



Economic Development Corporation (Type A) Agenda

Monday, December 12, 2022
3:45 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 November 14, 2022 Economic Development Corporation (Type A) meeting. (*Staff Contact: Amanda Campos, City Secretary*)

B. Consider approval of a Second Amendment to the commercial lease between FWAVE, Inc. and the Burleson 4A Economic Development Corporation located at 921 South Burleson Boulevard. (*Staff Presenter: Alex Philips, Economic Development Director*)

4. **Board Requests for Future Agenda Items or Reports**

5. **Recess into Executive Session**

Pursuant to Section 551.071, Texas Government Code, the Board reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

A. Pending or Contemplated Litigation or to Seek the Advice of the City Attorney Pursuant to Section 551.071

6. **Adjourn**

CERTIFICATE

I hereby certify that the above agenda was posted on this the **7th of December 2022, by 5:00 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.

Economic Development Corporation (Type A)

DEPARTMENT: City Secretary's Office
FROM: Amanda Campos, City Secretary
MEETING: December 12, 2022

SUBJECT:

Consider approval of the minutes from the November 14, 2022 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 November 14, 2022.

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
Phone: 817-426-9665

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION
November 14, 2022
DRAFT MINUTES

COUNCIL PRESENT:

Rick Green
Jimmy Stanford
Tamara Payne
Dan McClendon (President)
Ronnie Johnson

COUNCIL ABSENT:

Staff present:

Bryan Langley, City Manager
Amanda Campos, City Secretary
Matt Ribitzki, Deputy City Attorney

1. CALL TO ORDER – Time: 3:00 P.M.

2. CITIZEN APPEARANCE

- No speakers.

3. GENERAL

A. Minutes from the October 3, 2022 Economic Development Corporation (Type A) meeting. (Staff Contact: Amanda Campos, City Secretary)

Amanda Campos, City Secretary, presented board minutes for consideration to the board.

Motion by Rick Green and seconded by Ronnie Johnson to approve.

Motion passed 5-0.

Pursuant to Section 551.071, Seek advice of the City Attorney on item posted on agenda.

Motion was made by Ronnie Johnson and seconded by Tamara Payne to convene into executive session.

Motion passed 5-0. **Time: 3:01pm**

Motion was made by Tamara Payne and seconded by Ronnie Johnson to reconvene into open session.

Motion passed 5-0. **Time: 309pm**

- B. Resolution 4A111422CrouchContract, a resolution authorizing the enforcement of a contract dated July 18, 2022 with James Crouch and Katherine Hawles to acquire a 30.76 acre tract of land in Johnson County, Texas, commonly known as 2140 SW Hulen St., authorizing the Board President to direct and oversee the filing of a lawsuit, and authorizing the expenditure of funds. (Staff Contact: Matt Ribitzki, Deputy City Attorney)**

Matt Ribitzki, Deputy City Attorney, presented the resolution to the board.

Motion by Ronnie Johnson and seconded by Jimmy Stanford to approve.

Motion passed 5-0.

ADJOURN

There being no further discussion Dan McClendon adjourned the meeting.

Time: 3:15 p.m.

Amanda Campos
City Secretary

Economic Development Corporation (Type A)

DEPARTMENT: Economic Development

FROM: Alex Philips, Economic Development Director

MEETING: December 12, 2022

SUBJECT:

Consider approval of a Second Amendment to the commercial lease between FWAVE, Inc., and the Burleson 4A Economic Development Corporation located at 921 South Burleson Boulevard. *(Staff Presenter: Alex Philips, Economic Development Director)*

SUMMARY:

The Burleson 4A Economic Development Corporation purchased the property located at 921 S. Burleson Boulevard in 2015. The Burleson 4A then executed a lease with FWAVE, Inc. and it was approved by the 4A board on November 16, 2015 the premise to FWAVE, Inc. for a term of 5 years at a rate of \$5.50 per foot for an annual total of \$174,075.

The lease was first amended on June 17, 2019 to extend the lease for an additional term of 3 years to assist with the timing of identifying a future site for the expansion of FWAVE operations. The rental rate stayed the same for that additional time.

FWAVE, Inc., has requested a second amendment to the lease as they are needing additional time to secure a location within the City of Burleson for their full expansion needs. The new amendment is for an additional 2 years starting January 1, 2023. The rental rate for the 1st year of the amendment is at a rate of \$7.00 per foot for an annual total of \$237,375.

In the amendment there is a renewal of an additional year if both parties agree exercise that within 60 days of the term expiring on December 31, 2024. If both parties agree the rental rate would increase to \$9.00 per foot for an annual total of \$284,850.

OPTIONS:

- 1) Approve the Second Amendment with FWAVE, Inc. as presented
- 2) Deny the Second Amendment with FWAVE, Inc.

RECOMMENDATION:

Staff recommendations is to approve the Second Amendment to the lease with FWAVE, Inc.

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

N/A

FISCAL IMPACT:

N/A

STAFF CONTACT:

Alex Philips
Economic Development Director
aphilips@burlesontx.com
817-426-9613



Economic Development

Lease History

- FWAVE leases 921 S. Burleson Boulevard from the Burleson EDC. The building is 31,650 square feet on approximately 6 acres.
- Original Lease was approved on November 16, 2015 for a term of 5 years at a rate of \$5.50/ft
- The lease was extended on June 17, 2019, for an additional 3 years at the same rate of \$5.50/ft.
- The lease amendment was requested as FWAVE needed more time to identify a future site for their expansion. COVID basically put a hold on a site search.
- FWAVE has requested a new extension to the current lease as we are continuing to assist them in finding a future site.



Item B.



Amendment Details

- Term would be for an additional 2 years with an option for a 3rd year.
- Rental rate for the 2 year period would be at the rate of \$7.50 per foot for annual total of \$237,375.
- The 3rd year option would need to be mutually agreed to and it would be at a rate of \$9.00 per foot for an annual total of \$284,850.
- FWAVE and the EDC are currently working on identifying a site for the future home and expansion of their operations.



Item B.





Options

- Approve the 2nd lease amendment with FWAVE, Inc.
- Deny the 2nd lease amendment with FWAVE, Inc.

Questions / Comments

**SECOND AMENDMENT TO
COMMERCIAL LEASE AGREEMENT
BETWEEN
BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION
AND
FWAVE, LLC**

This Second Amendment to the Commercial Lease Agreement ("Second Amendment") is made effective as of the _____ day of _____, 20____ (the "Second Amendment Effective Date"), by and between BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION ("Landlord") and FWAVE, LLC ("Tenant").

WHEREAS, Landlord and Tenant entered into a commercial lease agreement on November 6, 2015 ("Original Lease") granting Tenant certain rights to lease land and improvements owned by Landlord; and

WHEREAS, Landlord and Tenant amended the Original Lease on January 1, 2019 ("First Amendment") (collectively with the Original Lease the "Lease") making certain amendments to the Original Lease and ratifying the remainder of the Original Lease; and

WHEREAS, the Landlord and Tenant desire to amend the Lease to extend the lease term, allow for an optional renewal lease term, and amend the rent amount; and

WHEREAS, the Parties agree to ratify the Lease in all other respects;

NOW, THEREFORE, Landlord and Tenant amend the Lease by this Second Amendment as follows:

1. **Term.** Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord beginning on the Second Amendment Effective Date and ending on December 31, 2024 (the "Second Amended Initial Term").
2. **Renewals.** Tenant and Landlord may renew the Lease for one (1) extended term of one (1) year (the "Second Amended Renewal Term"). Tenant and Landlord may exercise such renewal option, if at all, by both parties agreeing to such renewal in writing not less than sixty (60) days prior to the expiration of the Second Amended Initial Term. The renewal term shall be at the rental set forth below, and otherwise upon the same covenants, conditions, and provisions as provided in this agreement.
3. **Rent.** Tenant shall pay Landlord during the Second Amended Initial Term rental of TWO HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED AND SEVENTY-FIVE DOLLARS (\$237,375.00) per year for two years, payable in installments of NINETEEN THOUSAND SEVEN HUNDRED AND EIGHTY-ONE DOLLARS AND TWENTY-FIVE CENTS (\$19,781.25) per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at Burleson City Hall, 141 W. Renfro St., Burleson, TX 76028 Attn: Finance

Department or at such other place designated by written notice from Landlord to Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

The rental for the Second Amended Renewal Term, if created as permitted under this agreement, shall be TWO HUNDRED EIGHTY-FOUR THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS (\$284,850) per year, payable in installments of TWENTY-THREE THOUSAND SEVEN HUNDRED THIRTY-SEVEN DOLLARS AND FIFTY CENTS (\$23,737.50) per month.

4. **Recitals.** The recitals found at the beginning of this Second Amendment and any attachments hereto are an integral part of this Second Amendment and are deemed incorporated by reference herein for all purposes.
5. **Terms; Conflict between Lease and Amendment.** The terms and conditions of the Lease are incorporated herein by this reference, and capitalized terms used in this Second Amendment shall have the same meanings such terms are given in the Lease. Except as specifically set forth herein, this Second Amendment shall in no way modify, alter or amend the remaining terms of the Lease, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Lease and this Second Amendment, the terms and conditions of this Second Amendment will govern and control.

Executed by the parties below.

LANDLORD:

**BURLESON 4A ECONOMIC DEVELOPMENT
CORPORATION,
a Texas municipal development corporation**

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

**FWAVE, LLC,
A Delaware limited liability company**

By: Mick Santa

Name: MICK SANKA

Title: DIRECTOR

Date: Nov. 29, 2022

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective as of **November 6th, 2015** (the "Effective Date"), by and between **BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION** ("Landlord") and **FWAVE, LLC** ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as **921 S. BURLESON BLVD., BURLESON, TX 76028** and legally described as follows (the "Leased Premises"):

A 6.561 acre parcel located at 921 S. Burleson Blvd, Johnson County, Texas, which property is more fully described as Lot 1, Block 1 of the Housing of the Future Addition to the City of Burleson, Johnson County, Texas

Landlord makes available for lease the Leased Premises, including, but not limited to: (1) 30,000 square foot manufacturing building, (2) 1,650 square foot office building, and (3) the area surrounding such buildings within the Leased Premises.

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

1. Term.

- A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the Effective Date and ending December 31, 2018. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to deliver the Leased Premises to Tenant by November 15, 2015, Tenant shall be entitled to receive a credit against Base Rent next becoming due under this Lease in the amount of two (2) days' rental that becomes due during the first year of the Term for each day thereafter until the Leased Premises are so delivered to Tenant.
- B. Tenant may renew the Lease for two (2) extended term(s) of ONE YEAR each. Tenant may exercise such renewal option, if at all, by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the Initial Term, or the previously extended term, as the case may be. The extension of the Lease will be granted only with consent of both parties and not to be unreasonably withheld. The renewal term shall be at the rental set forth below, and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rental.

- A. Tenant shall pay to Landlord during the Initial Term rental of \$4.50 per square foot or ONE HUNDRED FORTY-TWO THOUSAND, FOUR HUNDRED TWENTY-FIVE DOLLARS (\$142,425.00) per year, payable in installments of ELEVEN THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND SEVENTY-FIVE CENTS (\$11,868.75) per month. Each installment payment shall be due in advance on the first day of each calendar month during the Lease term to Landlord at **BURLESON CITY HALL, 141 W. RENFRO ST., BURLESON, TX 76028 ATTN: FINANCE DEPARTMENT** or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.
- B. The rental for the first year of renewal lease term, if created as permitted under this Lease, shall be ONE HUNDRED SEVENTY-FOUR THOUSAND SEVENTY-FIVE DOLLARS (\$174,075.00) per year payable in installments of FOURTEEN THOUSAND FIVE-HUNDRED SIX DOLLARS AND TWENTY-FIVE CENTS (\$14,506.25) per month.

- C. The rental for the second year of renewal lease term, if created as permitted under this Lease, shall be TWO HUNDRED FIVE THOUSAND SEVEN HUNDRED TWENTY-FIVE DOLLARS (\$205,725.00) per year payable in installments of SEVENTEEN THOUSAND ONE HUNDRED FORTY-THREE DOLLARS AND SEVENTY-FIVE CENTS (\$17,143.75) per month.

3. Use

Tenant may use the Leased Premises for any lawful purpose. Notwithstanding the forgoing, except as set forth below, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device in violation of any applicable law unless otherwise approved by Landlord. For the avoidance of doubt, Landlord hereby agrees that the storage, manufacturing, selling, or use of the items listed on Schedule A, attached hereto, among other things, shall not violate the terms of this Paragraph 3.

4. Assignment.

Tenant may not assign any part of this Lease or sublease any part of the Leased Premises without prior written consent or approval by the Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the assignee agrees in writing to comply with each term in the Lease. Notwithstanding the foregoing, Tenant shall have the right, without the consent of Landlord and without otherwise being subject to or complying with the provisions of this Paragraph 4, to: (a) permit occupancy of the Leased Premises by, assign this Lease to or sublet the Leased Premises or any portion thereof to, any entity that controls, is controlled by, or is under common control with Tenant; or (b) assign this Lease to the surviving entity in any merger, consolidation or reorganization including Tenant, or to the purchaser of all or substantially all of the assets of Tenant at the Leased Premises; provided that Tenant provides Landlord with a fully executed copy of such assignment or sublease.

5. Repairs.

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease. Landlord shall warrant all equipment and systems serving the Leased Premises for a period of one (1) year after the commencement date and shall repair such equipment and systems promptly at Landlord's sole cost and expense.

6. Alterations and Improvements.

Tenant, at Tenant's expense, shall have the right following Landlord's written consent, which will not be unreasonably withheld, conditioned, or delayed, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials, and do not unreasonably diminish the future utility of the Leased Premises. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

7. Property Taxes.

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments as may be required coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises. Any

income, franchise, margin, gift, inheritance, capital levy and estate taxes attributable to or arising out of this Lease shall not be payable by Tenant.

8. Insurance.

- A. If any part of the Leased Premises is damaged by fire or other casualty resulting from any willful act or gross negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.
- B. Landlord shall maintain fire and extended coverage insurance on the Leased Premises in an amount equal to the full replacement value. Tenant shall maintain, at its expense, fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.
- C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each on the Leased Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord and Tenant, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Each party shall be listed as an additional insured on the other party's policy or policies of comprehensive general liability insurance, and each party shall provide the other party with current certificates of insurance evidencing compliance with this Paragraph. Landlord shall not be required to maintain insurance against thefts within the Leased Premises.

9. Utilities.

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. Notwithstanding anything in this Lease to the contrary, (a) if an interruption of services is the result of Landlord's negligence or misconduct, all rent shall be abated for each day of such interruption of services; (b) if an interruption of services continues for five (5) consecutive days, regardless of the cause, all rent shall be abated for each day thereafter until all services are fully restored; and (c) if an interruption of services continues for thirty (30) consecutive days, regardless of the cause, Tenant shall have the right to terminate this Lease.

10. Signs.

Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. Entry.

Landlord shall have the right to enter upon the Leased Premises during Tenant's regular business hours and following twenty-four (24) hour prior notice to inspect the same and, in the final six months of the Lease, with the prior consent of the Tenant, which consent shall not be unreasonably withheld, to market the Leased Premises to prospective tenants, provided that, in any event, Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises or allow any third party to observe any trade secrets or confidential information of Tenant. During any entry of the Lease Premises, Landlord shall comply with all requirements of Tenant.

12. Parking.

During the term of this Lease, Tenant shall have the exclusive use of the automobile parking areas, driveways, and other access to the Leased Premises.

13. Damage and Destruction.

Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes unless such inoperability or unfit condition is the result of Tenant's gross negligence. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes, except as provided in this Paragraph 13.

14. Tenant Default.

In the event Tenant fails to fulfill its obligations under this Lease or materially breaches any of the material terms and conditions of this Lease, then Tenant after the expiration of the notice and cure periods described herein, shall be in default of this Lease, unless Tenant is taking measures reasonably agreeable to the Landlord to cure any such breach, with such agreed measures to cure to include a stated plan and time frame for completion. In the event of such a default, Landlord shall give Tenant written notice of such breach and/or default, and if Tenant has not cured such breach or default within ninety (90) days after receipt of such notice, or is not taking such reasonably agreed measures to cure any such breach or default at such time, the Landlord may cure the default on behalf of Tenant and Tenant shall be obligated to reimburse Landlord for any actual and reasonable expenses incurred by Landlord to cure such default. This 90-day cure period shall not apply, however, to the failure to pay rent when due, which obligation shall not be excused or extended for any reason except as expressly provided in this Lease.

Notwithstanding any provision in this Lease to the contrary, (a) Tenant shall not be liable for any consequential, exemplary or punitive damages or lost profits; (b) Landlord shall not be entitled to lock Tenant out of the Leased Premises absent a court order; (c) Landlord shall use good faith, commercially reasonable efforts to mitigate Landlord's damages; (d) Tenant shall be entitled to vacate the Leased Premises for all or part of the Term of this Lease without penalty provided Tenant continues to pay Rent in accordance with the terms of this Lease.

15. Quiet Possession.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

16. Condemnation.

If any legally, constituted authority condemns any part of the Leased Premises, which shall make the Leased Premises unsuitable for Tenant's use, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

17. Subordination.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Notwithstanding the foregoing, this Lease shall not be subject to or subordinate to any lease, lien, deed of trust, indenture or mortgage unless and until the lessor or holder thereof executes and delivers to Tenant a non-disturbance agreement, in form reasonably acceptable to

Tenant, pursuant to the terms of which the lessor or holder agrees not to interfere with Tenant's use or enjoyment of the Leased Premises except as provided under this Lease.

18. Landlord's Lien.

Notwithstanding any provision in this Lease to the contrary, Landlord shall not have and hereby expressly waives any and all constitutional, statutory and contractual liens against the assets or property of Tenant, and Tenant may remove such items at any time and from time to time. Landlord agrees to execute and deliver to Tenant within twenty (20) days after receipt of a written request therefor, such documents as may be reasonably requested by Tenant or its lender to evidence and confirm such waiver.

19. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

BURLESON 4A EDC
141 W. RENFRO ST.
BURLESON, TX 76028
ATTN: JUSTIN BOND, DIRECTOR OF
DEVELOPMENT SERVICES

If to Tenant to:

FWAVE, LLC
9C BEATRICE TINSLEY CRESCENT
ALBANY, AUCKLAND, 0632
NEW ZEALAND
ATTN: ANDREW HAYNES, CEO

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this Paragraph by written notice thereof to the other party.

20. Brokers.

Tenant represents that Tenant has not entered into any written agreement with any real estate broker or agent regarding the Leased Premises and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

21. Waiver.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

22. Record of Lease.

The parties hereto contemplate that this Lease shall be filed for record as a public document with the City of Burleson, Texas, as a result of Landlord being known as a municipal corporation and subject to the requirements of the Texas Open Meetings Act.

23. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

24. Successors.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

25. Consent.

Landlord shall not unreasonably withhold, condition, or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

26. Landlord's Performance.

In the event Landlord fails to fulfill its obligations under this Lease or materially breaches any of the material terms and conditions of this Lease, Tenant may, at its option and without affecting any other remedy hereunder, cure such default, unless Landlord is taking measures reasonably agreeable to the Tenant to cure any such breach, with such agreed measures to cure to include a stated plan and time frame for completion. In the event of such a default, Tenant shall give Landlord written notice of such breach and/or default, and if Landlord has not cured such breach or default within forty-five (45) days after receipt of such notice, or is not taking such reasonably agreed measures to cure any such breach or default at such time, Tenant may deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures. Tenant may pursue any rights and remedies as may be available under this Lease, at law or in equity, in its sole discretion following any Landlord default.

27. Compliance with Law.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

28. Final Agreement.

This Agreement shall be the final document related to the lease terms of the Leased Premises. This Agreement may be modified only by a further writing that is duly executed by both parties.

29. Governing Law.

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Texas.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Commercial Lease Agreement as of the day and year first above written.

LANDLORD:

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION,
a Texas municipal development corporation

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

FWAVE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

[Signature page to Commercial Lease Agreement]

Schedule A

Permitted Storage, Manufacturing, Selling, and Uses

- Polymers
- Hot Melt type adhesives
- Calcium Carbonate
- Magnesium Hydroxide
- Plastic Packaging
- Cardboard Packaging
- Wooden pallets
- Ink and thinners, primarily for the inkjet printers
- Lubricants, oils, solvents, etc., primarily for cleaning and maintenance
- Fuel and gas containers, primarily for use of forklifts
- Office supplies
- Glass fibers
- Diesel or petrol

[Schedule A to Commercial Lease Agreement]



**AMENDMENT TO
COMMERCIAL LEASE AGREEMENT
BETWEEN
BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION
AND
FWAVE, LLC**

This Amendment to the Commercial Lease Agreement ("Amendment") is made effective as of the 1st day of JANUARY, 2019 (the "Amendment Effective Date"), by and between BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION ("Landlord") and FWAVE, LLC ("Tenant").

WHEREAS, Landlord and Tenant are amending the commercial lease agreement entered into on November 6, 2015 ("Lease") granting Tenant certain rights to lease land and improvements owned by Landlord; and

WHEREAS, the Landlord and Tenant desire to extend the term of the Lease and amend the rent amount; and

WHEREAS, the Parties agree to ratify the Lease in all other respects;

NOW, THEREFORE, Landlord and Tenant amend the Lease by this Amendment as follows:

1. **Term.** Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord beginning on the Amendment Effective Date and ending on July 31, 2022 (the "Amended Term").
2. **Renewals.** The options to renew the term of the Lease specified in Paragraph 1(B) of the Lease are hereby deleted as of the Effective Date of this Amendment. There shall be no option to renew the Amended Term unless otherwise agreed to by both Parties in writing.
3. **Rent.** The rental for the Amended Term shall be ONE HUNDRED THOUSAND SEVENTY-FOUR THOUSAND SEVENTY-FIVE DOLLARS (\$174,075.00) per year payable in installments of FOURTEEN THOUSAND FIVE-HUNDRED SIX DOLLARS AND TWENTY-FIVE CENTS (\$14,506.25) per month.
4. **Recitals.** The recitals found at the beginning of this Amendment and any attachments hereto are an integral part of this Amendment and are deemed incorporated by reference herein for all purposes.
5. **Terms; Conflict between Lease and Amendment.** The terms and conditions of the Lease are incorporated herein by this reference, and capitalized terms used in this Amendment shall have the same meanings such terms are given in the Lease. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend

the remaining terms of the Lease, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Lease and this Amendment, the terms and conditions of this Amendment will govern and control.

Executed by the parties below.

LANDLORD:

**BURLESON 4A ECONOMIC DEVELOPMENT
CORPORATION,**
a Texas municipal development corporation

By: 

Name: Dan McCleendon

Title: President

Date: 6/17/19

TENANT:

FWAVE, LLC,
A Delaware limited liability company

By: 

Name: Scott G. McDonald

Title: PRESIDENT & CEO

Date: 24 JUNE 2019