

**CHAPTER 380 AGREEMENT
BETWEEN THE CITY OF BURLESON
AND THE BURLESON OPPORTUNITY FUND**

This Agreement is entered into as of the _____ day of _____, 2023 (the "Effective Date"), by and between Burleson Opportunity Fund ("BOF"), a Texas nonprofit corporation, and the City of Burleson, a Texas home rule municipal corporation ("the City"), located in Johnson and Tarrant Counties, State of Texas.

RECITALS:

WHEREAS, the BOF is a Texas nonprofit corporation acting under its duly authorized Certificate of Formation filed December 17, 2007, and amended on March 28, 2008, and official Bylaws; and

WHEREAS, the BOF is created for educational purposes to promote higher education opportunities that will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state; and

WHEREAS, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, BOF desires to participate in the Program by entering into this Agreement; and

WHEREAS, the Burleson City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that BOF's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the City is authorized by Article 52-a Texas Constitution, and Section 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the BOF desires to operate a scholarship program to provide educational training as described in this Agreement; and

WHEREAS, the City desires to have BOF operate the scholarship program in the City's corporate limits; and

WHEREAS, the City desires to make a contribution to the BOF based on the terms and conditions listed herein.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS

- 1.1 The terms "Effective Date," "City," "BOF," and "BEDC" shall have the meanings provided above.
- 1.2 "Burleson Collegiate Program" means a type of BOF scholarship program whereby scholarship recipients attend Hill College in Burleson, Texas.
- 1.3 *[This section intentionally left blank.]*
- 1.4 "Contribution" means the donation of funds from the City to BOF as described in Article 3 of this Agreement.

ARTICLE 2.
AUTHORIZATION; TERM

The City has determined and found that contribution to the BOF as described in this Agreement is authorized by Chapter 380 of the Texas Local Government Code.

The term of this Agreement shall be for a term of six (6) years from the Effective Date, unless terminated earlier as provided herein.

ARTICLE 3.
CONTRIBUTION

The City hereby agrees to make a one-time contribution to the BOF in the amount of Fifty Thousand and no/100s Dollars (\$50,000.00) (the "Contribution"). The Contribution will be made by check payable to BOF. The Contribution shall be made within sixty (60) days of the Effective Date.

ARTICLE 4.
USE OF CONTRIBUTION FUNDS

- 4.1 BOF agrees to accept the Contribution in accordance with the terms, provisions, and conditions below:
- (A) *[This section intentionally left blank.]*
- (B) BOF shall use Fifty Thousand and no/100s Dollars (\$50,000.00) of the Contribution to fund scholarships in the Burleson Collegiate Program.
- (C) *[This section intentionally left blank.]*
- (D) Monies given under this Agreement to BOF for the Burleson Collegiate Program shall only be used by BOF for BOF scholarship recipients that are high school graduates who live or attend school in Burleson, Texas, to attend Hill College at the Burleson, Texas campus.
- (E) BOF shall comply with all applicable federal, state, and local laws and regulations.
- 4.2 In the event BOF misuses the Contribution funds or any portion thereof, the BOF shall

promptly reimburse the City an amount equal to the misused funds. The term "misuse" means contrary to this Agreement or state, federal, or local law. This Section shall survive termination of the Agreement.

- 4.3 BOF agrees to keep records of BOF expenses pertaining to the Contribution and records of account between City and BOF on a generally recognized accounting basis during the term of the Agreement and for a minimum of one (1) year from the date of termination of this Agreement. The City shall have the right, at its sole cost, to either use its own employees or engage an independent third party to audit the financial records of BOF pertaining to the Contribution and records of account. Such audit shall be completed by the City or its representatives at the location of such records on reasonable advance notice, and on dates and times mutually agreed to by the parties. The City or its authorized representative shall have the right to make copies of any and all documents, books, backup documents, or other items either included in the records of account or supporting such records, at the City's cost. This Section shall survive termination of the Agreement.

ARTICLE 5. MISCELLANEOUS PROVISIONS

- 5.1 Recitals. The recitals found at the beginning of this Agreement are an integral part of this Agreement and are deemed incorporated by reference herein for all purposes.
- 5.2 Entire Agreement: Amendments. This Agreement constitutes the entire agreement between City and BOF 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 both parties.
- 5.3 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected.
- 5.4 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.
- 5.5 Venue: 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. Each of the parties hereto has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 5.6 Assignment: Waiver. This Agreement, including the rights under it, may not be assigned

or transferred by BEDC or BOF. No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.

- 5.7 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.
- 5.8 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 5.9 No Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any person other than the parties hereto any rights, benefits, or remedies under or because of this Agreement.
- 5.10 No Waiver of Governmental Immunity. Nothing contained in this Agreement shall be construed as a waiver of City's or BEDC's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City or BEDC by law, except to the extent expressly provided or necessarily implied herein. This Section shall survive termination of the Agreement.
- 5.11 *[This section intentionally left blank.]*
- 5.12 *[This section intentionally left blank.]*
- 5.13 City Employee Interest Certification. By executing this Agreement, BOF warrants, agrees, verifies, and certifies that to the best of its knowledge and belief, no member of City Council, City Manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.
- 5.14 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to BOF as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official. This Section shall survive termination of the Agreement.
- 5.15 Compliance with Law. During the term of this Agreement, BOF agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a(f), BOF shall repay the amount of the City contribution(s) received by BOF for the period of time of such violation within 120 business days after the date BOF is notified by the City of such conviction (provided all appeals have been exhausted), plus interest at the rate the City is paying on the most recent issuance of bonded indebtedness prior to BOF's violation of this Section. This Section shall supersede any other conflicting term in this Agreement and

shall survive termination of the Agreement.

[The remainder of this page left blank.]

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

CITY OF BURLESON

BURLESON OPPORTUNITY FUND

By: _____

By: _____

Title: Tommy Ludwig, City Manager

Title: _____

Date: _____

Date: _____

ATTEST:

Amanda Campos, City Secretary

APPROVED AS TO FORM:

City Attorney, City of Burleson