

MARKETING AGREEMENT
Between
City of Burleson, Texas
And
Burleson 4A Economic Development Corporation
And
Burleson Area Chamber of Commerce

This Agreement is entered into by and between Burleson Area Chamber of Commerce, henceforth known as “BACC,” the Burleson 4A Economic Development Corporation, a Texas municipal development corporation, henceforth known as “EDC”, and the City of Burleson, a Texas home rule municipal corporation in Johnson and Tarrant Counties, henceforth known as “City”.

WITNESSETH:

WHEREAS, the EDC desires to increase economic development within the city limits of Burleson, Texas, by promoting the EDC and the City of Burleson as exceptional economic partners; and

WHEREAS, the EDC desires to increase economic development within the city limits of Burleson, Texas, by promoting the local community as a premium economic market; and

WHEREAS, the EDC believes specific marketing activities undertaken by the BACC will increase economic activity by promoting the EDC and the City as exceptional economic partners and the local community as a premium economic market; and

WHEREAS, the City desires to promote tourism and the convention and hotel industry; and

WHEREAS, the City believes that BACC advertising certain tourism-based events will attract tourists to the municipality or its vicinity; and

WHEREAS, BACC is the local chamber of commerce, has numerous key connections in the regional and state business community, and can perform the marketing, event, and advertising duties described herein; and

WHEREAS, the City and EDC desire to compensate BACC for the performance of the marketing, event, and advertising duties described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City, EDC, and BACC hereby contract, covenant, and agree as follows:

1. Marketing Duties. In consideration of the Payment and other good and valuable consideration set forth in this Agreement, BACC will perform the following marketing, event, and advertising duties prior to the end of the term of the Agreement specified in Section 3:

1.1. Business Research and Retention.

BACC shall conduct one hundred (100) meetings annually with local businesses to gather key business information. The EDC shall collaborate with BACC at a mutually agreeable later date to compile list of businesses and develop key business information to gather. BACC shall promote the EDC at such meetings in a manner that is mutually agreeable to the parties.

BACC shall produce and deliver to the EDC four (4) quarterly reports with business retention findings within thirty (30) days of the end of each quarter.

BACC shall contract catering service for the annual State of the City Luncheon and EDC Luncheon events. Such catering service shall be with a business located within the City Limits of the City of Burleson. BACC shall promote the EDC at the State of the City Luncheon and EDC Luncheon events in a manner that is mutually agreeable to the parties.

1.2. Tourism Promotion.

BACC shall conduct three (3) annual tourism-based events in the City of Burleson. Events should focus on attracting visitors from outside the City of Burleson and generate overnight stays in hotels or motels within the city limits of the City of Burleson. Advertising for these events should be focus outside of fifty (50) miles from the City of Burleson. These events shall include The Burleson Honey Tour Bike Ride, The Full Circle Women's Conference, and a third event to be mutually agreed upon between the parties (the "Tourism Events"). BACC shall utilize at least Thirty Thousand Dollars (\$30,000) of the Payment specified in Section 2 below solely for advertising the Tourism Events in a manner that is mutually agreeable to the parties ("Advertising Costs"). Thirty (30) days prior to the end of the Term of this Agreement, BACC shall deliver to the City receipts or other proof that the Advertising Costs were in fact spent on advertising the Tourism Events.

Contractor shall alternate the host location of the Annual Burleson Area Chamber of Commerce Golf Classic to include Hidden Creek Golf Course every other year, beginning in 2023.

BACC shall promote the EDC at the three (3) annual tourism-based events and the Annual Burleson Area Chamber of Commerce Golf Classic in a manner that is mutually agreeable to the parties.

2. Payment. As consideration for the marketing duties performed by BACC, City and EDC shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) ("Payment") to BACC within thirty (30) days from the Effective Date of the Agreement. The Payment will be made by City check payable to BACC.

City and EDC shall apportion the cost of the Payment as follows: EDC shall pay Twenty Thousand Dollars (\$20,000) of the Payment, and City shall pay Thirty Thousand Dollars (\$30,000) of the Payment.

3. Term. The term of this Agreement shall begin on the Effective Date and end on September 30, 2023.

4. Time of the Essence. Time is of the essence in this Agreement.

5. Default and Termination; Limitation of Liability; Right to Audit.

- a. **Default by BACC.** BACC shall be in default if BACC fails to comply with any provision of this Agreement within ten (10) days after written notice from either of the other parties. The other parties' remedies for BACC's default are to sue for damages and terminate this Agreement.
- b. **Default by EDC.** EDC shall be in default if EDC fails to comply with any provision of this Agreement within thirty (30) days after written notice from either of the other parties. The other parties' remedies for EDC's default are to sue for damages and terminate this Agreement.
- c. **Default by City.** City shall be in default if City fails to comply with any provision of this Agreement within thirty (30) days after written notice from either of the other parties. The other parties' remedies for City's default are to sue for damages and terminate this Agreement.
- d. **Limitation of Liability.** Notwithstanding any other provision in this Agreement, a party's aggregate maximum liability for any damages arising out of or related to this Agreement shall not exceed the amount of the Payment. No party shall be liable for any indirect, incidental, special, consequential, reliance, exemplary, lost profits or revenues, cover or punitive damages, however arising. The parties acknowledge that the limitations set forth in this provision are a material part of the consideration of this Agreement and are an integral part of the calculation in determining the value of the Payment.
- e. **Right to Audit.** BACC agrees that the City and EDC shall, until the expiration of three (3) years after the term of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Agreement at no additional cost to the City or EDC. BACC agrees that the City and EDC shall have access during normal working hours to all necessary BACC facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City and EDC shall give BACC reasonable advance notice of intended audits.

6. Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement will be in writing and will be sent via certified mail, hand delivery, or overnight courier, as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand or overnight courier when received:

If to BACC: _____

If to EDC: Burleson 4A Economic Development Corporation
 Attn: Economic Development Director
 141 W. Renfro St.
 Burleson, TX 76028

If to City: City of Burleson
 Attn: City Manager
 141 W Renfro St.
 Burleson, TX 76028

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

7. General.

- a. **No Waiver of Immunity.** Nothing contained in this Agreement shall be construed as a waiver of the City's or EDC's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to the City or EDC by law, except to the extent expressly provided or necessarily implied herein. This provision shall survive termination or the consummation of the transaction contemplated herein.
- b. **No Waiver of City Requirements.** Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.
- c. **No Waiver of Default.** A failure of the non-defaulting party to declare immediately a default shall not constitute a waiver of any provision of this Agreement.
- d. **Independent Contractor.** The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, does not create, and shall not be construed to create a relationship of employer-employee.
- e. **No Partnership or Joint Venture.** The parties to this Agreement are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them.
- f. **No Third Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed or interpreted to give any person or entity other than the parties hereto any legal or equitable right, remedy, or claim under or in respect of this Agreement or any provision contained herein. This provision shall survive termination or the consummation of the transaction contemplated herein.
- g. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of the parties.
- h. **Survivability.** The terms of this Agreement, which by their nature one would reasonably intend to survive this Agreement shall survive it, including terms addressing fees and payment, confidentiality, immunity, representations and warranties, limitation of liability, and the applicable miscellaneous sections.

- i. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original of this Agreement, but all the counterparts will together constitute the same agreement. No counterpart will be effective until each party has executed at least one counterpart.
- j. **Controlling Law; Interpretation.** Johnson County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. This Agreement shall not be construed against the drafting party, but all other rules of contract construction shall apply.
- k. **Assignment; Waiver.** This Agreement, including the rights under it, may not be assigned or transferred by any party.
- l. **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- m. **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- n. **Attorney's Fees.** If either party shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees.
- o. **Effective Date.** The "Effective Date" shall be the date this Agreement is last signed by the parties below.

[The remainder of this page left blank.]

EDC:

Burleson 4A Economic Development Corporation

By: _____
Dan McClendon, President

Date: _____

City:

City of Burleson, Texas

By: _____
Bryan Langley, City Manager

Date: _____

BACC:

Burleson Area Chamber of Commerce

By: _____

Name: _____

Title: _____

Date: _____