

## SERVICE CONTRACT

This **SERVICE AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas, the **BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION** (the “EDC”) and **BURLESON AREA CHAMBER OF COMMERCE** (“Contractor”).

### ***WITNESETH:***

**WHEREAS**, City, EDC and Contractor desire to enter into a contract by which Contractor will provide **BUSINESS RETENTION AND TOURISM SERVICES**

**WHEREAS**, City and EDC desire to compensate Contractor for Contractor’s services as provided herein.

**NOW, THEREFORE**, City and EDC hereby engage the services of Contractor, and in consideration of the mutual promises herein contained, the parties agree as follows:

### **1. SCOPE OF SERVICES.**

#### **1.1. Business Retention**

Contractor shall conduct one hundred (100) meetings annually local businesses to gather key business information. The EDC shall collaborate to compile list of businesses and data to gather.

Contractor shall produce four (4) quarterly reports with business retention findings within thirty (30) days of the end of each quarter.

Contractor shall contract catering service for the annual State of the City Luncheon, and EDC Luncheon events with a business located within the City Limits of the City of Burleson.

#### **1.2. Tourism**

Contractor 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 should include The Burleson Honey Tour Bike Ride, The Full Circle Women’s Conference and the Downtown Dine Out.

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.

2. TERM.

The term of this Contract upon execution shall be active until September 30, 2024, and in the amount of \$50,000 over the term of the agreement.

3. COMPENSATION.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Contractor's invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4. TERMINATION.

4.1. Written Notice.

The City, EDC or Contractor may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the termination date, the City shall pay Contractor for services actually rendered or Contractor shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

4.4 Failure to Perform

In the event Contractor fails to perform all services within the term of this agreement, Contractor will not be eligible to receive any City or EDC funds for a period of one year.

5. INDEMNIFICATION.

**CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS,**

OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

## 6. MISCELLANEOUS PROVISIONS.

**6.1 Right to Audit.** Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Agreement at no additional cost to the City. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor 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 shall give Contractor reasonable advance notice of intended audits.

**6.2 Independent Contractor.** It is expressly understood and agreed that Contractor shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Contractor shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Contractor acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Contractor, its officers, agents, employees, servants, contractors and subcontractors. Contractor further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Contractor.

**6.3 Government Function Clause.** All parties agree that this contract is one wherein the City is solely performing a governmental function.

**6.4 Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Contractor of any violation of such laws, ordinances, rules or regulations, Contractor shall immediately desist from and correct the violation.

**6.5 Non-Discrimination Covenant.** Contractor, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Contractor's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Contractor, its personal representatives, assigns, subcontractors or successors in interest, Contractor agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

**6.6 Assignment and Subcontracting.** Neither party may assign or subcontract any of its duties, obligations or rights under this Agreement.

**6.7 Notice.** Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, or (2) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

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

To CONTRACTOR:

Burleson Area Chamber of Commerce  
Attn: Executive Director  
124 S. Main St. Ste. 228  
Burleson, Texas 76028

**6.8 Governmental Powers.** It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**6.9 No Waiver.** The failure of the City or Contractor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Contractor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**6.10 Governing Law and Venue.** This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

**6.11 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**6.12 Force Majeure.** The City and Contractor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, pandemics, epidemics, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**6.13 Heading Not Controlling.** Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**6.14 Review of Counsel.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

**6.15 Amendment and Modification.** No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

**6.16 Entirety of Agreement.** This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Contractor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**6.17 Signature Authority.** The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

**6.18 No Waiver of Governmental Immunity.** Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

**6.19 Mandatory Ownership Disclosure Provision.** If required by law, Contractor shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

**6.20 Non-Exclusivity.** Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

**6.21 No Third-Party Beneficiaries.** Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

**6.22 Basic Safeguarding of Contractor Information Systems.** Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

**6.23 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.

**6.24 Insurance: A.** The vendor, consistent with its status as an independent contractor, shall carry, and shall require any of its subcontractors to carry, at least the following insurance in such form, with such companies, and in such amounts (unless otherwise specified) as City will require:

1. Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;

2. Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Liability, Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;

3. Comprehensive Automobile Liability insurance covering all owned, non owned or hired automobiles to be used by the Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.

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**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

**BURLESON AREA CHAMBER OF  
COMMERCE**

By: \_\_\_\_\_  
Tommy Ludwig, City Manager

By:   
Melissa Miller, Executive Director

Date: \_\_\_\_\_

Date: 9/25/23

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION**

By:

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

Title: Board President

Date: October \_\_\_, 2023

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on September \_\_\_, 2023, by \_\_\_\_\_, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas



## **Exhibit A**

### **SCOPE OF SERVICES**

#### **Business Retention**

Contractor shall conduct one hundred (100) meetings annually local businesses to gather key business information. The EDC shall collaborate to compile list of businesses and data to gather.

Contractor shall produce four (4) quarterly reports with business retention findings within thirty (30) days of the end of each quarter.

Contractor shall contract catering service for the annual State of the City Luncheon, and EDC Luncheon events with a business located within the City Limits of the City of Burleson.

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