

THE STATE OF TEXAS                   §  
  §       **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF BANDERA               §

### **ADMINISTRATIVE SERVICES AGREEMENT**

This Administrative Services Agreement (the “Agreement”) shall be between the City of Bandera, a municipal corporation, situated in Bandera County, Texas, acting by and through its City Administrator, (“City”), and the Bandera Economic Development Corporation, a Texas non-profit economic development corporation (“BEDC”) acting by and through its President and in accordance with Texas Local Government Code Chapters 501, 502, and 505. The City and the BEDC are collectively referred to herein as the “Parties” and are each a “Party”.

#### **WITNESSETH:**

WHEREAS, BEDC was incorporated pursuant to and is governed by the Development Corporation Act, Chapters 501-507, Texas Local Government Code, as amended (the “Code”); and

WHEREAS, Section 501.007 of the Code prohibits a municipality from lending credit or granting public money to an Economic Development Corporation; and

WHEREAS, the City and BEDC have mutual interests in the economic development of the City of Bandera; and

WHEREAS, the Parties have historically determined and continue to determine that it would be of benefit to the citizens of the City, and enhance the economic development of the community, for the City to provide certain administrative services to BEDC for a fee; and

WHEREAS, the Parties have determined that it would benefit the citizens of Bandera and enhance the economic development of the community for the City to establish the roles and responsibilities between the City and BEDC and their respective employees and officers; and

WHEREAS, as provided by Section 2.01 of BEDC’s bylaws, upon approval of the Bandera City Council, BEDC may contract with the City for the provision of financial and accounting services by City; and

WHEREAS, the Parties hereby find that it is in the best interest of the Parties for the City to provide fiscal, personnel, and professional services to the BEDC under the terms stated herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are acknowledged, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

#### **AGREEMENT**

##### **1. Administrative Functions.**

1.1. The City shall provide fiscal, personnel, and professional services (“Services”) to BEDC as provided herein.

- 1.2. BEDC shall allow City full administrative and financial access to BEDC's financial and investment accounts so that City staff can manage reparation and payment of payroll, payment issuances for services, preparation of financial reports, presentational meeting reports related to project performances, preparation of annual budgets, and general summaries of budgeting, accounting, vendor payment, financial management, and auditing. City reserves the right to have access to BEDC's corporate books and records for the purposes identified in Tex. Loc. Gov't Code Chapters 501-507.

**2. Compensation and Payment.**

- 2.1. The Maximum Compensation for the performance of Services within the Statement of Work described in Exhibit A is Ten Thousand Dollars (\$ 10,000.00). In no case shall the amount paid by BEDC under this Agreement or the rates for Services as described in Exhibit A exceed the Maximum Compensation without an approved change order.
- 2.2. All performance of the Services by City including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by BEDC.
- 2.3. BEDC will pay City based on the following procedures:
  - (a) Upon completion of the tasks identified in Exhibit A, City shall submit to BEDC an original copy of each invoice showing the amounts due for Services performed in a form acceptable to BEDC to the following address:

PO Box 896  
Bandera, TX 78003

- 2.4. All payment terms, time for payments, and interest charged for late payments made in accordance with the Agreement are subject to Chapter 2251, Texas Government Code.

**3. Term and Termination.**

- 3.1. This Agreement shall commence on the Effective Date and shall automatically renew for successive periods of two (2) years unless either Party wishes to amend by mutual consent or provides the other Party with 90 days advance written notice to terminate.
- 3.2. The Agreement may be terminated before the stated termination date by any of the following conditions:
  - (a) By mutual written agreement and consent; or
  - (b) By either Party, upon the failure of the other Party to fulfill its obligations as set forth herein; or
  - (c) By either Party for reasons of its own and without the consent of the other Party, provided that at least thirty (30) days' written notice is provided to the other Party.The termination of this Agreement and payment of any outstanding amount in settlement as prescribed in Section 2, above shall extinguish all rights, duties, and obligations of the City and BEDC under this Agreement.

**4. Ownership of Documents**

- 4.1. All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this Agreement are the exclusive property of BEDC and shall be furnished to BEDC upon request. Release of information to the public shall be subject to and in conformance with the Texas Public Information Act.

**5. Indemnification.**

- 5.1. BEDC AGREES, TO THE EXTENT PERMITTED BY LAW, TO SAVE HARMLESS THE CITY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, ITS AGENTS, OFFICERS, OR EMPLOYEES,

PERFORMED UNDER THIS AGREEMENT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF BEDC OR OF BEDC'S AGENTS, OFFICERS, AND EMPLOYEES. BEDC SHALL ALSO SAVE HARMLESS THE CITY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES THAT THE CITY MAY INCUR IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE CITY AS A RESULT OF SUCH ACTIVITIES BY BEDC, ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS INDEMNITY SHALL NOT INCLUDE CLAIMS BASED UPON OR ARISING OUT OF THE WILLFUL MISCONDUCT OF THE CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES. FURTHER, THIS INDEMNITY SHALL NOT REQUIRE PAYMENT OF A CLAIM BY THE CITY OR ITS AGENTS, OFFICERS, OR EMPLOYEES AS A CONDITION PRECEDENT TO CITY'S RECOVERY UNDER THIS PROVISION.

- 5.2. CITY AGREES, TO THE EXTENT PERMITTED BY LAW, TO SAVE HARMLESS BEDC AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, ITS AGENTS, OFFICERS, OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE CITY OR THE CITY'S AGENTS, OFFICERS, OR EMPLOYEES. THE CITY SHALL ALSO SAVE HARMLESS BEDC FROM ANY AND ALL EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE BEDC IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON BEDC AS A RESULT OF SUCH ACTIVITIES BY THE CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS INDEMNITY SHALL NOT INCLUDE CLAIMS BASED UPON OR ARISING OUT OF THE WILLFUL MISCONDUCT OF BEDC, ITS AGENTS, OFFICERS, OR EMPLOYEES. FURTHER, THIS INDEMNITY SHALL NOT REQUIRE PAYMENT OF A CLAIM BY BEDC OR ITS OFFICERS OR EMPLOYEES AS A CONDITION PRECEDENT TO BEDC'S RECOVERY UNDER THIS PROVISION.

**6. Notice.**

- 6.1. Any notice required shall be delivered to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

For City:

City Administrator

City of Bandera

511 Main Street

Bandera, Texas 78003

For BEDC:

President

Bandera Economic Development Corporation

511 Main Street

Bandera, Texas 78003

**7. Officials Not To Benefit.**

- 7.1. No public official of the City or BEDC who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the agreement which affects his personal interest, nor shall he have any personal or pecuniary interest direct or indirect in this Agreement or proceeds thereof.

**8. No Waiver.**

- 8.1. Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither the City nor the BEDC shall be

held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

- 8.2. Neither Party waives or relinquishes any immunity or defense on behalf of itself, its BEDC members, councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements
- 8.3. ONLY THE CITY, THROUGH ACTION OF THE CITY COUNCIL, OR THE BEDC BOARD, THROUGH VOTE OF THE BEDC BOARD, MAY SUBMIT ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION, OR INVALIDITY THEREOF, TO NON-BINDING MEDIATION BEFORE ANY MUTUALLY AGREED UPON ATTORNEY MEDIATOR. NO PARTY SHALL HAVE THE RIGHT TO REQUIRE THAT THIS CASE BE SUBMITTED TO BINDING ARBITRATION.

## **9. Miscellaneous Provisions**

- 9.1. Force Majeure. In the event that either Party shall be prevented from completing the performance of their respective obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of the Parties hereto, then they shall be excused from any further performance of their obligations and undertakings hereunder, provided however, that in the event that any such performance is only interrupted or delayed, the affected Party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- 9.2. Amendments. This Agreement may be amended by the mutual written agreement of the Parties.
- 9.3. Independent Contractors. Both Parties shall not be construed to have the relationship of partners, joint ventures, principal-agent, or employer-employee. The Parties are separate entities who enter into this Agreement for their respective (and the public's) benefit. No employee of the City shall be construed or deemed an employee of BEDC, and no employee of BEDC shall be construed or deemed an employee of the City.
- 9.4. Compliance With Laws. The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.
- 9.5. Waiver. Any waiver by either Party of any default under or breach of this Agreement shall not be construed to be a continuing waiver of such default or breach, nor as a waiver of, or permission for, express or implied, any other or subsequent default or breach.
- 9.6. Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Bandera County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.
- 9.7. Successors and Assigns. City and BEDC bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.
- 9.8. Third Party Beneficiaries. This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.
- 9.9. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
- 9.10. Captions. The section captions used in this Agreement are for convenience of reference

only and do not affect the interpretation or construction of this Agreement.

9.11. Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

9.12. Understanding, Fair Construction. By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**CITY OF BANDERA**

**BANDERA ECONOMIC DEVELOPMENT  
CORPORATION**

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Jill Shelton, City Secretary

\_\_\_\_\_, BEDC Secretary

## **Exhibit A – Scope of Services**

City Provided Services:

1. City Secretary – Agendas, Minutes
2. City Treasurer- Financials, Bank Reconciliation, Budget