

RESOLUTION NO. 2009- 72 R

A resolution appointing Sharon Steen as the City Council Representative to the Texas Settlement Trails, Inc. (TSTI) Board of Directors; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

Sharon Steen is appointed as the City Council Representative to the Texas Settlement Trails, Inc. (TSTI) Board of Directors, in accordance with the FY 2008-2009 Hotel Occupancy Tax Revenue Agreement between the City of Victoria and Texas Settlement Trails, Inc. (TSTI) for Historical Renovation and Preservation attached hereto as **Exhibit "A"**.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 5th day of May, 2009.

AYES: **7**

NAYS: **0**


ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 5th day of May, 2009.

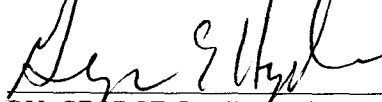


ATTEST:


SCARLET SWOBODA, City Secretary


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


BY: GEORGE E. HYDE, City Attorney
DENTON, NAVARRO, ROCHA & BERNAL, P.C.

Distribution: Legal Department

Copies Sent: **MAY 6, 2009**

**Hotel Occupancy Tax Revenue Agreement between the City of Victoria and
Texas Settlement Trails, Inc. for Historical Renovation and Preservation
FY 2008-2009 -- \$4,000.00**

This Agreement is between the City of Victoria, Texas, a municipal corporation ("City"), acting by and through its duly authorized City Manager, and the Texas Settlement Trails, Inc. ("TSTI"), a Texas nonprofit corporation, acting by and through its duly authorized Executive Director, and

Pursuant to Tex. Tax Code § 351.101, et. seq., the City levies a tax upon hotel and motel occupancy within the City, and said funds may be expended for historical renovation pursuant to Tex. Tax Code § 351.101(a)(5) which provides:

- (5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - (A) at or in the immediate vicinity of convention center facilities or visitor information centers; or
 - (B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.

THEREFORE, in consideration of the premises and covenants herein contained, the City and TSTI agree as follows:

1. Formation. City engages TSTI to render the services herein described. TSTI accepts such hiring, engagement, and employment and shall discharge such duties in accordance with Chapter 351 of the Texas Tax Code and the terms and conditions herein set forth.

2. Independent Contractor. TSTI is engaged as an independent contractor and is not an officer, agent or employee of the City in regard to its operations and actions. TSTI shall select and employ such persons as it may deem necessary to fulfill its obligations and responsibilities under this Agreement. Said persons shall be at all times employees of TSTI and shall not be officers, agents or employees of the City. The power to hire, manage, supervise, direct, and discharge such employees shall be vested solely and exclusively with TSTI. The City shall not manage, direct, supervise or discharge said persons or direct them in the performance of their duties for TSTI under this Agreement.

3. Indemnification; Insurance. TSTI agrees to indemnify, save harmless and defend the City and the City's officers, agents, and employees from any and all claims, causes of action and damages of every kind arising from the operations of TSTI and TSTI's officers, agents and employees, carried out in furtherance of this Agreement.

4. Operation. TSTI shall promote tourism and the convention and hotel industry advertising by conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums that would be frequented by tourists and convention delegates in the vicinity of the City of Victoria.

5. TSTI Board of Directors. To assist in monitoring this program and providing accountability for the funds provided hereunder, the City shall have the right to appoint at least one member to the Board of Directors of TSTI.

6. Budget. TSTI shall submit to the City Manager an annual operating budget for the City's 2008-2009 fiscal year based upon all estimated revenues. Said budget shall reflect the proposed expenditures to be made by TSTI during said fiscal year and the purposes for which these expenditures are to be made. This budget shall also reflect an accurate projection of beginning and ending fiscal year fund balance, disclosing all financial resources available for use in the forthcoming budget year. Budgets shall be prepared and approved by TSTI and submitted to the City Manager for submission to the City Council for review and approval of expenditures of City funds. Expenditures of City funds shall be made only in accordance with the budget approved by the Victoria City Council.

7. Revenue. City agrees to pay \$4,000.00 to TSTI, from the revenue the City receives from the hotel occupancy tax during fiscal year 2008-2009, for the operation of TSTI to encourage and promote tourism and the convention and hotel/motel industry as provided in this agreement. Payment of the aforementioned amount may be reduced to account for lower-than-budgeted hotel occupancy tax receipts. This total amount will be subdivided into quarterly payments. These quarterly payments will be made after hotel occupancy tax funds are remitted to the City and will be adjusted upward or downward in proportion to the percentage of budgeted hotel occupancy tax revenue that is received by the City.

8. Separate Budget Account. TSTI shall maintain all revenue provided by City under the terms of this Agreement in a separately budgeted line item account established for the purpose of fulfilling this Agreement and may not commingle such revenue with any other money or maintain it in any other budgeted accounts except as approved by City Council.

9. Use of Funds. It is expressly understood and agreed by the City and TSTI that all funds received from the hotel occupancy tax that are paid to TSTI shall be used solely for the purpose of promoting tourism and the convention and hotel industry in accordance with the provisions of Chapter 351 of the Texas Tax Code.

10. Fund Balance. Should this Agreement be renewed or agreement for the same project be executed next year, TSTI shall be authorized to carry forward its remaining balance of City funds, if any, including interest, from this fiscal year and to use these funds, subject to Council approval of proposed expenditures of such funds, in the succeeding fiscal year's annual budget. However, should this Agreement be terminated, the remaining City fund balance, if any, including interest, shall be paid to the City.

11. Allocated Funds. Payments from the City to TSTI are subject to funds being appropriated by the City Council for the expressed purpose of purchasing the services provided for in this Agreement.

12. Financial Records. TSTI shall maintain complete and accurate financial records of each expenditure made by TSTI of the hotel occupancy tax revenue provided for in this Agreement. Upon request of the City Council, the City Manager, or the City Finance Director, TSTI shall make records of such expenditures available for inspection and review by such requesting party. The City Council may, upon reasonable notice, audit all books and records of TSTI pertaining to such revenues. TSTI shall be required to keep such records available for such purpose at least two years after the expiration of this Agreement. The general method of financial record keeping and reporting proposed by TSTI to be used in complying with the requirements of this Agreement shall be submitted to and approved by the City's Finance Director. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the City Council.

13. Reporting. TSTI shall report quarterly to the City Council on the general progress of TSTI in promoting tourism and the convention and hotel industry. Said reports shall contain a listing of all expenditures made by TSTI with municipal hotel occupancy tax revenue received by it pursuant to this Agreement.

14. Audit. In addition to the hereinabove required reports covering activities and expenditures of TSTI, if requested, a certified audit shall be provided to the City within 180 days of the closing of TSTI's fiscal year. The auditors performing the above described audit shall have access to and the right to examine all records and accounts directly related to the program and such other TSTI records and accounts as may be reasonably necessary to conduct and complete its audit.

Should either the independent audit or a decision of any court of competent jurisdiction in the State of Texas determine that funds provided to TSTI by City under this Agreement have been spent improperly, TSTI shall immediately return all said funds, plus a reasonable rate of interest that shall accrue from the time of original disbursement to the time of return to the City. Any such misuse of funds shall be considered a material breach of this Agreement and the City, at its sole option, may immediately declare this Agreement null and void.

15. Parties in Interest. This Agreement shall bind and benefit the City and TSTI and shall not bestow any rights upon any third parties.

16. Mutual Cooperation. City and TSTI agree to cooperate fully with one another and to coordinate their efforts in order to ensure that the conditions of this Agreement are fulfilled and to ensure optimal encouragement and promotion of the tourism and the convention and hotel industry within the City. In order to expedite the conditions of the Agreement and to effect economies of scale, the parties agree to keep each other fully informed of their plans, operations, and activities and wherever possible to coordinate fully their efforts to promote and otherwise undertake the encouragement and promotion of the tourism and the convention and hotel industry within the City.

17. No Obligation for Additional Funds. Nothing in this Agreement shall in any way place any obligation on any other funds or sources of revenue of the City and nothing herein shall create any lien or other obligation on any other sources of income, revenues or funds of the City. The obligations of the City provided by this Agreement are payable only from the hotel occupancy tax revenue receipts fund. The City, at its sole option, may further subordinate the obligations of the City hereunder to other present and future obligations of the City.

18. Ability to Contract with Others. Nothing in this Agreement shall in any way limit either party from contracting with other persons or organizations for the encouragement, promotion and solicitation of tourism and conventions for the City.

19. Notices. All written notices must be made by certified mail, return receipt requested, and shall be addressed to the applicable parties, or their successors in office, at the following addresses:

President	City Manager
Texas Settlement Trails, Inc.	City of Victoria
P.O. Box 1132	P.O. Box 1758
607 N. Bridge Street	Victoria, Texas 77902
Victoria, Texas 77902	

20. Term. The term of this Agreement shall be from October 1, 2008 to October 1, 2009 unless sooner terminated or extended in writing by City on an annual basis during City's budget process.

21. Termination. It is understood and agreed that either party may terminate this Agreement by giving the other party notice in writing at least 30 days in advance of the first day of a calendar quarterly period. Such termination shall become effective at the end of the calendar quarterly period following such notice.

22. Conflict of Interest. No member of the City Council, the Board of Directors of TSTI nor any member of any other City board or any appointive officer or employee of the City shall ever be pecuniarily interested, directly or indirectly, in this Agreement except on behalf of the City or TSTI as an officer or employee. Any violation of this Section with the knowledge, express or implied, of the person involved shall render this Agreement voidable by the City Manager or City Council.

23. Texas Public Information Act. TSTI acknowledges that it is "an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds" for purposes of the application of Tex. Gov't Code § 552.003.

Executed, this 18th day of November, 2008, in Victoria County, Texas.

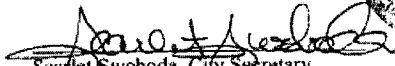
CITY OF VICTORIA

Charles E. Windwehen, City Manager


(seal)

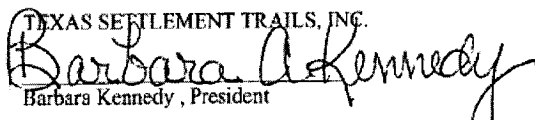


ATTEST:


Scarlet Swoboda, City Secretary

APPROVED AS TO LEGAL FORM:


Mites K. Risley, City Attorney

TEXAS SETTLEMENT TRAILS, INC.

Barbara Kennedy, President

(seal)

ATTEST:

Secretary