

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION
PERFORMANCE AGREEMENT**

This Performance Agreement (this “Agreement”) is made by and between the Tomball Economic Development Corporation, a State of Texas Type B Economic Development Corporation (the “TEDC”), and Sip Hip Hooray, LLC, a State of Texas limited liability company (the “Company”) (with the TEDC and the Company each being a “Party”, and collectively the “Parties”), and is entered into by the Parties on the date of execution below (the “Effective Date”).

RECITALS

WHEREAS, the TEDC’s Board of Directors (the “Board”), at its meeting on May 10, 2022, after conducting a public hearing that was properly published in accordance with applicable State law and TEDC, found that a project that included the TEDC’s provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to the Company would promote new or expanded business development (the “Project”); and

WHEREAS, through the Project, the TEDC will assist the Company in promoting and expanding business development in the City of Tomball, Texas (the “City”) by providing expenditures to the Company in an amount not to exceed forty thousand five hundred thirty-five dollars (\$40,535) (the “Funding”) so the Company may be reimbursed for its costs to initiate and operate its marketing project regarding the Shop and Stroll events in Old Town Tomball as provided in the Marketing Grant Proposal (the “Proposal”) that is attached to and incorporated in this Agreement as “Exhibit A” for all intents and purposes; and

WHEREAS, as consideration for the Funding, the Company has agreed to satisfy and comply with certain terms and conditions provided in this Agreement; and

NOW, THEREFORE, in consideration of mutual benefits and obligations set forth herein, including the recitals set forth above, the Parties agree as follows:

AGREEMENT

Section 1. Term.

This Agreement shall become enforceable upon the Effective Date and shall remain in effect for two (2) years, unless terminated or cancelled earlier (the “Term”). The Term may be extended through a written amendment to this Agreement executed by the Parties.

Section 2. Company Obligations.

A. Continued Operation. The Company hereby covenants and agrees that it will continue to operate and maintain its business in the City throughout the Term.

B. Jobs Creation. By the end of the Term, the Company shall provide evidence to the Board that the Project is directly responsible for the creation or retention of ten (10) full-time jobs in the City (the “Jobs”). A Job shall be any position that requires at least thirty (30) hours of work to be performed in one (1) calendar week.

C. Capital Investment. In addition to the Jobs to be created under this Agreement, the Company shall provide evidence to the Board that, by the end of the Term, the Company has made a capital investment of an amount equal to or greater than the amount of reimbursement provided to the Company through the Funding. The Capital Investment may include, but is not limited to, any cost provided in the Proposal.

D. Reporting. Throughout the Term, within sixty (60) days following the anniversary date of the Effective Date of this Agreement, the Company will provide a report to the TEDC showing that it is in compliance with this Agreement and that gives an update on the progress of the Training (the “Annual Report”). The Annual Report shall include an update on the Company’s progress on satisfying the Job Creation and Capital Investment requirements of this Agreement, if applicable. Upon the written request of the TEDC or the City, the Company will promptly provide any additional information related to this Agreement.

Section 3. TEDC Obligations.

A. Project Payment. In consideration of the Company’s representations, promises, and covenants provided in this Agreement, the TEDC hereby agrees to grant to the Company an amount not to exceed forty thousand five hundred thirty-five dollars (\$40,535) (the “Funding”) so the Company may be reimbursed for its costs to initiate and operate its marketing project regarding the Shop and Stroll events in Old Town Tomball as provided in the Marketing Grant Proposal (the “Proposal”) that is attached to and incorporated in this Agreement as “Exhibit A” for all intents and purposes. The TEDC may provide the Funding in a lump sum or in installments, depending on manner in which the Company presents its reimbursable costs to the TEDC.

B. Additional Incentive Payment. To the extent allowed by law, the Board may amend this Agreement to allow for additional provisions of land, buildings, equipment, facilities, expenditures, targeted infrastructure, or improvements to the Company that would promote new or expanded business development.

C. Contingency. The Parties understand and acknowledge that the funding of this Agreement is contained in the TEDC’s annual budget and is subject to the approval of the Board in each fiscal year. The Parties further agree that should the Board fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the Board fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the TEDC and the TEDC shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by the TEDC to discharge its obligations under this Agreement are expended, the Company’s sole and exclusive remedy shall be to terminate this Agreement.

Section 4. Termination.

A. This Agreement shall terminate upon the expiration of the Term, unless terminated earlier as the result of a default by the Company under one of the following provisions:

1. General Default. Either Party may terminate this Agreement during the Term as provided in this paragraph if the other Party is in default by failing to comply with the obligations of this Agreement. The Party alleging the default will give the other Party notice of the default in writing. If the Party in default fails to cure the default within sixty (60) days of the date of the notice, then the Party giving the notice may terminate this Agreement by written notice to the other Party, specifying the date of termination. However, neither Party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the Parties (the “force majeure”) during the Term, but only for so long as the event of force majeure reasonable prevents performance.

2. Funding Agreement Default. In the event Company enters into any type of funding agreement with the City and such funding agreement terminates because of default of the Company, then this Agreement shall terminate.

3. *Undocumented Worker Employment Default.* According to Chapter 2264 of the Texas Government Code (the “Code”), the Company will not knowingly employ an individual who, at the time of employment: (i) is an undocumented workers as that term is defined in the Code; and, (ii) is not lawfully admitted for permanent residence to the United States or, is not authorized under the law to be employed in that manner in the United States. Additionally, if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), then the conviction is a breach of this Agreement and the TEDC will send the Company written notice that the Company has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

B. It is understood and agreed by the Parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company’s sole and exclusive remedy shall be limited to either the termination of this Agreement, or a suit for specific performance.

Section 5. Reimbursement For Default.

If this Agreement terminates because of the Company’s default, then the Company shall refund the TEDC for all expenses that the TEDC has made to the Company related to this Agreement, excluding any previous reimbursement payments made by the Company under this Agreement (the “Refund”). The Refund shall be in accordance with the following provisions:

1. The Refund shall be made for all direct expenses paid by the TEDC to the Company along with interest at the rate equal to the 90-day Treasury Bill plus one-half percent ($\frac{1}{2}$ %) per annum, within one hundred twenty (120) days after the TEDC notifies the Company of the default;
2. The Refund shall include any and all reasonable attorney’s fees and costs incurred by the TEDC as a result of any action required to enter into this Agreement and to obtain the Refund; and,
3. The Refund obligation survives termination of this Agreement.

Section 6. Miscellaneous.

A. *Liability.* To the extent permitted by law, no director, officer, employee, or agent of the TEDC, and no officer, employee, or agent of the City, shall be personally responsible for any liability arising under or related to this Agreement.

B. *Assignability.* This Agreement may not be assigned by the Company to any other person or entity unless the TEDC consents in writing to such assignment.

C. *Jurisdiction and Venue.* This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

D. *Amendment.* Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only in writing, and by the signatures and mutual consent of the Parties.

E. *No Waiver.* The failure of either Party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance. However, the TEDC hereby reserves and retains any and governmental immunities that it might now have or possess in the future.

F. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by: (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, registered or certified mail, return receipt requested; (ii) by delivering the same in person to such Party; (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or, (iv) by facsimile or other electronic transmission; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the Parties for the purpose of notice under this Agreement shall be as follows:

To the TEDC:
Tomball Economic Development Corporation
Attn: President, Board of Directors
401 West Market Street
Tomball, Texas 77375

To the Company:
Sip Hip Hooray, LLC
Attn: Ms. Meagan Morris, Owner
201 West Main Street
Tomball, Texas 77375

G. Severability. In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity, or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

SIGNATURES

THIS AGREEMENT is hereby executed by the Parties on this _____ day of _____ 2022.

FOR: THE TEDC

FOR: THE COMPANY

By: _____

By: _____

Name: Gretchen Fagan

Name: _____

Title: President, Board of Directors

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: Secretary, Board of Directors

Title: _____

ACKNOWLEDGMENT – FOR THE COMPANY

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Namefor and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

ACKNOWLEDGMENT – FOR THE TEDC

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A – MARKETING GRANT PROPOSAL WITH PROJECT DESCRIPTION

2022 Fiscal Year Events

Summer Party - June 18th (Saturday)
Back To School - August 25th (Thursday)
Total request for 2022 | \$9,010

2023 Fiscal Year Events

Halloween - October 29th (Saturday)
Christmas - December 3rd (Saturday)
Galentines - February 9th (Thursday)
St. Patricks Day - March 11th (Saturday)
Mothers Day - May 11th (Thursday)
Summer Party - June 17th (Saturday)
Back to School - August 24th (Thursday)
Total request for 2023 | \$31,535