



## Economic Development Corporation (Type A) Agenda

Monday, October 02, 2023  
4:30 PM

City Hall - 141 W. Renfro  
Burleson, TX 76028

### 1. **CALL TO ORDER**

### 2. **CITIZEN APPEARANCES**

Each person in attendance who desires to speak to the Board on an item NOT posted on the agenda, shall speak during this section. A speaker card must be filled out and turned in to the City Secretary prior to addressing the Board. Each speaker will be allowed three minutes to speak.

Each person in attendance who desires to speak on an item posted on the agenda shall speak when the item is called forward for consideration.

### 3. **GENERAL**

- A.** Consider approval of the minutes from the September 5, 2023 Economic Development Corporation (Type A) meeting. (*Staff Contact: Amanda Campos, City Secretary*)
- B.** Consider approval of a five-year farm lease with Jody Land for the property for approximately 46 acres located at 2140 & 2250 SW Hulen St., Burleson, Texas. (*Staff Presenter: Matt Ribitzki, Senior Deputy City Attorney*)
- C.** Consider approval of a resolution authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389. (*Staff Presenter: Alex Philips, Economic Development Director*)
- D.** Consider approval of a Performance Agreement between the Burleson 4A Economic Development Corporation and C&C Burleson, LLC. for a development located at 425 SW Wilshire Blvd in Burleson, Texas. (*Staff Presenter: Alex Philips, Economic Development Director*)
- E.** Consider approval of a one-year services contract with the Burleson Area Chamber of Commerce in the amount of \$50,000. (*Staff Presenter: Alex Philips, Economic Development Director*)

### 4. **BOARD REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS**

### 5. **RECESS INTO EXECUTIVE SESSION**

In accordance with Chapter 551 of the Texas Government Code, the Board may convene in Executive Session in the City Council Workroom in City Hall to conduct a closed meeting to discuss any item listed on this Agenda.

**A. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code**

**6. ADJOURN**

**CERTIFICATE**

I hereby certify that the above agenda was posted on this the 27th of September 2023, by 5:30 p.m., on the official bulletin board at the Burleson City Hall, 141 W. Renfro, Burleson, Texas.



Amanda Campos

City Secretary

**ACCESSIBILITY STATEMENT**

The Burleson City Hall is wheelchair accessible. The entry ramp is located in the front of the building, accessible from Warren St. Accessible parking spaces are also available in the Warren St. parking lot. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-426-9600, or TDD 1-800-735-2989.

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## Economic Development Corporation (Type A)

**DEPARTMENT:** City Secretary's Office  
**FROM:** Amanda Campos, City Secretary  
**MEETING:** October 2, 2023

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**SUBJECT:**

Consider approval of the minutes from the September 5, 2023 Economic Development Corporation (Type A) meeting. (*Staff Contact: Amanda Campos, City Secretary*)

**SUMMARY:**

The Burleson 4A Economic Development Corporation Board duly and legally met on September 5, 2023.

**OPTIONS:**

- 1) Board may approve the minutes as presented or approve with amendments.

**RECOMMENDATION:**

Approve.

**PRIOR ACTION/INPUT (Council, Boards, Citizens):**

N/A.

**FISCAL IMPACT:**

N/A.

**STAFF CONTACT:**

Name: Amanda Campos, TRMC  
Title: City Secretary  
Email: [acampos@burlesontx.com](mailto:acampos@burlesontx.com)  
Phone: 817-426-9665

**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION**  
**September 5, 2023**  
**DRAFT MINUTES**

**BOARD MEMBERS PRESENT:**

Phil Anderson, Place 2  
Ronnie Johnson, Place 4  
Larry Scott, Place 1  
Dan McClendon, President, Place 3  
Adam Russell, Place 5

**BOARD MEMBERS ABSENT:**

**Staff present:**

Tommy Ludwig, City Manager  
Amanda Campos, City Secretary  
Monica Solko, Deputy City Secretary  
Matt Ribitzki, Deputy City Attorney

**1. CALL TO ORDER - 3:45 P.M.**

President Dan McClendon called the meeting to order. **Time: 3:47 P.M.**

**2. CITIZEN APPEARANCE**

- No speakers.

**3. GENERAL**

**A. Minutes from the August 15, 2023 Economic Development Corporation (Type A) meeting. (Staff Contact: Amanda Campos, City Secretary)**

Motion by Adam Russell and seconded by Phil Anderson to approve.

Motion passed 5-0.

**B. Consider approval of six speaking contracts for the 2024 Project U Leadership Conference in the total amount of \$93,000. (Staff Contact: Alex Philips, Economic Development Director)**

Alex Philips, Economic Development Director, presented Project U Leadership Conference contracts to the 4A Economic Development Corporation.

Motion by Ronnie Johnson and seconded by Larry Scott to approve as presented.

Motion passed 5-0.



#### 4. ADJOURN

There being no further discussion President Dan McClendon adjourned the meeting.  
**Time: 3:52 P.M.**

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Monica Solko  
Deputy City Secretary

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## Economic Development Corporation (Type A)

**DEPARTMENT:** Legal

**FROM:** Matt, Ribitzki, Deputy City Attorney

**MEETING:** October 2, 2023

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**SUBJECT:**

Consider approval of a five-year farm lease with Jody Land for the property for approximately 46 acres located at 2140 & 2250 SW Hulen St., Burleson, Texas. (*Staff Presenter: Matt Ribitzki, Senior Deputy City Attorney*)

**SUMMARY:**

Mr. Land approached the city in July inquiring about the property that the city had recently purchased. At the time, city staff was determining maintenance options for the property. During this discussion, city staff contacted the individual who had a prior lease that terminated when the real estate contract was executed, inquiring about leasing the land again. He expressed no interest in engaging in another lease. Given this information, staff negotiated an agreement with Mr. Land for the property outlined in Exhibit A of the contract.

Mr. Land will be expected to maintain the property in good working order. He has expressed interest in planting a seasonal crop on the property. The lease term is five years and can be terminated with 180 days' written notice. Per the terms of the lease agreement, Mr. Land will pay the city one hundred dollars annually in rent. City staff believes the lease primarily benefits the city by reducing the mowing and maintenance costs associated with the property.

**OPTIONS:**

- 1) Example: Approve as presented
- 2) Example: Approve with changes
- 3) Example: Deny

**RECOMMENDATION:**

N/A

**PRIOR ACTION/INPUT (Council, Boards, Citizens):**

N/A

**FISCAL IMPACT:**

N/A

**STAFF CONTACT:**

Name: Matt Ribitzki  
Title: Senior Deputy City Attorney  
[mribitzki@burlesontx.com](mailto:mribitzki@burlesontx.com)  
817-426-9664



# Farm Lease

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October 2, 2023

# Summary of Lease

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- In the proposed farm lease the city would lease approximately 46 acres to Mr. Jody Land. The 46 acres is near the intersection of Alsbury Blvd and Hulen St, and outlined below:



# Summary of Lease Continued

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- The annual rent due to the city under the lease is one hundred dollars.
- City staff believes the lease benefits the city by reducing the mowing and maintenance costs associated with the property.
- The term of the lease is five years, but either party may cancel the lease at any time with 180 days' notice.
- Mr. Land will use the property for planting, raising, and harvesting seasonal crops that are consistent with farming operations in Johnson County, Texas.
- Mr. Land may apply annual herbicide to the property to improve soil conditions, but must comply with all federal, state and local laws/ordinances.

# Staff Recommendation

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- Approve a farm lease with Mr. Jody Land for the approximate 46-acre property located near the intersection of Alsbury Blvd and Hulen St.

## FARM LEASE

THE STATE OF TEXAS       §  
COUNTY OF JOHNSON       §

THIS FARM LEASE (the "Lease") is made and entered into by and between the City of Burleson, Texas, a home rule municipal corporation located in Johnson and Tarrant County, and Burleson 4A Economic Development Corporation, a Texas economic development corporation, together hereinafter referred to as "Lessor", and Jody Land, an individual, hereinafter referred to as "Lessee." In consideration of the rent and the covenants herein contained on the part of Lessee to be kept and performed, the Lessor does hereby lease, demise and let unto the Lessee, and the Lessee hires and rents the SURFACE ONLY, excluding the minerals, of approximately 46 acres, more or less, situated in Johnson County, Texas, as depicted in "A" (the "Premises"), subject to the following terms and conditions:

### ARTICLE 1: TERM OF LEASE

The total term of this Lease shall be one day less than five (5) years, commencing on the 2nd day of October, 2023 (the "Commencement Date") and terminating on the 30th day of September, 2024 (the "Termination Date"), unless sooner terminated in accordance with this Lease. The five (5) separate lease periods that make up the total term of this Lease are as follows:

First Lease Period:	October 2, 2023, to September 30, 2024
Second Lease Period:	October 1, 2024, to September 30, 2025
Third Lease Period:	October 1, 2025, to September 30, 2026
Fourth Lease Period:	October 1, 2026, to September 30, 2027
Fifth Lease Period:	October 1, 2027, to September 30, 2028

### ARTICLE 2: RENT; PAYMENT OF RENT

Lessor agrees to lease the Premises to Lessee for and in consideration of Lessee's maintaining the property and Lessee's compliance with the provisions established in this Lease Agreement. In addition to the above consideration, Lessee agrees to pay Lessor \$100.00 in rent for each lease period. Lessee shall pay Lessor rent within thirty (30) days of October 1st each year. All rental payments must be made payable to City of Burleson and be hand delivered or mailed to the City of Burleson, Attn: Finance, 141 W Renfro St, Burleson, Texas 76028.

### ARTICLE 3: TAXES

Lessee agrees to pay any taxes levied against the crops and personal property and fixtures of Lessee in and about the Premises and any ad valorem taxes assessed against the Premises. If any taxes of Lessee are levied against Lessor or Lessor's property and Lessor pays those taxes, Lessee, on demand, shall reimburse Lessor for all taxes actually paid on Lessee's behalf.

### ARTICLE 4: SUBORDINATION

This Lease and all rights of Lessee under it are and shall be subject to and subordinate to the rights of any debt holder now or hereafter having a security interest in the Premises or any other encumbrances Lessor desires to place on the property.

### ARTICLE 5: USE OF PREMISES



Lessee shall use the Premises solely for the purpose of planting, raising and harvesting crops, together with all other purposes and activities usually and customarily associated with a farming operation in Johnson County, Texas. Lessee agrees to not use the Premises for any purpose other than for planting, raising and harvesting crops or to alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of permanent or temporary improvement without Lessor's prior written consent. Lessee further agrees to not hunt or fish the Premises or allow anyone else to do so. Lessee hereby acknowledges and understands that Lessor may lease property adjoining the Premises for agricultural or other purposes and that Lessee shall only have farming rights to the Premises and shall not have any rights to farm or use such adjoining acreage.

Notwithstanding the above, Lessee may only plant wheat, Sudan, or Hybrid Grass. Other applications or crops outside of above must be approved by the City in writing on a case by case basis. Lessee shall keep the property mowed and cleaned up, and the land of bushes and trees in the open areas of the field. Lessee from time to time, at its discretion apply liquid or granular fertilizer and herbicide to improve the quality of the crop. Applications shall be consistent in variation to Super Nitro 28-0-0 for fertilizer and 2,4-D Amine 4 Herbicide. Other applications outside of the above must be approved by the City in writing prior to application. Lessee shall maintain communication with the adjacent landowner at 2410 SW Hulen Street, informing the homeowner tentative schedules for maintaining and improving the property.

#### ARTICLE 6: UTILITIES

Lessee shall pay or cause to be paid all charges for any water, electricity and any other utilities used on the Premises throughout the term of this Lease, including any costs of installation and connection fees.

#### ARTICLE 7: LESSEE'S COVENANTS

Lessee further covenants and agrees as follows:

- A. To pay and provide the Rent for this Lease, as it is set out herein; to use the Premises in a careful and proper manner for the use specifically described herein; to commit or permit no waste or damages to the Premises; to conduct or permit no business or act that is a nuisance or may be in violation of any federal, state, or local law or ordinance; only use the Premises in such a prudent manner so as to preserve and protect the land and soil; to surrender the Premises on expiration or termination of this Lease in at least as good of a condition as the Premises was in on the date prior to Lessee's occupation of the Premises; cultivate the Premises in a timely, thorough, and farmer-like manner, employing the best methods of farming customarily practiced on like crops in the area and keep, repair and maintain all existing fencing, if any, during the term of this Lease.
- B. Lessee assumes the risk of loss on all property and all improvements, including any crops, which are situated on the Premises. Lessee agrees to maintain at all times during this Lease, the insurance described herein below.
- C. Upon termination of this Lease, Lessee agrees that all improvements situated on the Premises, whether such improvements were situated on the Premises prior to this Lease or placed on the Premises during this Lease, shall become the property of Lessor, or, at the option of the Lessor, Lessee, at Lessee's sole expense, shall remove all improvements and debris and restore the surface of the Premises to its original condition provided that Lessee placed such improvements on the Premises during the term of this Lease.

- D. To permit Lessor to enter, inspect, and make such repairs to the Premises as Lessor may reasonably desire or show the Premises to prospective purchasers and tenants, at all reasonable times.
- E. Lessee agrees that it is solely responsible for making all alterations, additions, or improvements necessary to the Premises to cause the Premises and its intended use to be in compliance with any laws, rules, ordinances, development codes or regulations of any applicable governmental authority, entity, or body, including, without limitation, the Federal Government, the City of Burleson, the County of Johnson, and the State of Texas and the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner. The allocation of responsibility to Lessee for compliance with said laws, rules, ordinances, development codes or regulations is a material inducement for the parties to enter into this Lease. The costs incurred in causing the Premises and its intended use to be in compliance with said laws, rules, ordinances, development codes or regulations shall be solely borne by Lessee.
- F. Keep all gates on the Premises, if any, closed and locked, ingress to and egress from the Premises being at those places designated by Lessor and provide Lessor with all keys and/or combinations to each gate locking mechanism used by Lessee on the Premises.
- G. In the event this Lease is terminated early by Lessor, whether such termination is for cause or convenience, Lessee shall pay Lessor any and all rents and amounts, on a pro-rata basis, which were incurred and due prior to or as of the date this Lease is terminated. If Lessee has paid any portion of the annual rental amount in advance, Lessor shall return to Lessee, on a pro-rata basis, the proportion of rents that have been prepaid for any unused portion of a lease period.

#### ARTICLE 8: LESSOR'S COVENANTS

Lessor covenants and agrees to warrant and defend Lessee in the enjoyment and peaceful use and operation of the Premises during the term of this Lease, subject to the termination rights set forth herein.

#### ARTICLE 9: INDEMNIFICATION & INSURANCE

- A. **INDEMNIFICATION OF LESSOR: LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE PREMISES OR ANY NEARBY PREMISES USED BY LESSEE OR ANY PART THEREOF; OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT THEREON; OR IN ANY EQUIPMENT OR OTHER FACILITY THEREIN; OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF LESSEE, OR OF ANY OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT ON THE LAND OR ANY SURROUNDING PREMISES OR ANY FIRE OR OTHER CASUALTY THEREON, OR OCCASIONED BY THE FAILURE OF LESSEE TO MAINTAIN THE PREMISES IN SAFE CONDITION, OR ARISING FROM ANY OTHER CAUSE WHATSOEVER; AND LESSEE HEREBY WAIVES ON ITS BEHALF ALL CLAIMS AND DEMANDS AGAINST LESSOR FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF LESSEE OR OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, AND HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR ENTIRELY FREE AND HARMLESS FROM ALL LIABILITY FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF OTHER PERSONS, AND FROM ALL COSTS AND EXPENSES ARISING THEREFROM. THE TERMS OF THIS INDEMNITY PROVISION SHALL SURVIVE ANY TERMINATION OF THIS LEASE.**

- B. Insurance: In order to insure the fulfillment of the above referenced indemnity provision, Lessee hereby agrees to maintain, at all times during the Term of this Lease, at Lessee's sole cost, a comprehensive public liability insurance policy protecting Lessor against all claims or demands that may arise or be claimed on account of Lessee's use of the Premises, in an amount of at least \$1,000,000.00, per occurrence of accident and/or injury, for injuries to persons and damages to real and/or personal property. Said insurance shall be written by a company or companies acceptable to Lessor, authorized to engage in the business of general liability insurance in the state of Texas, and name Lessor as an additional insured. Furthermore, said insurance shall be primary as to any other existing, valid, and collectible insurance. Lessee shall deliver to Lessor annual certificates demonstrating that said insurance is paid up and copies of the insurance policies issued by the insurance companies. Lessee further agrees to maintain at all times during the Term of this Lease, at Lessee's cost, broad coverage fire and casualty insurance on its property and to provide Lessor with a copy of the policy and a certificate issued by the insurance company demonstrating that insurance is paid up. Lessee shall, within ten (10) calendar days from the execution of this Lease, obtain a certified statement by each insurance carrier containing a clause providing that the insurance carrier will give Lessor 30 days' written notice before any cancellation shall be effective. The insurance policies shall be provided by Lessee and shall be for a period of at least one year.

#### ARTICLE 10: DEFAULTS BY LESSEE

In addition to the remedies specifically set forth herein and those available at law or in equity, if Lessee fails to perform or breaches any term, condition or covenant set forth in this Lease, and this failure or breach continues for ten (10) calendar days after a written notice specifying the required performance has been given to Lessee, Lessee shall be in default and Lessor may:

1. enforce specific performance causing Lessee to strictly comply with and perform such term, condition or covenant; or
2. may, but not be obligated to do so, enter the Premises and perform Lessee's obligations for the account of and at the expense of Lessee. Bills for all amounts paid by Lessor and all losses, costs, and expenses incurred by Lessor in connection with such performance by Lessor pursuant to this clause, including without limitation, all amounts paid and costs and expenses incurred by Lessor for any property, material, labor or services provided, furnished, or rendered or caused to be provided, furnished or rendered by Lessor to Lessee may be sent by Lessor to Lessee monthly or immediately, at Lessor's option, and shall be due and payable by Lessee to Lessor as additional rent within five (5) calendar days after same is sent to Lessee by Lessor; or
3. terminate this Lease, without liability, by written notice to Lessee, in which event, the Lease hereby created shall terminate on the tenth (10th) day after such notice is given (the "Termination Date") and Lessee shall within such ten (10) day period vacate the Premises and surrender them to Lessor in the state required under this Lease, with Lessor having the right to reenter and repossess the Premises discharged of this Lease and to expel all occupants and to remove all property therefrom.

Upon the occurrence of any default, Lessor may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Lessee or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

#### ARTICLE 11: DEFAULTS BY LESSOR

Defaults by Lessor are failing, within thirty (30) calendar days after receiving written notice from Lessee, to comply with any term, condition or covenant set forth in this Lease. In the event that Lessor fails to cure its default within the said thirty (30) calendar days, Lessee may, as Lessee's sole remedy, terminate this Lease.

#### ARTICLE 12: VOLUNTARY TERMINATION

Lessor or Lessee may terminate this Lease, without cause or liability, upon giving one-hundred eighty (180) calendar days written notice to the other party. Upon the termination of this Lease, Lessee will surrender the Premises peaceably to the Lessor and pay Lessor all rental amounts and any other amounts that may be due hereunder as of the date of termination. In the event that Lessor exercises its right to terminate this Lease pursuant to this provision, Lessor shall be obligated to reimburse Lessee, on a pro-rata basis, the proportion of rents, if any, that have been prepaid for any unused portion of a lease period.

#### ARTICLE 13: INSOLVENCY, BANKRUPTCY, ETC., OF LESSEE

If Lessee is declared insolvent or adjudicated a bankrupt; if Lessee makes an assignment for the benefit of creditors; or if a receiver is appointed for Lessee, Lessor, without prejudice to its rights hereunder and at its option, may terminate this Lease and retake possession of the premises immediately and without notice to Lessee or any assignee, transferee, trustee, or any other person or persons, using force if necessary.

#### ARTICLE 14: LESSOR TO HAVE LIEN

Lessor will have a lien against all goods, equipment and other personal property of Lessee brought, stored, or kept on the Premises during the term of this Lease, in the aggregate amount of all rent, consideration, damages, and other sums that may at any time be owed by Lessee to Lessor under this Lease. In the event of any default by Lessee, Lessor may foreclose the lien in the same manner that a mortgage would be foreclosed.

#### ARTICLE 15: RIGHT TO SELL

It is understood and agreed that Lessor shall have the right to sell or assign its right, title and interest in the Premises, in whole or in part, at any time during the term of this Lease. If during the term of this Lease, the Premises are sold by Lessor to a third party, this Lease shall terminate. Not later than one hundred eighty (180) calendar days from the date in which Lessor gives Lessee notice that the Premises has been sold, Lessee shall vacate the Premises. Notwithstanding the above, Lessor may transfer its interest in the Premises between the two entities comprising the Lessor without triggering the termination specified in this Article.

#### ARTICLE 16: ELECTION BY LESSOR NOT EXCLUSIVE

The exercise by Lessor of any right or remedy to collect rent or enforce its rights under this Lease will not be a waiver or preclude the exercise of any other right or remedy afforded Lessor by this Lease or by statute or law. The failure of Lessor in one or more instances to insist on strict performance or observations of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this Lease on or reserved to Lessor shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. The receipt by Lessor of rent or any other payment or part of payment

required to be made by Lessee shall not act to waive any other additional consideration, rent or payment then due. Even with the knowledge of the breach of any covenant or condition of this Lease, receipt will not operate as or be deemed to be a waiver of this breach, and no waiver by Lessor of any of the provisions of this Lease, or any of Lessor's rights, remedies, privileges, or options under this Lease, will be deemed to have been made unless made by Lessor in writing.

#### ARTICLE 17: LIMITATIONS OF WARRANTIES

**LESSEE ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN, LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH LESSEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, AND THE TEXAS ARCHITECTURAL BARRIERS ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND SPECIFICALLY THAT LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PREMISES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND APPLICABLE STATE LAWS, AND REGULATIONS PROMULGATED THEREUNDER. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, LESSEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LESSOR. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LESSOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE USE AND OPERATION OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS". LESSEE ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE AMOUNT OF THE RENT OF THE PREMISES. THE TERMS OF THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OF THIS LEASE.**

#### ARTICLE 18: CONDEMNATION

If during the term of this Lease, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right or eminent domain, or are sold

to the condemning authority under threat of condemnation, this Lease will terminate, effective as of the date the condemning authority takes the premises. If only a part of the premises shall be so taken or sold, but the remainder of the premises is not capable of being used for the purposes set forth herein, Lessor may terminate this Lease, without liability, at any time within forty-five (45) calendar days following such taking or sale. Any and all payments made for or arising from any such taking or for damages to the premises resulting therefrom shall belong and be payable entirely to Lessor.

#### ARTICLE 19: MISCELLANEOUS PROVISIONS

- A. **Gender, Number and Headings.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Lease. The captions and paragraphs or letters appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.
- B. **Place of Performance.** This Lease shall be interpreted according to the laws of the State of Texas and shall be performed in Johnson County, Texas, and exclusive jurisdiction and venue shall lie in Johnson County, Texas.
- C. **Terms Inclusive.** As used herein, the terms "Lessor" and "Lessee" include the plural whenever the context requires or admits.
- D. **Severability.** If any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Lease will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Lease is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Lease and be deemed to be validated and enforceable.
- E. **Governmental Immunity.** Nothing in this Lease shall be deemed to waive, modify or amend any legal defense or damage caps available at law or in equity to Lessor nor to create any legal rights or claim on behalf of any third party. Lessor does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- F. **No Assignment or Lease by Lessee.** Lessee may not sell or assign any interest granted herein or lease the Premises or any portion of the same or any portion of any improvement erected on said premises at any time without the prior written authorization and approval of Lessor.
- G. **No Indemnification by Lessor.** Lessee acknowledges and agrees that Lessor, as a Texas Lessor and a political subdivision of the State of Texas, under the Constitution and the laws of the State of Texas, cannot enter into an agreement whereby it agrees to indemnify or hold harmless any other party, including but not limited to Lessee; therefore, all references of any kind, if any, to Lessor indemnifying, holding or saving harmless any other party, including but not limited to Lessee, for any reason whatsoever are hereby deemed void and deleted.
- H. **Notices.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery or in writing by certified mail, return receipt requested, addressed to the proper party, at the following address:

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

LESSEE: Jody Land, 1200 County Road 914A, Burleson, TX 76028

- I. Compliance with All Statutes and Regulations. Lessee, at its expense, shall ensure compliance with any and all State, Federal, City and Lessor (and any other such regulatory body as may exercise jurisdiction over Lessee and/or the Premises) laws, ordinances, regulations, or rules regarding the erection or installment of any improvements and all permitted activities upon the Premises.
- J. Day. Unless otherwise specifically set forth in this Lease, a reference to a "day" shall mean a calendar day and not a business day.
- K. Entire Agreement. This Lease and its addenda, if any, sets forth all the promises, agreements, conditions, and understandings between Lessor and Lessee relative to the Premises and supersedes any prior understandings or written or oral agreements between the parties with respect to the to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease will be binding on Lessor or Lessee unless in writing and signed by them and made a part of this Lease by direct reference.

EXECUTED to be effective this 2nd day of October, 2023.

LESSOR:

CITY OF BURLESON

By: \_\_\_\_\_  
 Printed Name: Tommy Ludwig  
 Title: City Manager

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

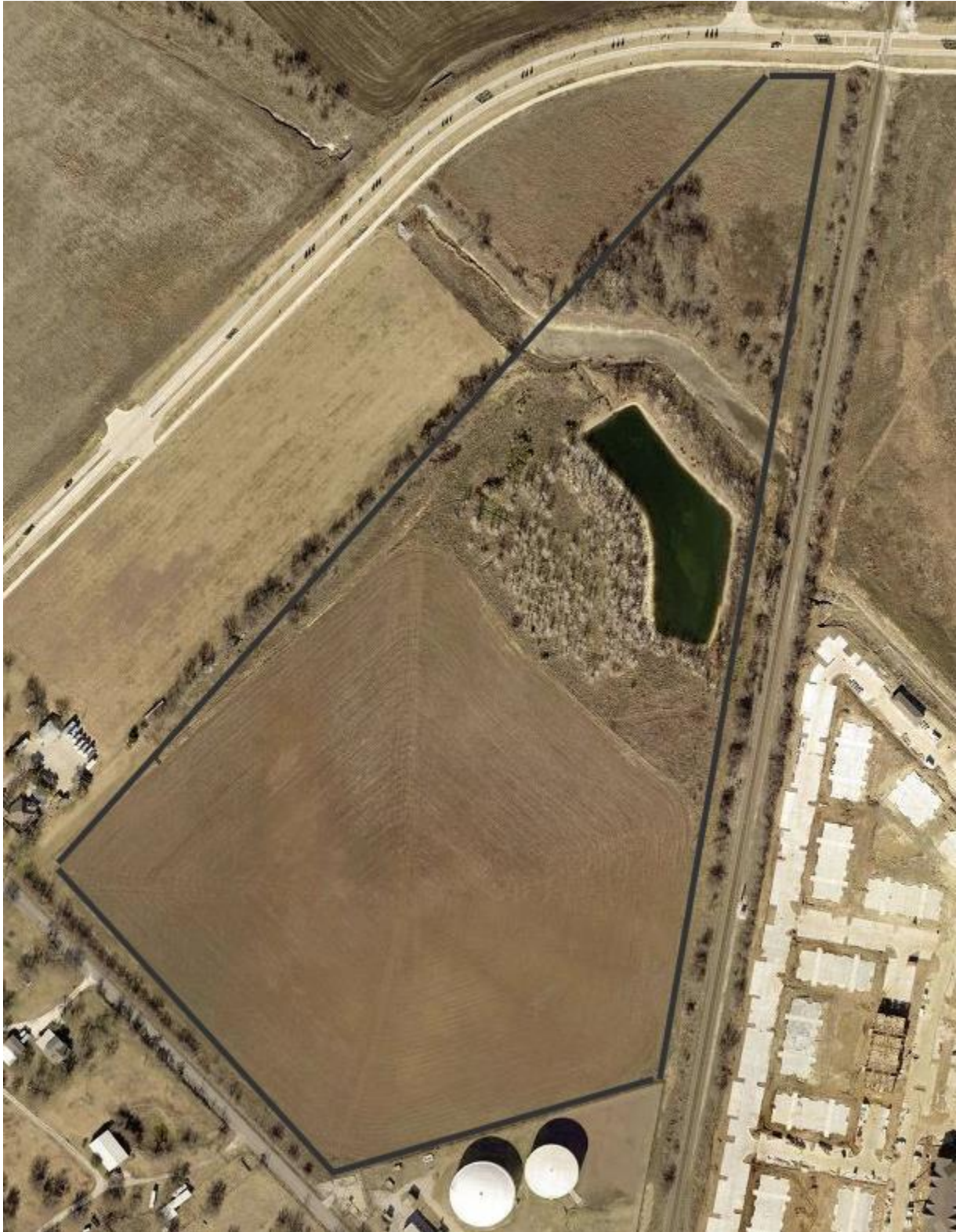
By: \_\_\_\_\_  
 Printed Name: Dan McClendon  
 Title: President

LESSEE:

By: \_\_\_\_\_  
 Printed Name: Jody Land



Exhibit "A"  
The Premises







Texas AgAdvantage  
FOR FARM AND RANCH OWNERS\*

Policy Declarations - Form TA  
Texas Farm Bureau Insurance Item B.

7420 Fish Pond Road • Waco, TX 76710-1010

Mailing Address: PO Box 2689 • Waco, TX 76702-2689

Your policy is hereby amended to read

FOR YOUR AUTO-FIRE-LIFE-HEALTH INSURANCE NEEDS  
CONTACT YOUR LOCAL AGENT AT 817-558-2848  
JOHNSON COUNTY FARM BUREAU, PO BOX 745, CLEBURNE TX 76033  
OR VISIT US AT WWW.TXFB-INS.COM FOR POLICYHOLDER INFORMATION

Named Insured/Mailing Address

RICHARD G LAND  
AND WIFE BRENDA LAND  
1200 COUNTY ROAD 914A  
BURLESON TX 76028-7724



POLICY NUMBER	DECL NUMBER
0032899	29
MEMBER NUMBER(S)	
BJ3T	
POLICY PERIOD DATES	
EFFECTIVE DATE:	09/18/2023
EXPIRATION DATE:	07/12/2024

AT 12:01 A.M. STANDARD TIME AT THE  
LOCATION OF DESCRIBED PROPERTY  
STATED BELOW IN THE COUNTY OF  
JOHNSON

<b>LOCATION OF DESCRIBED PROPERTY:</b> 0.1 acres @ 1200 COUNTY ROAD 914A, BURLESON, TX 76028-7724		<b>City Limit:</b> No	<b>PPC:</b> 5
<b>CONSTRUCTION:</b> Frame			
<b>ROOF YEAR:</b> 2004	<b>ROOF AGE:</b> 19	<b>ROOF CONSTRUCTION:</b> Metal	
<b>PREMIUM SUMMARY</b>			
BASIC PREMIUM (EXCLUDING ENDORSEMENT PREMIUM)			
SECTION IV PREMIUM (EXCLUDING ENDORSEMENT PREMIUM)			\$204
TOTAL DISCOUNTS			\$31-
<b>TOTAL POLICY PREMIUM</b>			<b>\$173</b>
<b>SECTION I DWELLING COVERAGES</b>		<b>LIMITS OF LIABILITY</b>	<b>PREMIUM</b>
<b>SECTION I PROPERTY</b>			
COVERAGE A. DWELLING		\$322,800	
OTHER STRUCTURES		\$65,880	
COVERAGE B. PERSONAL PROPERTY		\$193,680	
PERSONAL PROPERTY OFF PREMISES		\$19,368	
LOSS OF USE COVERAGE		\$32,280	INCLUDED
IDENTITY THEFT COVERAGE		\$5,000	NO CHARGE
DISCOUNTS INCLUDED Claims Free Companion Policy Metal Roof			
<b>DEDUCTIBLES (SECTION I ONLY)</b>		<b>AMOUNT OF DEDUCTIBLE</b>	<b>DEDUCTIBLE ADJUSTMENT PREMIUM</b>
Deductible Clause 1 Windstorm, Hurricane or Hail		\$16,140	
Deductible Clause 2 All Other Perils		\$16,140	
<b>SECTION I - ENDORSEMENTS</b>			
TAA-996, TAA-400, TAA-405, TAA-410, TAA-426, TAA-445, TAA-800B, TAA-904, TAA-925			

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SECTION II LIABILITY COVERAGES		LIMITS OF LIABILITY	PRE
GENERAL AGGREGATE LIMIT		\$2,000,000	Item B.
COVERAGE C. PERSONAL LIABILITY (EACH OCCURRENCE)		\$1,000,000	Included
COVERAGE C. 1 The acreage and location of the residence farm/ranch premises is: 0.1 acres @ 1200 COUNTY ROAD 914A, BURLESON, TX 76028-7724  The acreage and location of all other farm/ranch premises other than the residence farm/ranch owned by the <b>insured</b> , occupied by the <b>insured</b> , and/or rented by the <b>insured</b> to others are: 63 acres @ 1.0 mile(s), S, FM 1021, FM 914 A 24 acres @ 2410 Sw Hulen St, Burleson, TX 76028-8019 Nickname: burleson city of  Total Acreage <u>87.1</u>		With/Without Buildings With Without	
COVERAGE C.2. All farm/ranch premises with buildings other than residence farm/ranch premises owned by the <b>insured</b> , occupied by the <b>insured</b> , and/or rented by the <b>insured</b> to others: No. of premises <u>1</u>			
COVERAGE C.3. No <b>business</b> pursuits, other than <b>farming</b> , are conducted on the <b>insured</b> location. Exceptions, if any:			
COVERAGE D. MEDICAL PAYMENTS TO OTHERS (EACH PERSON)		\$5,000	
COVERAGE E. CHEMICAL DRIFT LIABILITY – AGGREGATE LIMIT		\$25,000	
COVERAGE F ANIMAL COLLISION Animal Collision (Market value not exceeding \$1500 each animal) Coverage is provided for the number of head denoted below: 10			
COVERAGE H. RECREATIONAL LAND USE LIABILITY Bodily Injury \$ 500,000 each person \$ 1,000,000 each occurrence Property Damage \$ 100,000 each occurrence  Total receipts _____			
SECTION II - ENDORSEMENTS			
TAA-400, TAA-530, TAA-531, TAA-534, TAA-536, TAA-537, TAA-539, TAA-602			

# CERTIFICATE OF INTERESTED PARTIES

## FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

### OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2023-1075449

Date Filed:  
09/25/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Jody Land  
Burleson, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Burleson

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

12345  
Farming land

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Land, Jody	Burleson, TX United States	X	
	Land, Brenda	Burleson, TX United States	X	

5 Check only if there is NO Interested Party. ☐

### 6 UNSWORN DECLARATION

My name is Jody Land, and my date of birth is [REDACTED].

My address is 1200 County Road 914A, Burleson, TX, 76028, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Johnson County, State of Texas, on the 25 day of September, 2023.  
(month) (year)

Jody Land  
Signature of authorized agent of contracting business entity  
(Declarant)

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## Economic Development Corporation (Type A)

**DEPARTMENT:** Economic Development

**FROM:** Alex Philips, Economic Development Director

**MEETING:** October 2, 2023

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**SUBJECT:**

Consider approval of a resolution authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389. *(Staff Presenter: Alex Philips, Economic Development Director)*

**SUMMARY:**

The Burleson 4A Economic Development Corporation has received Land Sale Contract for the purchase of approximately 7 acres in Highpoint Business Park owned by the EDC.

**Contract Obligations:**

- Fourco Development Partners, LLC. has submitted a LOI for \$2.50/ft (\$762,300) to build one building up to 100,000 square feet.
- Fourco Development Partners will deliver earnest money of \$10,000 once the contract has been executed.
- Option period is for 90 days. If Fourco needs an additional time we will grant another 30 days for due diligence at no additional cost.
- There is no brokerage fees associated with the sale of this property.
- The EDC will provide the survey for the Buyer.

**OPTIONS:**

- 1) Approve the resolution authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389.
- 2) Approve the resolution with changes authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389.
- 3) Deny the resolution authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389.

**RECOMMENDATION:**

Approve the resolution authorizing a land sale contract between the Burleson 4A Economic Development Corporation and Fourco Development Partners, LLC for approximately 7 acres located within Highpoint Business Park near the intersection of Vantage Drive and Cirrus Drive in the amount of \$763,389.

**PRIOR ACTION/INPUT (Council, Boards, Citizens):**

N/A

**FISCAL IMPACT:**

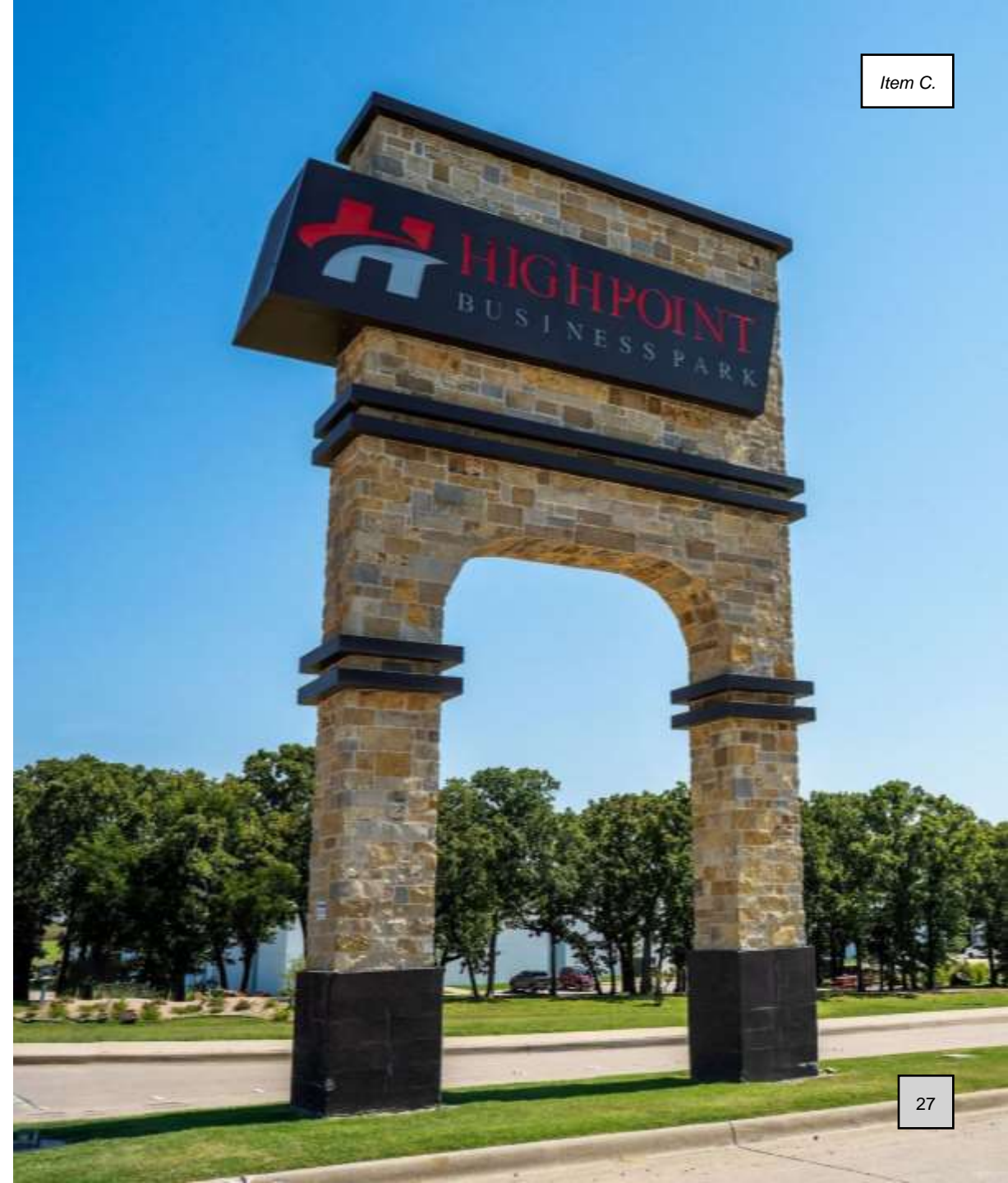
N/A

**STAFF CONTACT:**

Alex Philips  
Economic Development Director  
[aphilips@burlesontx.com](mailto:aphilips@burlesontx.com)  
817-426-9613

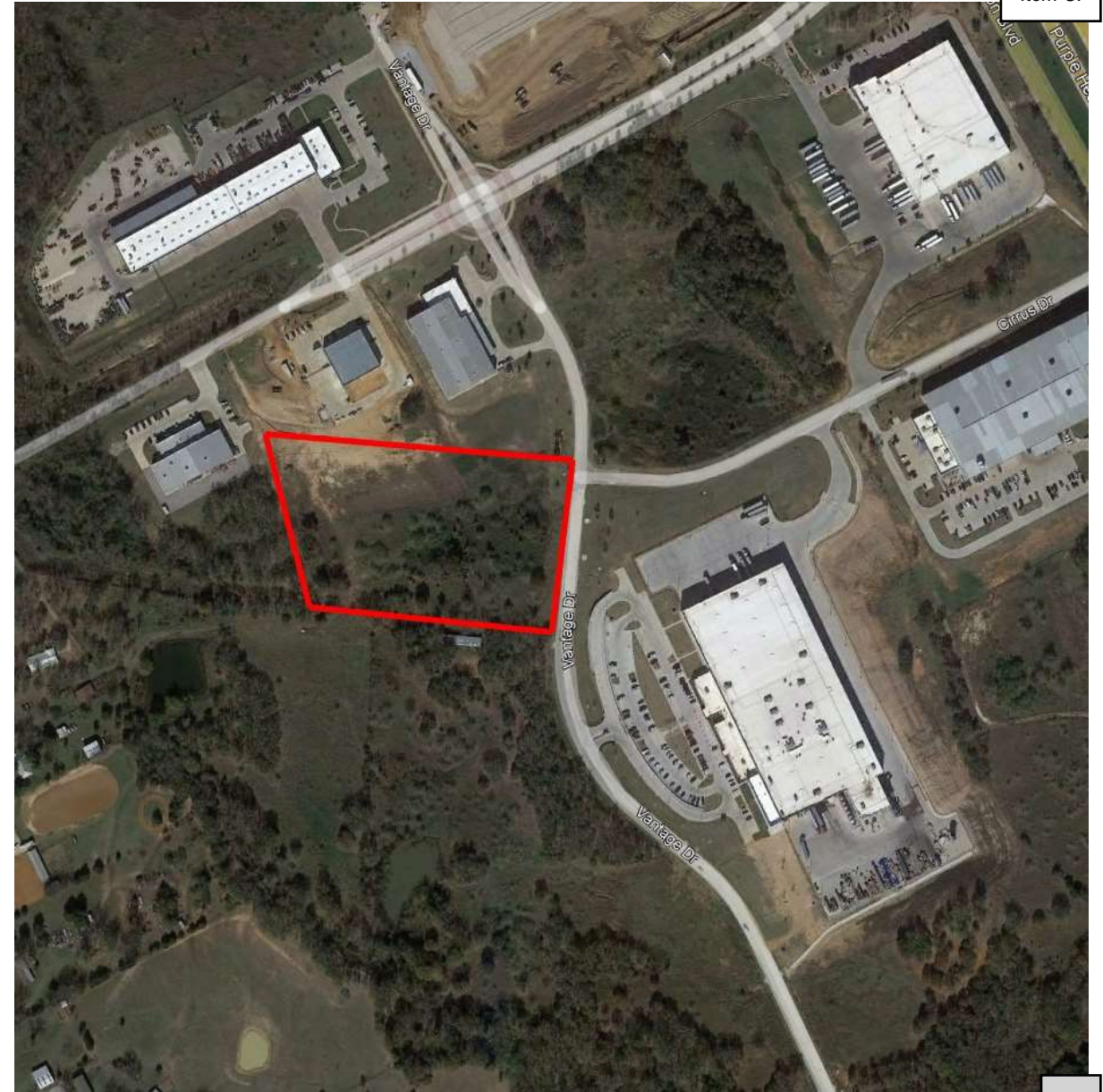


# HighPoint Business Park Land Sale



# Subject Property

- The Burleson 4A Economic Development Corporation has received Land Sale Contract for the purchase of approximately 7 acres in HPBP owned by the EDC.
  - Last piece in EDC Ownership
- Fourco Development Partners, LLC., has submitted a LOI for \$2.50/ft (\$762,300) to build one building up to 100,000 square feet.
  - This group has been in discussions with an existing business for their relocation and future home but there is no deal in place at this time.





# Contract Obligations

Item C.

- Fourco Development Partners will deliver earnest money of \$10,000 once the contract is executed.
- Option period is for 90 days. If Fourco needs an additional time we will grant another 30 days for due diligence at no additional cost.
- There is no brokerage fees associated with the sale.
- Fourco has developed a 156,000 square foot building in Highpoint East and sold to Brietling Distribution.
- Fourco also is working with an additional project in Highpoint East Business Park for a new cold storage and distribution center with a capital investment of \$25M





- **Approve the Land Sale Contract with Fourco Development Partners, LLC.**
- **Modify the Land Sale Contract with Fourco Development Partners, LLC.**
- **Deny the Land Sale Contract with Fourco Development Partners, LLC.**

## RESOLUTION

**A RESOLUTION OF THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE BOARD PRESIDENT TO EXECUTE A CONTRACT BETWEEN THE TYPE A CORPORATION, AS SELLER, AND FOURCO DEVELOPMENT PARTNERS, LLC, AS BUYER, TO ACQUIRE FEE SIMPLE TITLE TO A 5.79 ACRE TRACT OF LAND SITUATED IN JOHNSON COUNTY, TEXAS, COMMONLY KNOWN AS 2140 SW HULEN STREET, BURLESON, TEXAS (THE "PROPERTY") FOR THE SALES PRICE OF \$763,389, AND OTHER CONSIDERATION, AS PRESCRIBED IN THE REAL ESTATE CONTRACT ATTACHED IN EXHIBIT "A" (THE "CONTRACT"); AUTHORIZING THE BOARD PRESIDENT TO EXECUTE ALL DOCUMENTS NECESSARY TO CLOSE ON THE CONTRACT; AUTHORIZING THE EXPENDITURE OF FUNDS; REQUEST FOR BURLESON CITY COUNCIL RATIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Burleson 4A Economic Development Corporation, known as the "Type A Corporation", incorporated and certified in October 2000 under the authorization of the Development Corporation Act of 1979; and

**WHEREAS**, the City of Burleson, Texas ("City"), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, the Type A Corporation and Buyer desire to enter into the Real Estate Contract, attached hereto as Exhibit "A" and incorporated herein by reference for all purposes (the "Contract"); and

**WHEREAS**, the Type A Corporation desires that the Board President, Dan McClendon, execute the Contract on behalf of the Type A Corporation with the Buyer; and

**WHEREAS**, the Type A Corporation desires to close the real estate transaction described in the Contract; and

**WHEREAS**, the Type A Corporation desires the Board President, Dan McClendon, execute all documents necessary to close the real estate transaction described in the Contract; and

**WHEREAS**, the Type A Corporation desires to purchase the Property pursuant to the Contract; and

**WHEREAS**, the Type A Corporation desires the City approve this action;

**NOW, THEREFORE, BE IT RESOLVED BY THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS, THAT:**

### Section 1.

The Board President, Dan McClendon, is authorized: (a) to execute on behalf of the Type A Corporation (i) the Contract between the Type A Corporation and the Buyer, substantially in the form attached as Exhibit "A", with the purchase price of \$763,389.00 and other consideration, and (ii) any other documents necessary for closing the transaction contemplated by the Contract; and (b) to make expenditures in accordance with the terms of the Contract and in closing the transaction contemplated by the Contract.

### Section 2.

The foregoing recitals are adopted and incorporated herein for all purposes.

### Section 3.

The Type A Corporation hereby requests that the City Council of the City of Burleson ratify this resolution and actions of the Type A Corporation. Accordingly, this resolution shall take effect immediately after such ratification.

**PASSED, APPROVED, AND SO RESOLVED** by the Board of Directors of the Burleson 4A Economic Development Corporation on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Dan McClendon, Board President  
Burleson 4A Economic Development Corporation

ATTEST:

---

Amanda Campos, Secretary



**UNIMPROVED PROPERTY CONTRACT**  
NOTICE: Not For Use For Condominium Transactions

**1. PARTIES:** The parties to this contract are Burleson 4A Economic Development Corporation (Seller) and Fourco Development Partners, LLC (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:** Lot 1R1, Block 7,  
HighPoint Business Park of Burleson, Addition,  
City of Burleson, County of Johnson,  
Texas, known as 5500 Cirrus Road, Burleson, TX 76028  
(address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto (Property).

RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

**3. SALES PRICE:**

- A. Cash portion of Sales Price payable by Buyer at closing .....\$ 763,389  
The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.
- B. Sum of all financing described in the attached: ☐ Third Party Financing Addendum,  
☐ Loan Assumption Addendum, ☐ Seller Financing Addendum .....\$ 0
- C. Sales Price (Sum of A and B) .....\$ 763,389

**4. LEASES:**

- A. Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property.
- B. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party. Seller ☐ is ☒ is not a party to a Natural Resource Lease. If Seller is a party to a Natural Resource Lease, check one of the following:
- ☐ (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
- ☐ (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to Chicago Title, Kyle McCartan (Escrow Agent) at 2828 Routh Street, Ste 800, Dallas, TX 75201 (address): \$ 10,000 as earnest money and \$ 1,000 as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.

- (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
- (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
- (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 90 days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.

Initialed for identification by Buyer Am and Seller \_\_\_\_\_

TREC NO. 9-16



- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

## 6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at ☒ Seller's ☐ Buyer's expense an owner's policy of title insurance (Title Policy) issued by Chicago Title (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
- (1) Restrictive covenants common to the platted subdivision in which the Property is located.
  - (2) The standard printed exception for standby fees, taxes and assessments.
  - (3) Liens created as part of the financing described in Paragraph 3.
  - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
  - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
  - (6) The standard printed exception as to marital rights.
  - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
    - ☐ (i) will not be amended or deleted from the title policy; or
    - ☒ (ii) will be amended to read, "shortages in area" at the expense of ☐ Buyer ☒ Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
- ☒ (1) Within 30 days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at ☐ Seller's ☒ Buyer's expense no later than 3 days prior to Closing Date.
- ☐ (2) Within \_\_\_\_\_ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- ☐ (3) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (9) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:
- Buyer must object the earlier of (i) the Closing Date or (ii) \_\_\_\_\_ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate

Initialed for identification by Buyer [Signature] and Seller \_\_\_\_\_

TREC NO. 9-16



(Address of Property)

within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

**E. TITLE NOTICES:**

(1) **ABSTRACT OR TITLE POLICY:** Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) **MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S):** The Property ☐ is ☒ is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

**If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used.**

(3) **STATUTORY TAX DISTRICTS:** If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.

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TREC NO. 9-16



(Address of Property)

- (8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property ☐ is ☒ is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.
- (9) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (10) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (11) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (12) REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, MUD, WCID, PID notices): \_\_\_\_\_

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

**NOTICE:** Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

(Check one box only)

- ☒ (1) Buyer accepts the Property As Is.
- ☐ (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: \_\_\_\_\_

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

~~C. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs and treatments to Buyer at closing. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days, if necessary, for Seller to complete repairs and treatments.~~

D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

**E. SELLER'S DISCLOSURE:**

- ~~(1) Seller ☐ is ☐ is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.~~
- ~~(2) Seller ☐ is ☐ is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.~~
- ~~(3) Seller ☐ is ☐ is not aware of any environmental hazards that materially and adversely affect the Property.~~
- ~~(4) Seller ☐ is ☐ is not aware of any dumpsite, landfill, or underground tanks or containers now or previously located on the Property.~~
- ~~(5) Seller ☐ is ☐ is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.~~
- ~~(6) Seller ☐ is ☐ is not aware of any threatened or endangered species or their habitat affecting the Property.~~
- ~~(7) Seller ☐ is ☐ is not aware that the Property is located ☐ wholly ☐ partly in a floodplain.~~
- ~~(8) Seller ☐ is ☐ is not aware that a tree or trees located on the Property has oak wilt.~~

~~If Seller is aware of any of the items above, explain (attach additional sheets if necessary): \_\_\_\_\_~~

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TREC NO. 9-16



**8. BROKERS AND SALES AGENTS:**

A. **BROKER OR SALES AGENT DISCLOSURE:** Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_

B. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before January 12, 2024, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing: \_\_\_\_\_

- (1) Seller shall execute and deliver a ~~general~~ <sup>special</sup> warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the Escrow Agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents, transfer of any warranties, and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

**11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) Addendum to Unimproved Property Contract is attached hereto and incorporated herein by reference for all purposes.

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

- (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
- (b) Seller shall also pay an amount not to exceed \$ \_\_\_\_\_ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES:**

A. **PRORATIONS:** Taxes for the current year, interest, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

Initialed for identification by Buyer AM \_\_\_\_\_ and Seller \_\_\_\_\_

TREC NO. 9-16



(Address of Property)

B. **ROLLBACK TAXES:** If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

**16. MEDIATION:** ~~It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.~~

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or Escrow Agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. **ESCROW:** The Escrow Agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as Escrow Agent. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to Escrow Agent.

B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, Escrow Agent may: (i) require a written release of liability of the Escrow Agent from all parties before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.

C. **DEMAND:** Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the earnest money.

D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. **NOTICES:** Escrow Agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by Escrow Agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

Initialed for identification by Buyer Am and Seller \_\_\_\_\_

TREC NO. 9-16



Contract Concerning 5500 Cirrus Road, Burleson, TX 76028  
(Address of Property)

Page 7 of 10 11-07-2022

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

**To Buyer at:** 4936 Collinwood Ave

Fort Worth, TX 76107

Phone: ( 817 ) 703-4086

E-mail/Fax: andrew.mcdonald@fourco.com

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

**To Seller at:** 141 W Renfro St

Burleson, TX 76028, Attn City Manager

Phone: ( 817 ) 426-9613

E-mail/Fax: bphilips@burlesontx.com

E-mail/Fax: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ☐ Third Party Financing Addendum
- ☐ Seller Financing Addendum
- ☐ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ☐ Buyer's Temporary Residential Lease
- ☐ Seller's Temporary Residential Lease
- ☐ Addendum for Reservation of Oil, Gas and Other Minerals
- ☐ Addendum for "Back-Up" Contract
- ☐ Addendum Concerning Right to Terminate Due to Lender's Appraisal
- ☐ Addendum containing Notice of Obligation to Pay Improvement District Assessment

- ☐ Addendum for Coastal Area Property
- ☐ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ☐ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ☐ Addendum for Sale of Other Property by Buyer
- ☐ Addendum for Property in a Propane Gas System Service Area
- ☒ Other (list): Addendum to Unimproved Property Contract

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: ( )

Phone: ( )

Fax: ( )

Fax: ( )

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Initialed for identification by Buyer Amr and Seller \_\_\_\_\_

TREC NO. 9-16

Contract Concerning \_\_\_\_\_ 5500 Cirrus Road, Burleson, TX 76028 \_\_\_\_\_ Page 8 of 10 11-07-2021  
(Address of Property)

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

*Ar. Marshall*

Buyer

Seller

Buyer

Seller



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 9-16. This form replaces TREC NO. 9-15.

**BROKER INFORMATION**

(Print name(s) only. Do not sign)

~~Other Broker Firm~~~~License No.~~~~Listing Broker Firm~~~~License No.~~

represents

~~Buyer only as Buyer's agent~~

represents

~~Seller and Buyer as an intermediary~~~~Seller as Listing Broker's subagent~~~~Seller only as Seller's agent~~~~Associate's Name~~~~License No.~~~~Listing Associate's Name~~~~License No.~~~~Team Name~~~~Team Name~~~~Associate's Email Address~~~~Phone~~~~Listing Associate's Email Address~~~~Phone~~~~Licensed Supervisor of Associate~~~~License No.~~~~Licensed Supervisor of Listing Associate~~~~License No.~~~~Other Broker's Address~~~~Phone~~~~Listing Broker's Office Address~~~~Phone~~~~City~~~~State~~~~Zip~~~~City~~~~State~~~~Zip~~~~Selling Associate's Name~~~~License No.~~~~Team Name~~~~Selling Associate's Email Address~~~~Phone~~~~Licensed Supervisor of Selling Associate~~~~License No.~~~~Selling Associate's Office Address~~~~City~~~~State~~~~Zip~~

~~Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee ( ). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.~~



**OPTION FEE RECEIPT**

Receipt of \$ \_\_\_\_\_ (Option Fee) in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

### **Addendum to Unimproved Property Contract**

This Addendum to Unimproved Property Contract ("Addendum" and "Contract" respectively) for the sale of real property commonly known as 5500 Cirrus Road in Burleson, Johnson County, Texas, and more particularly described in the Contract, is by and between the Seller, the Burleson 4A Economic Development Corporation, a Texas economic development corporation ("Seller"), and Fourco Development Partners, LLC ("Buyer" whether one or more ), and is effective after signed by the parties subject to approval by the Board of the Seller and the City Council of the City of Burleson.

In consideration of the promises and mutual covenants contained in the Contract, the parties further agree in this Addendum as follows:

1. The Property described in Paragraph 2 of the Contract is more particularly described as follows:

LOT 1R1, BLOCK 7, HIGHPOINT BUSINESS PARK OF BURLESON, AN ADDITION IN THE CITY OF BURLESON, JOHNSON COUNTY, TEXAS, ACCORDING TO THE REPLAT THEREOF RECORDED AT VOLUME 10, PAGE 734, DRAWER F, PLAT RECORDS, JOHNSON COUNTY REAL PROPERTY RECORDS.

2. Subject and in accordance with the terms and conditions set forth in this Contract, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract. Seller will convey the Property and Buyer agrees to accept the Property **"AS IS", "WHERE IS" and "WITH ALL FAULTS"**. Accordingly, the deed conveying the Property to Buyer at closing shall be substantially in the same form as the deed attached to this Addendum as Attachment 1, incorporated herein for all purposes, which accurately reflects the agreement of the parties.

EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS CONTRACT AND THE WARRANTY OF TITLE CONTAINED IN THE DEED, BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER BY SELLER OR ANY AGENT OR EMPLOYEE THEREOF REGARDING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ITS PHYSICAL CONDITION, ITS SUITABILITY FOR ANY PARTICULAR PURPOSE, ITS COMPLIANCE WITH LAWS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS, OR THE PRESENCE OR ABSENCE OF CHEMICALS, TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES THEREUPON, AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, EXCEPT FOR ANY LIMITED WARRANTIES CONTAINED HEREIN AND THE SPECIAL WARRANTY OF TITLE TO BE CONTAINED IN THE DEED TO BE DELIVERED AT THE CLOSING. BUYER SHALL ACCEPT THE PROPERTY IN ITS **"AS IS," "WHERE IS," "WITH ALL FAULTS"** CONDITION, AND SELLER HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXPRESS OR IMPLIED. AFTER CLOSING SELLER SHALL BE UNDER NO OBLIGATION WHATSOEVER TO UNDERTAKE ANY REPAIR, ALTERATION, REMEDIATION OR OTHER

WORK OF ANY KIND WITH RESPECT TO ANY PORTION OF THE PROPERTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CONTRACT OR ANY CLOSING DOCUMENTS, SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR OTHER INFORMATION DELIVERED BY SELLER TO BUYER IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY. BUYER ACKNOWLEDGES THAT IT IS A SOPHISTICATED REAL ESTATE INVESTOR WHO SHALL HAVE HAD, AS OF THE CLOSING DATE, OPEN ACCESS TO, AND SUFFICIENT TIME TO REVIEW, ALL INFORMATION, DOCUMENTS, AGREEMENTS, STUDIES AND TESTS RELATING TO THE PROPERTY THAT BUYER ELECTS TO CONDUCT, AND CONDUCT A COMPLETE AND THOROUGH INSPECTION, ANALYSIS AND EVALUATION OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL ISSUES, IF ANY, AND SHALL CONDUCT SUCH TESTS, PRIOR TO THE CLOSING DATE, AND RECEIVE AND REVIEW SUCH INFORMATION AS BUYER SHALL REQUIRE IN THE COURSE OF ITS INVESTIGATION. BUYER SHALL UNDERTAKE SUCH INVESTIGATION AS SHALL BE REQUIRED TO MAKE BUYER FULLY AWARE OF THE CONDITION OF THE PROPERTY, INCLUDING THE ENVIRONMENTAL CONDITION OF THE LAND, AS WELL AS ALL FACTS, CIRCUMSTANCES AND INFORMATION WHICH MAY AFFECT THE USE AND OPERATION OF THE PROPERTY, AND BUYER COVENANTS AND WARRANTS TO SELLER THAT BUYER SHALL RELY, EXCEPT TO THE EXTENT OF SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED HEREUNDER, OR IN ANY CLOSING DOCUMENTS, SOLELY ON BUYER'S OWN DUE DILIGENCE INVESTIGATION IN DETERMINING TO PURCHASE THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS CONTRACT WHETHER OR NOT INCORPORATED INTO THE DEED TO BE DELIVERED AT CLOSING.

3. Seller reserves and excepts from the conveyance of the Property all of Seller's right, title, and interest in and to all oil, gas, hydrocarbons, and other minerals, in and under and that may be produced from the Property. Accordingly, the deed conveying the Property to Buyer at closing shall be substantially in the same form as the deed attached to this Addendum as Attachment 1, incorporated herein for all purposes, which accurately reflects the agreement of the parties.

4. The redacted provisions in the Contract on page 4 (7.C., 7.E.), page 5 (9), page 6 (16), and page 9 (Broker Information) and all strikethroughs are intentional modifications to the Contract made by the parties.

5. Brokers and Commissions.

- a) Seller represents, warrants and covenants with Buyer that Seller has not dealt with any real estate agent or broker in connection with the transaction contemplated hereby. Seller shall indemnify Buyer against all claims, costs and liability arising from any broker or other person claiming any commission or similar compensation by, through or under Seller.
- b) Buyer represents, warrants and covenants with Seller that Buyer has not dealt with any real estate agent or broker in connection with the transaction contemplated hereby. Buyer shall indemnify Seller against all claims, costs and



liability arising from any broker or other person claiming any commission or similar compensation by, through or under Buyer.

The provisions of this Section shall survive the Closing or termination of the Contract.

6. Noting contained in the Contract shall be construed as a waiver of Seller's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to Seller by law, except to the extent expressly provided in the Contract.

7. This Contract is subject to the approval of the Board of Directors of the Seller and City Council of the City of Burleson, Texas. This Contract shall not be effective until such Contract is signed by the parties and approved by the Board of Directors of the Seller and the City Council of the City of Burleson, Texas.

8. Each party hereto acknowledges that it has had ample opportunity to review and comment on this Contract. This Contract shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either party.

9. In the event of a conflict between the Addendum and Contract, the terms of this Addendum shall control.

In witness whereof, the parties have executed this Addendum as the date the Addendum to Unimproved Property Contract was signed.

----- This space left intentionally blank. Signature pages follow. -----

**SELLER**

**Burleson 4A Economic Development Corporation**  
A Texas economic development corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Signed on the \_\_\_\_ day of \_\_\_\_\_, 2023.

**BUYER:**

**Fourco Development Partners, LLC**  
A Texas limited liability company



Signature



Printed Name



Title

Signed on the 7<sup>th</sup> day of September, 2023.

## Attachment 1

**Form of Special Warranty Deed**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS                   §  
   §       KNOW ALL MEN BY THESE PRESENTS:  
 COUNTY OF \_\_\_\_\_ §

That \_\_\_\_\_, a Texas economic development corporation, ("Grantor"), for and in consideration of the amount of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto \_\_\_\_\_, a Texas limited liability company ("Grantee"), whose mailing address is \_\_\_\_\_, all of the real property described on **EXHIBIT A** attached hereto, and all improvements located thereon (the "Property"), subject only to the matters described in **EXHIBIT B** attached hereto, to the extent the same are validly existing and applicable to the Property (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property unto Grantee, and Grantee's successors and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors and assigns to WARRANT and FOREVER DEFEND, all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject however to the Permitted Exceptions.

Grantor hereby reserves and retains for itself, its legal representatives, successors and assigns forever, all of the oil, gas and other minerals which are owned by Grantor in and to the Property, including all rights and benefits relating to any existing and future leases of oil, gas and minerals (collectively, the "Minerals"). Grantor waives and relinquishes any right to enter upon or otherwise utilize any portion of the surface of the Property for the exploration, drilling, production or marketing of the Minerals. Notwithstanding the foregoing, Grantor's reservation of Minerals shall include the right to produce the Minerals, but only by directional drilling from lands other than the Property or by horizontal drilling, pooling or other techniques (whether presently known or later developed) which do not require entry or use of the surface of the Property.

EXCEPT FOR THE WARRANTY OF TITLE IN THIS DEED AND THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THAT AGREEMENT OF PURCHASE AND SALE, BETWEEN GRANTOR, AS GRANTOR, AND GRANTEE, DATED EFFECTIVE \_\_\_\_\_, 2023 (THE "CONTRACT"), GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, EXPRESS OR IMPLIED, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE PROPERTY; INCLUDING BUT NOT LIMITED TO: (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (II) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT; (III) THE EXISTENCE OR NONEXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (IV) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY, INCLUDING WITHOUT LIMITATION, ZONING, ENVIRONMENTAL AND LAND USE LAWS AND REGULATIONS; (V) TAX CONSEQUENCES; (VI) OPERATING HISTORY OR PROJECTIONS; (VII) VALUATIONS; (VIII) THE TRUTH, ACCURACY OR COMPLETENESS OF THE ITEMS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF GRANTOR TO GRANTEE OR (IX) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER ENCUMBRANCE. GRANTEE ACKNOWLEDGES THAT IT WILL INSPECT THE PROPERTY AND GRANTEE WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED FOR OR ON BEHALF OF GRANTOR (INCLUDING WITHOUT LIMITATION ANY SURVEY AND ENVIRONMENTAL ASSESSMENT REPORT PREPARED BY A THIRD PARTY AND PROVIDED BY GRANTOR TO GRANTEE). GRANTEE FURTHER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (1) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; AND (2) DOES NOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SALE OF THE PROPERTY IS MADE ON AN "**AS IS,**" "**WHERE IS**" AND "**WITH ALL FAULTS**" BASIS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF GRANTOR, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, ELIGIBILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF.

Grantee, by its acceptance hereof, does hereby assume and agree to pay any and all ad valorem taxes and special assessments pertaining to the Property for calendar year 2024 and subsequent years, there having been a proration of ad valorem taxes for the

current calendar year between Grantor and Grantee. Any taxes or assessments (plus any penalties and interest thereon) becoming due on the date hereof or thereafter for any year prior to, after, or including the year of the Closing because of a change in land usage or ownership of the Property shall be paid by Grantee and Grantee indemnifies and saves Grantor harmless from and against all claims, liabilities, losses, costs, and expenses (including attorneys' fees) relating to such taxes and assessments.

When the context requires, singular nouns and pronouns include the plural.

*[signature page follows]*

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

**GRANTOR**

\_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2024, \_\_\_\_\_.

[seal]

\_\_\_\_\_  
Notary Public in and for the State of Texas

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## Economic Development Corporation (Type A)

**DEPARTMENT:** Economic Development  
**FROM:** Alex Philips, Economic Development Director  
**MEETING:** October 2, 2023

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**SUBJECT:**

Consider approval of a Performance Agreement between the Burleson 4A Economic Development Corporation and C&C Burleson, LLC. for a development located at 425 SW Wilshire Blvd in Burleson, Texas (*Staff Presenter: Alex Philips, Economic Development Director*)

**SUMMARY:**

Foremark Development, also known as C&C Burleson, LLC., is under contract on property generally located at 425 Wilshire Blvd and Summercrest Blvd. The property is currently the site of the vacant China King Buffet. Foremark desires to redevelop the entire 1.8 acre into a new retail building. The new building will be the home of four new-to-market businesses; Shipley Doughnuts, Black Rock Coffee, Brident Dental and a fourth tenant to be determined. In order for the site to be viable, considerable site improvements are needed. Foremark will be required to raze and clean the site including environmental cleanup, improve drainage through site, and reengineer access with a deceleration lane. Staff believes these site improvements will greatly decrease flooding, traffic impacts and clean up the aesthetics of the Wilshire corridor.

Foremark has requested \$300,000 in economic incentives to help accomplish the needed site improvements.

In order to receive the proposed incentives, Foremark will be required to adhere to the following conditions:

- Design and construct the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- Design and construct the Development in substantial conformance with the Concept Plan included in the agreement
- Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws
- Complete a zoning application and file with the City by December 31, 2023



- Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than April 30, 2024
- Substantially Complete construction of the Development no later than December 31, 2024
- Make a minimum Capital Investment of no less than Four Million Dollars (\$3,000,000.00) in the Property no later than December 31, 2024
- Recruit to the Development at least two (2) new-to-market retail, office, or restaurant tenants, with both tenants receiving a certificate of occupancy in the Development no later than December 31, 2025
- Foremark shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein

As performance measures are met, TRC would receive the following incentives:

- Upon Substantial Completion of the deceleration lane, the Incentive due to TRC shall be a reimbursement of Foremark's expenses related to Foremark's construction of the Site Improvements up to One Hundred Fifty Thousand Dollars (\$150,000.00)
- Upon receipt of a Certificate of Occupancy from two (2) new-to-market retail, office, or restaurant tenants in the Development, the Incentive due to TRC shall be a reimbursement of Foremark's expenses related to Foremark's construction of the Site Improvements up to One Hundred Fifty Thousand Dollars (\$150,000.00)

#### **OPTIONS:**

- 1) Approve as presented
- 2) Approve with changes
- 3) Deny

#### **RECOMMENDATION:**

Staff recommends approving a Performance Agreement between the Burleson 4A Economic Development Corporation and C&C Burleson, LLC. for a development located at 425 SW Wilshire Blvd in Burleson, Texas

#### **PRIOR ACTION/INPUT (Council, Boards, Citizens):**

N/A

#### **FISCAL IMPACT:**

#### **STAFF CONTACT:**

Alex Philips  
Economic Development Director  
[aphilips@burlesontx.com](mailto:aphilips@burlesontx.com)  
817-426-9613

# Project Bear Claw





# Foremark Development Company

Item D.

- Approximately 1.8 acre site
- The building has been vacant for several years
- Old Jose's or China King



- Developer will do the environmental and demolition of the site

# Proposed Development

Item D.

- Developer is proposing 2 new to market sales tax users and a dental office.

- Shipley Doughnuts
- Black Rock Coffee
- Brident Dental
- TBD

- This site improvement would include the following:

- Deceleration Lane
- Environmental Cleanup
- Drainage
- Aesthetics
- New to market users



# Proposed Development & Incentives

Item D.

- Shipley's Do-Nuts

- 20<sup>th</sup> DFW Location
- Been in business since 1936



- Black Rock Coffee

- 6<sup>th</sup> DFW Location
- Each team finds ways to serve in their communities as part of their store.



- Brident Dental

- Fourth Tenant TBD



## Incentive Proposal

- EDC to provide a cash grant of \$150,000 once the deceleration lane is accepted and complete.
- EDC to provide a cash grant of \$150,000 once two sales-tax producing tenants receives their Certificate of Occupancy.

# Foremark Development Company

Item D.

Project Name	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2043
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 20
CAPEX	\$ 6,000,000.00	\$ 6,180,000.00	\$ 6,365,400.00	\$ 6,556,362.00	\$ 6,753,052.86	\$ 6,955,644.45	\$ 7,164,313.78	\$ 7,379,243.19	\$ 7,600,620.49	\$ 7,828,639.10	\$ 10,521,036.32
Appraised Value (70% of CAPEX)	\$ 4,200,000.00	\$ 4,326,000.00	\$ 4,455,780.00	\$ 4,589,453.40	\$ 4,727,137.00	\$ 4,868,951.11	\$ 5,015,019.65	\$ 5,165,470.23	\$ 5,320,434.34	\$ 5,480,047.37	\$ 7,364,725.42
Revenue											
Cumulative	\$ 71,000.00	\$ 73,130.00	\$ 75,323.90	\$ 77,583.62	\$ 79,911.13	\$ 82,308.46	\$ 84,777.71	\$ 87,321.04	\$ 89,940.68	\$ 92,638.90	\$ 124,498.93
Property Tax	\$ 30,240.00	\$ 31,147.20	\$ 32,081.62	\$ 33,044.06	\$ 34,035.39	\$ 35,056.45	\$ 36,108.14	\$ 37,191.39	\$ 38,307.13	\$ 39,456.34	\$ 53,026.02
Expenses											
Sales Rebate											
Site Improvements	\$ (150,000.00)	\$ (150,000.00)									
Demo & Env.											
Annual	\$ (48,760.00)	\$ (45,722.80)	\$ 107,405.52	\$ 110,627.68	\$ 113,946.51	\$ 117,364.91	\$ 120,885.85	\$ 124,512.43	\$ 128,247.80	\$ 132,095.24	\$ 177,524.95
Cumulative		\$ (94,482.80)	\$ 12,922.72	\$ 123,550.40	\$ 237,496.91	\$ 354,861.82	\$ 475,747.67	\$ 600,260.10	\$ 728,507.90	\$ 860,603.14	\$ 2,420,356.71

- 10 YR Return – 287%
- 20 YR Return – 807%
- Estimated Total Tax per Year - \$100,000



# Questions?

Item D.

- Approve the Performance Agreement with C&C Burleson, LLC.
- Deny the Performance Agreement with C&C Burleson, LLC.



**PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC  
DEVELOPMENT CORPORATION AND – C&C BURLESON, LLC**

This Performance Agreement (the “Agreement”) is entered into as of September \_\_\_\_, 2023 (the “Effective Date”) by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City (“BEDC”), by and through its Board President, and C&C Burleson, LLC, a Texas limited liability company (“Developer”), by and through its manager.

**WITNESSETH:**

**WHEREAS**, the City of Burleson, a Texas home rule municipal corporation (“City”), located in the counties of Johnson and Tarrant, has established a regional economic center with unique architecture in the State Highway 174 corridor (“Wilshire Corridor”); and

**WHEREAS**, the City desires to encourage and incentivize high quality development comprised of office, retail, restaurants, and commercial along the Wilshire Corridor to, among other things, improve drainage, site access, and walkability; and

**WHEREAS**, Developer is the current owner of real property in the Wilshire Corridor commonly known as 425 SW Wilshire Blvd in Burleson, Johnson County, Texas, and being more particularly described in **Exhibit A** (the “Property”); and

**WHEREAS**, Developer seeks to develop mixed-use facilities on the Property and greatly improve the drainage on the Property, especially along Wilshire Blvd, substantially modify the vehicular access to the Property from Wilshire Blvd, and greatly improve the walkability to and through the Property; and

**WHEREAS**, the Property is not owned or leased by any member of the Burleson City Council, any member of the BEDC Board, or any member of the City Planning and Zoning Commission; and

**WHEREAS**, the BEDC Board finds and determines the Development will contribute to an increase in economic development in the City; and

**WHEREAS**, the BEDC Board finds and determines that the incentives contemplated in this Agreement constitute a “Project” as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103, in that the expenditures are for infrastructure improvements related to streets and roads, drainage, and site improvements necessary to promote new or expanded business development and enterprises; and



**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 agree as follows:

## **ARTICLE 1.** **AUTHORIZATION**

The Burleson City Council and the BEDC Board both find and determine that this Agreement is authorized by Chapters 501 and 504 of the Texas Local Government Code, and that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103.

## **ARTICLE 2.** **DEFINITIONS**

2.01 The terms "Agreement," "BEDC," "City," "Developer," "Effective Date," "Project," and "Property," shall have the meanings provided, above.

2.02 "Building Permit" means the permit issued by the City's building official reflecting that Developer may commence with construction of the Development in conformance with appropriate municipal codes.

2.03 "Capital Investment" means and shall include all hard and soft costs incurred relating to the Development, including actual construction costs including costs of all site preparation, environmental remediation costs, demolition costs, buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, architect fees, and engineering fees but shall not include financing costs for the Capital Investments, tenant finish out costs not reimbursed by the Developer to the tenants, insurance costs, marketing costs, the purchase price of the Property, offsite improvements, or costs reimbursed to Developer by the BEDC in the form of Incentives.

2.04 "Certificate of Occupancy" means the document issued by the City certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

2.05 "City Manager" means the city manager of the City.

2.06 "Concept Plan" means the plan depicted on **Exhibit B**.

2.07 "Deceleration Lane" means the turn lane from Wilshire Blvd that allows vehicular traffic to enter the Development as depicted on **Exhibit C**.

2.08 "Development" means the removal of the existing building on the Property and the construction of a new mixed-use building(s) on the Property of at least 8,014 square feet, of which a minimum of 3,600 square feet will be restaurant space, to contain restaurant

and retail locations and related site improvements, including the Site Improvements, to be constructed in general conformance with the Concept Plan.

2.09 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 90 days after the filing thereof.

2.10 “Incentives” mean the combined contributions, monetary or otherwise, of the BEDC towards completion of the Development, as required by this Agreement.

2.11 “Site Improvements” means the improvements and permanent enhancements which are set forth in item numbers 3 through 7 of **Exhibit D**, which are drainage improvements, access improvements, walkability improvements, environmental remediation, and other improvements to be constructed on the Property in general conformance with the Concept Plan.

2.12 “Substantially Complete” or “Substantial Completion” with regard to the Development means that all buildings in the Development are constructed as shell buildings in conformance with appropriate municipal codes and ready for tenant finish out. The shell buildings and Development shall be constructed to such an extent that upon tenant finish out, the area finished out shall be eligible to secure full utility service, be eligible for a Certificate of Occupancy, and permit occupancy. “Substantially Complete” or “Substantial Completion” with regard to the Deceleration Lane means the date upon which the City or Texas Department of Transportation issues a Letter of Substantial Acceptance to the Developer for completion of the construction of the Deceleration Lane.

### **ARTICLE 3.** **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate five years following the date of issuance of the first Certificate of Occupancy for the Development.

### **ARTICLE 4.** **IN GENERAL**

4.01 The Development. It is the parties’ intent to cooperate in the creation of a high-end mixed-use development comprised of desirable restaurants, retail, and commercial to enhance and compliment the Wilshire Corridor substantially in conformance with the Concept Plan set forth in **Exhibit B**. Developer will be responsible for constructing the Development, and in furtherance thereof the parties acknowledge and agree that Developer may accomplish this by hiring a general contractor to perform such

construction on its behalf, or by leasing a portion of the Property to a tenant pursuant to a ground lease, and such tenant shall then perform, or cause to be performed, such construction on that portion of the Property. The BEDC will provide the Incentives set forth in this Agreement provided Developer is in compliance with its duties and obligations set forth herein.

4.02 **BEDC Participation.** The BEDC's obligations under this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) for all obligations set forth herein, including all Incentives. The BEDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the BEDC obligations set forth in this Agreement.

4.03 **Exhibits.** The Exhibits to this Agreement, incorporated herein for all purposes, are as follows:

- Exhibit A – Property Description
- Exhibit B – Concept Plan
- Exhibit C – Deceleration Lane Depiction
- Exhibit D – List of Site Improvements

## **ARTICLE 5.** **COVENANTS OF DEVELOPER**

5.01 **Covenants Regarding Developer Development and Operations.** In consideration of BEDC agreeing to pay Developer the Incentives in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following, which are not obligations of Developer, but are duties that must be fulfilled in order to receive the Incentives, subject to Article 12 below:

A. Design and construct the Development and Deceleration Lane in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

B. Design and construct the Development and Deceleration Lane in substantial conformance with the Concept Plan.

C. Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

D. Intentionally Deleted.

E. Complete any required zoning application and file with the City by December 31, 2023.

F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development and Deceleration Lane no later than April 30, 2024; provided however, the obligation by Developer to commence construction shall be abated for any period of time for delays caused by applicable governmental authorities beyond the reasonable control of Developer.

G. Substantially Complete construction of the Development and Deceleration Lane no later than December 31, 2024; provided however, the obligation by Developer described herein shall be abated for any period of time for delays caused by applicable governmental authorities beyond the reasonable control of Developer.

H. Make a minimum Capital Investment of no less than Three Million Dollars (\$3,000,000.00) in the Property and Deceleration Lane no later than December 31, 2024.

I. Recruit to the Development at least two (2) new-to-market retail or restaurant tenants, with both tenants receiving a certificate of occupancy in the Development no later than December 31, 2025.

J. Developer shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

5.02 Verification of Capital Investment. On or before February 15, 2025, Developer shall provide written verification to the BEDC that the Capital Investment made by Developer meets or exceeds the requirements set forth in this Agreement. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the Capital Investment made by Developer for the Development meets or exceeds the requirements of this Agreement.

## **ARTICLE 6. COVENANTS AND INCENTIVES OF BEDC**

6.01 Incentives. Subject to Developer complying with its duties and obligations under this Agreement, the BEDC agrees to the Incentives set forth in this Section. The Incentives shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements in the Development not to exceed Three Hundred Thousand Dollars (\$300,000.00), payable to Developer in the incremental, scheduled amounts specified below upon completion of the following milestones:

A. Upon Substantial Completion of the Deceleration Lane, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Deceleration Lane up to One Hundred Fifty Thousand Dollars (\$150,000.00); and



B. Upon receipt of a Certificate of Occupancy from two (2) new-to-market retail or restaurant tenants in the Development, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements up to One Hundred Fifty Thousand Dollars (\$150,000.00).

6.02 Verification of Completion of Milestone. Following the completion of a milestone specified in Section 6.01, Developer shall provide written notice of such completion to the BEDC and provide proof of costs reasonably satisfactory to the BEDC. Developer agrees that BEDC shall not be required to make any Incentive payment under this Agreement until such time that Developer provides such written notice and proof of costs. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the costs made by Developer for the Development meets or exceeds the requirements of this Agreement. Additionally, the BEDC may request, and Developer hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the BEDC to verify that the improvements made by Developer for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the BEDC, BEDC shall pay Developer the Incentive amount specified in Section 6.01, subject to the terms and provisions of this Agreement, within 90 days.

## **ARTICLE 7.**

### **REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS**

The parties hereto find that the area described herein constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Developer voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Developer voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Developer's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the BEDC to authorize the



Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Developer and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

**ARTICLE 8.**  
**AUTHORITY; COMPLIANCE WITH LAW**

8.01 Developer hereby represents and warrants to the BEDC that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Developer and this Agreement constitutes the legal, valid and binding obligation of Developer, and is enforceable in accordance with its terms and provisions.

8.02 Notwithstanding any other provision of this Agreement, Developer shall comply with all federal, state, and local laws.

8.03 During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the amount of the Incentives received by Developer as of the date of such violation within 120 business days after the date Developer is notified by the City or the BEDC of such violation, plus interest at the rate the City of Burleson is paying on the most recent issuance of bonded indebtedness prior to Developer's violation of this Section. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

8.04 Developer agrees, verifies, and certifies that it does not and during the duration of this Agreement will not:

- A. boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;
- B. do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;
- C. boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2274, as amended; or
- D. discriminate against a firearm trade association as defined in Texas Government Code Chapter 2274, as amended.

8.05 By executing this Agreement, Developer 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.

## **ARTICLE 9.** **TERMINATION.**

9.01 Termination. This Agreement shall terminate at the expiration of the Term specified in Article 3 unless terminated earlier as follows:

- (a) By written agreement of the Parties;
- (b) On the date of termination set forth in a written notice provided by a Party to the other Party in the event the other Party is in default and breaches any of the terms and conditions, or fails to meet any performance conditions, of this Agreement and such default is not cured within ninety (90) days after the non-breaching Party sends notice to the breaching Party of such breach;
- (c) On the date of termination set forth in a written notice by BEDC to Developer if Developer experiences an Event of Bankruptcy;
- (d) On the date of termination set forth in a written notice by BEDC to Developer if Developer has delinquent ad valorem or sales taxes owed to the City (provided that Developer retains the right to timely and properly protest and/or contest any such taxes), and such delinquent ad valorem or sales taxes owed to the City are not paid within ninety (90) days after the BEDC sends notice to Developer;
- (e) On the date of termination set forth in a written notice by a Party to the other Party if either Party receives notice that any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; or

9.02 No Additional Incentives Following Termination. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01, then Developer shall not be entitled to any additional Incentive payments or other funds paid pursuant to this Agreement from BEDC and the BEDC shall have no further obligation to Developer.

9.03 False Representation or Falsification of Documentation. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01(b) because Developer made any false representation or provided any false documentation of investments, costs, or achievement of any milestone or requirement under this Agreement, then Developer shall within thirty (30) days of the date of termination return to the BEDC any funds received by Developer related to such false representation or report from the date of termination. The terms set forth in this Section shall survive termination.

9.04 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall BEDC be liable to Developer for consequential, incidental, punitive, special, or exemplary damages, including lost revenues, profits, delays, or other economic loss arising from any cause including breach of warranty, breach of contract, tort, strict liability or any other cause whatsoever. To the extent permitted by law, any statutory remedies that are inconsistent with this provision of the Agreement are waived. The terms set forth in this Section shall survive termination.

9.05 No Waiver. 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 authorized representatives of the parties and approved by the City Council.

## **ARTICLE 10.** **RIGHT OF OFFSET**

Developer agrees that, subject to the provision of notice by BEDC and 90-day period following receipt of notice in which Developer may respond or act, BEDC may offset the amount of any compensation due to Developer for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Developer, and (ii) not subject to challenge by Developer in a court of competent jurisdiction.

## **ARTICLE 11.** **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

## **ARTICLE 12.** **FORCE MAJEURE**

Performance of Developer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced

herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

### **ARTICLE 13.**

#### **GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE**

13.01 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 (i) a contribution or expenditure made and reported in accordance with law or (ii) payment of the Incentives.

13.02 Right of Reimbursement. Notwithstanding any other legal remedies, BEDC may obtain reimbursement for any expenditure made to Developer as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official or a BEDC employee or official.

### **ARTICLE 14.**

#### **ASSIGNMENT**

Developer may not assign any part of this Agreement without consent or approval by the BEDC Board of Directors and ratification by the City Council.

### **ARTICLE 15.**

#### **INDEMNIFICATION**

**15.01 DEVELOPER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, AND THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF DEVELOPER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF OR IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL DEVELOPER BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, OR THE CITY, ITS OFFICERS AND EMPLOYEES, THAT**

**CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Developer, BEDC, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

## **ARTICLE 16.** **MISCELLANEOUS MATTERS**

16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

16.02 Agreement Subject to Law. This Agreement is made subject to and in accordance with the Burleson Home Rule Charter and ordinances of the City, as amended, and all applicable State and federal laws.

16.03 Interpretation. Each of the parties have 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.

16.04 Counterparts Deemed Original; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.



16.07 No Waiver. 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.

16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mail, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Developer:** C&C Burleson, LLC  
The Gild North  
8350 N. Central Expressway, Suite 1313  
Dallas, Texas, 75206  
Attn : Chad DuBose

**BEDC:** Burleson 4A Economic Development Corp.  
Attn: Board President  
141 West Renfro  
Burleson, TX 76028

With a copy to: E. Allen Taylor, Jr., City Attorney  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, TX 76107

With a copy to: City Manager  
City of Burleson, Texas  
141 West Renfro  
Burleson, TX 76028

16.09 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be

substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

- 16.11 Approval by the City Council Required. The BEDC's action to enter into this Agreement is subject to the approval of the City Council of the City of Burleson, Texas. This Agreement shall not be effective until such Agreement is signed by the parties and the City Council of the City of Burleson, Texas ratifies and approves the BEDC's action to enter into this Agreement.

*[Signature pages to follow]*

**BURLESON 4A ECONOMIC DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_

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

Title: Board President

Date: September \_\_\_\_, 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

**C&C Burleson, LLC,  
A Texas limited liability company**

By: 

Name: Chad Dubose


Title: Manager

Date: September 26, 2023

STATE OF TEXAS  
COUNTY OF Texas

This instrument was acknowledged before me on September 26, 2023 by Chad Dubose, known personally by me to be the manager of C&C Burleson, LLC, on behalf of said entity.



  
Notary Public, State of Texas



**Exhibit A**

Property Description

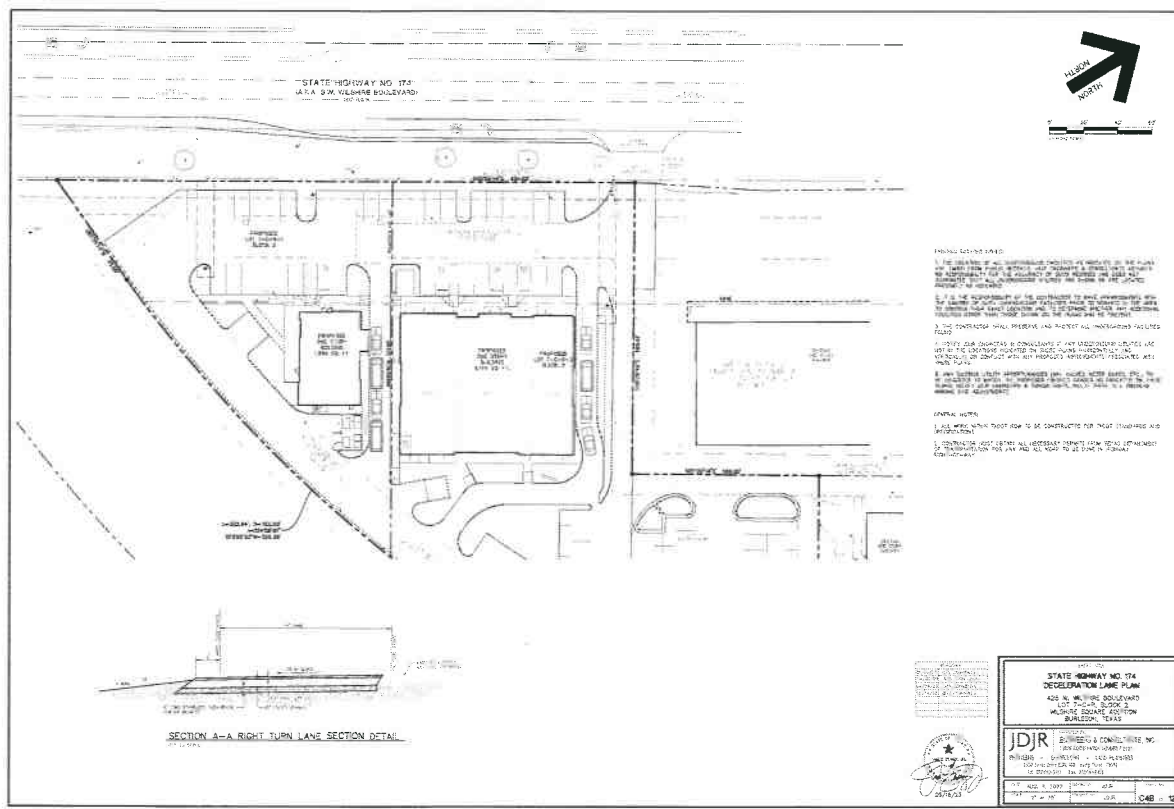
Lot 7-C-R, Block 2, of WILSHIRE SQUARE ADDITION, an Addition to the City of Burleson, Johnson County, Texas, according to the Map or Plat thereof recorded in Volume 7, Page 58, of the Plat Records of Johnson County, Texas.

## **Exhibit B**

## Concept Plan



### Deceleration Lane Depiction



## List of Site Improvements

78



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## Economic Development Corporation (Type A)

**DEPARTMENT:** Economic Development  
**FROM:** Alex Philips, Economic Development Director  
**MEETING:** October 2, 2023

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**SUBJECT:**

Consider approval of a one-year services contract with the Burleson Area Chamber of Commerce in the amount of \$50,000 (*Staff Presenter: Alex Philips, Economic Development Director*)

**SUMMARY:**

The City Council and the Burleson 4A Economic Development Corporation approved the contract on October 3, 2022.

The Burleson Area Chamber of Commerce (BACC) has a mission to be an advocate for their members and for business in Burleson. Part of their core activities include; quarterly luncheon meetings (including the State of the City and Economic Development Update), ribbon cuttings for new businesses, networking events, training and small business resources. The BACC desires to have a formal partnership with the City of Burleson and collaborate on shared objectives with Economic Development.

The BACC has proposed a services contract for formalize this partnership. The contract would primarily focus on two shared objectives; Business Retention and Tourism. The following outlines contract deliverables and fees:

Business Retention

- BACC will conduct one hundred (100) meetings annually local businesses to gather key business information. The EDC will collaborate to compile list of businesses and data to gather.
- BACC will produce four (4) quarterly reports with business retention findings within thirty (30) days of the end of each quarter.
- BACC will 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.

## Tourism

- BACC will 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 a new event titled 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.

The total fee for these services is proposed to be \$50,000.

- Business retention: \$20,000 (this amount is a 4A expense)
- Tourism: \$30,000 (or, \$10,000/event) (this amount is a HOT/MOT expense)
  - This fee will be in lieu of BACC's annual HOT/MOT grant awards

Should BACC not perform or breach the contract, they would not be eligible for any City funding for one year. Either party may terminate the contract with 30 days written notice.

## Fiscal Year 2023 Recap

The Burleson Area Chamber of Commerce did meet all of the obligations outlined in the agreement.

### Business Retention

- BACC conducted one hundred (100) meetings with local businesses to gather key business information.
- BACC produced four (4) quarterly reports with business retention findings within thirty (30) days of the end of each quarter.
- BACC did utilize catering services 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.

### Tourism

- BACC conducted 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 a new event mutually agreed upon with the EDC.
- BACC Golf Tournament was held at Hidden Creek Golf Course

[burlesontx.com](http://burlesontx.com) | 817.426.9611 | 141 W Renfro Street, Burleson, Texas 76028

**OPTIONS:**

- 1) Approve as presented
- 2) Deny

**RECOMMENDATION:**

Approve as presented

**PRIOR ACTION/INPUT (Council, Boards, Citizens):**

The City Council approved the contract last year at the October 3, 2022 meeting.

**FISCAL IMPACT:**

Budgeted: Y

Fund Name: Business Retention / Community HOT/MOT Grant

Full Account #s: 2014201-66046 / 2104202-66077

Amount: \$50,000

**STAFF CONTACT:**

Alex Philips  
Economic Development Director  
[aphilips@burlesontx.com](mailto:aphilips@burlesontx.com)  
817-426-9613

# Chamber of Commerce Services Contract





# Burleson Area Chamber of Commerce

Item E.



- Vision Statement

To be recognized as an effective resource, providing relevant, innovative, and impactful programming that ensures a healthy business climate and an enhanced quality of life for the entire Burleson area

- Mission Statement

To be an advocate for our members and for business in Burleson. We are in Business for Business.

- Core Values

Strengthen the local economy by providing events that bring in individuals from outside the Burleson Area

Promote the community by marketing Burleson as a destination for new businesses, active older adults and potential employees

Provide business to business networking opportunities by organizing and hosting Luncheons, Business After Hours and Special Events for our Chamber members

Build community-wide leadership by encouraging and developing a shared vision for the future of Burleson

# BACC Current Activities

Item E.



## • Activities

- Quarterly Luncheons
- Ribbon Cuttings
- Member Events (networking, training, etc.)
- Small Business Resources

# Burleson Area Chamber of Commerce

Item E.

- Previous to last year the City and the Chamber did not have an agreement in place.
- The Chamber requested the agreement for services.
- The City worked with the Chamber to outline the services being split with EDC business retention meetings and Hot/Mot qualified tourism events.
- The agreement also outlined that the annual golf tournament be alternated and held at Hidden Creek every other year.
- The agreement is on a yearly basis and is approved each year with the City Council



- The Chamber is local and deepening the relationships with businesses is a benefit to the City as well.
- The business visits gives us more information about a business that may be looking to expand or obstacles that they are facing that we can assist with.
- The agreement extends the personal touch of business retention for the City.
- The tourism events outlined in the agreement gives us the confidence that they will be happening each year and can plan more efficiently for them and increase hotel stays.

# Burleson Area Chamber of Commerce 2023 Recap

Item E.

## Business Retention

- 100 business retention visits and surveys were completed. They were from all industries and size in the community.
  - 93.2% of businesses stated that their satisfaction level was above average of doing business in Burleson.
  - Over 50% of the employees live in Burleson.
  - Some of the top challenges were employee retention, cost of supplies, competition, area construction and parking.
  - 4 of the businesses surveyed are planning on expanding.



## Tourism

- Honey Tour is back after a 3 year hiatus! The 22<sup>nd</sup> Annual ride was a huge success over the Memorial Day Holiday.
  - Over 800 riders from all over the State participated in the event as well as a rider from Las Vegas and Utah.
  - Advertising of the event happened all over the State through digital billboards, mailers and print advertisement.
  - The Chamber teamed up with the Parks Department to host the BTX Honey Tour Festival in conjunction of the ride.
- Full Circle Women's Conference
  - The Power of Heels welcomed women from all over the metroplex for the event.

# BACC Contract Services

Item E.

## Business Retention

Conduct 100 annual business retention meetings with businesses to gather key information

EDC to collaborate on questions and information to gather at meetings

Deliverables include: contact updates, business anniversaries, summary of business strength, key issues and growth plans

## Tourism

Host three events a year that are focused on bringing people from outside Burleson as well as adding to the quality of life in the community

Burleson Honey Tour Bike Ride - Long running bike ride event continue in 2024

Power of Heels Full Circle Women's Conference 2024 - Full day event to inspire women professionally and personally

Downtown Dine-Out - New event featuring collaborative outdoor dinner



# BACC Contract Terms

\$50,000 - total contract price with annual renewal and Council approval each year

- **Business Retention**

\$20,000 annually

Approx. 130 hours (~\$150/Hour)

This is a 4A expense

- **Tourism**

\$10,000 per event (\$30,000 total)

In lieu of BACC HOT/MOT Grant

This is a HOT/MOT expense

- **Terms**

Produce 4 quarterly reports within 30 days of the end of each quarter

Host annual BACC golf tournament at Hidden Creek Golf Course every other year

Utilize Burleson catering for State of the City and EDC Luncheons

- **Termination/Breach**

Should BACC not perform, they would be ineligible for any City funding for one year

Either party may terminate with 30 days written notice

# Board Action Requested

Item E.

Services Contract with the Burleson Area Chamber of Commerce for Small Business and Tourism Services in the amount of \$50,000



Approve as presented



Deny

## 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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*The remainder of this page is left intentionally blank*


**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.

**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.

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

**Certificate Number:**  
2023-1075734

**Date Filed:**  
09/25/2023

**Date Acknowledged:**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

**Burleson Area Chamber of Commerce**  
**Burleson, TX United States**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Burleson

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

9/25/2023

### Burleson Area Chamber event

[illegible]

**5 Check only if there is NO Interested Party.**

☐

## 6 UNSWORN DECLARATION

My name is Melissa Miller, and my date of birth is [REDACTED]

My address is 872 Valley Ridge Rd., Burleson, TX, 76028, Johnson  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Johnson County, State of Texas, on the 25 day of September, 2023  
(month) (year)

Signature of authorized agent of contracting business entity  
(Declarant)