditors
- 4.5. Notwithstanding any other provision of this Agreement, to mitigate damages and preserve evidence/issues for trial, 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 arising out of this Agreement.
- 4.6. In the event that this Agreement is terminated due to default, Agency agrees to return to the City any and all funds paid under this Agreement, except for those expenditures which were properly made in accordance with this Agreement and which are supported by adequate documentation.

**ARTICLE V
INDEMNIFICATION AND RELEASE**

- 5.1. **AGENCY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING ATTORNEY'S FEES AND COURT COSTS) FOR LOSSES, COSTS, OR DAMAGES OF ANY KIND, NATURE OR DESCRIPTION THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT.**
- 5.2. **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, OR CAUSES OF ACTION OF EVERY KIND AND CHARACTER (INCLUDING THE COST OF DEFENSE) FOR ANY INJURY TO, INCLUDING DEATH OF, ANY PERSON AND ANY LOSS OR DAMAGE TO PROPERTY THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH AGENCY'S WORK OR SERVICES PROVIDED HEREUNDER WHETHER OR NOT SAME ARE COVERED IN WHOLE OR IN PART BY INSURANCE.**

**ARTICLE VI
MISCELLANEOUS**

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.

- 6.4. 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.
- 6.5. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their heirs, executors, administrators, legal representatives, successors, and permitted assigns. Agency shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Agency shall not be prohibited under the section.
- 6.6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- 6.7. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
- 6.8. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
- 6.9. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- 6.10. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 6.11. No Waiver. 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 anyway 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.

- 6.12. Notices. Any notices required to be provided pursuant to this Agreement are deemed provided within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested, or on the day of transmission by facsimile, email, or when hand delivered to the address provided herein. City and Agency hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY
City of Bryan
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

AGENCY
AdventGX Corporation
Attn: Jose Quintana
216 W. 26th. St.
Bryan, Texas 77803

- 6.13. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
- 6.14. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
- 6.15. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed to be effective this ____ day of _____, 20 __.

ATTEST:

CITY OF BRYAN, TEXAS:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ADVENTGX CORPORATION

Jose Quintana, President