

**380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF BURLESON, HILL COLLEGE AND BURLESON INDEPENDENT  
SCHOOL DISTRICT**

This 380 Economic Development Agreement (the “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) by and among the City of Burleson (the “City”), a Texas municipality located in the Counties of Johnson and Tarrant, State of Texas, acting by and through its city manager, Hill College (“Hill College”), a Texas public community college, acting through its duly-authorized president, and Burleson Independent School District (“BISD”), a Texas independent school district, acting by and through its duly-authorized superintendent. The City, Hill College and BISD may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.” 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.

**RECITALS**

**WHEREAS**, the City has a long held belief that it is beneficial to the economic growth of the City to have a higher education facility located centrally in the City; and

**WHEREAS**, representatives of the City, Hill College, and BISD have held numerous discussions concerning creating a facility to house expanded higher education opportunities in the City; and

**WHEREAS**, the Burleson City Council desires to work with the Hill College and BISD to facilitate a facility to house higher education in the City, to define the terms and conditions under which the City will participate in creating said facility, and to create a framework for future actions by Hill College and BISD; and

**WHEREAS**, Hill College is currently leasing property owned by the City located at 130 E. Renfro Street, with the lease term expiring July 31, 2021; and

**WHEREAS**, the current location no longer serves the needs of Hill College; and

**WHEREAS**, the City finds that keeping Hill College in the City of Burleson is important for its youth and to promote economic development; and

**WHEREAS**, part of the former Kerr Middle School facility owned by BISD is now vacant, which is circled and colored orange in the aerial photograph attached as Exhibit “A”, (hereinafter referred to as the “Property”); and

**WHEREAS**, BISD, the City, and Hill College agree that with appropriate and necessary renovations, the Property will be an ideal location for Hill College; and

**WHEREAS**, to facilitate retaining Hill College in the City of Burleson, the City has agreed to participate in the cost of the Renovation of the Property; and

**WHEREAS**, the City recognizes the importance of its continued role in economic development; and

**WHEREAS**, Chapter 380 of the Texas Local Government Code (the “Act”) authorizes the grant of public funds and assets to promote economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, pursuant to Section 380.001 of the Act, through this Agreement the City establishes an economic development program to continue the goal of ensuring that its youth have the opportunity to obtain quality higher education locally (the “Program”) and encourage the economic development usually engendered by a higher education facility; and

**WHEREAS**, Hill College desires to participate in the Program and has submitted a proposal that meets the City’s criteria for the Program; and

**WHEREAS**, the City Council finds that this Agreement will effectuate the purpose of the Program and that Hill College and BISD’s performances of their obligations herein will promote economic development and stimulate commercial activity in the City; and

**WHEREAS**, BISD and Hill College have agreed to enter into the Lease Agreement for the Property, provided there are sufficient funds for the Renovation, setting forth the terms and conditions by which BISD will lease the Property to Hill College, and requiring the development and use of the Property according to the terms of this Agreement; and

**WHEREAS**, the Property is not owned or leased by any member of the Burlson 4A Economic Development Corporation, Burlson City Council, or any member of the City Planning and Zoning Commission.

**ARTICLE 1.**  
**DEFINITIONS**

- 1.01 The terms “Act,” “Agreement,” “Effective Date,” “City,” “BISD,” “Hill College,” “Property,” and “Program” shall have the meanings provided, above.
- 1.02 “Construction Costs” means and shall include all costs incurred relating to the Renovation of the Property, including without limitation actual Construction Costs, labor and materials, engineering costs, consultant fees, designers, permit fees, and inspection fees.
- 1.03 “Event of Bankruptcy” means the dissolution or termination of Hill College’s existence as a going business, insolvency, appointment of receiver for any part of Hill College’s property and such appointment is not terminated within 60 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 Hill College and such proceeding is not dismissed within 60 days after the filing thereof.

- 1.04 “Lease Agreement” means the future agreement between BISD and Hill College for the lease of the Property described in Section 4.02 of this Agreement.
- 1.05 “Reimbursement” means the payment made to Hill College for the cost of the Renovations.
- 1.06 “Renovation” means the required buildout of the Property to make it suitable for use by Hill College as a higher education facility, to include primarily façade improvements and development of a student hall.
- 1.07 “Site Plan” means the Council approved plan required by Section 4.05, in general compliance with the renderings on Exhibit “B.”

**ARTICLE 2.**  
**IN GENERAL**

- 2.01 In General. The City, BISD, and Hill College agree to facilitate the relocation and retention of Hill College, a higher education facility to include two components: 1) a traditional associate/bachelor’s degree program, and 2) a vocational job training program.
- 2.02 Location of Hill College. The parties intend that they will participate in the Renovation of the Property for use by Hill College in accordance with the terms of this Agreement. BISD will be primarily responsible for the construction of the Renovations, and Hill College and the City will participate in the cost of the Renovation as set forth herein, with a total participation by the City capped at One Million Dollars (\$1,000,000.00).

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

The term of this Agreement shall commence on the Effective Date and will terminate on July 1, 2043, or sooner as provided by Article 7.

**ARTICLE 4.**  
**RESPONSIBILITIES OF THE PARTIES**

- 4.01 Programming Plan. Prior to the execution of this Agreement, Hill College prepared and submitted to the City and BISD a programming plan to meet the higher education needs in the City of Burleson, and the governing bodies of the City and BISD received the programming plan. Hill College agrees that it will notify the City and BISD within thirty (30) days of any substantial alteration to the programming plan during the term of this Agreement. Hill College may substantially change the programming plan without the approval of the City or BISD; however, at all times during the term of this Agreement the programming plan must include, but is not limited to, the following:

- (1) Degree programs for the top five (5) degrees identified by market/employer research.
- (2) Identify or attempts to identify a four-year partner who can and will offer four-year bachelor degrees to be offered.
- (3) Vocational training programs as identified by market and employer research.
- (4) A comprehensive plan to integrate Burleson students into higher education to ensure they are on a path to an in-demand degree or in-demand employment skill.

4.02 Lease Agreement. No later than six (6) months Hill College and BISD will execute a Lease Agreement for the Property, with a term not less than twenty (20) years, and a commencement date no later than August 1, 2022.

4.03 Renovations of the Property.

- (A) Hill College and BISD will identify mutually agreeable space allocation and required Renovations to the Property.
- (B) Hill College shall be responsible for the first One Million Dollars (\$1,000,000.00) of Construction Costs for the Renovation, with any overages to be shared/negotiated with BISD.
- (C) BISD shall be responsible for the following in the completion of the Renovations:
  - (1) Engaging an architect;
  - (2) Bidding the work, if required by law; and
  - (3) Engaging a contractor to complete the work.
- (D) BISD shall complete the work on the Renovations and receive a certificate of occupancy from the City no later than thirty-six (36) months after receiving a building permit for the Renovations.
- (E) Reimbursement. Subject to BISD and Hill College complying with each term of this Agreement, the City will reimburse Hill College for Construction Costs actually expended for the Renovation up to no more than One Million Dollars (\$1,000,000.00) within sixty (60) days of receiving documentation satisfactory to the City of the expenditure.

4.04 Duty to Remain for Term of Lease. Hill College shall remain on the Property and operate the Property as Hill College for the term of the Lease.

4.05 BISD shall prepare the Site Plan and submit it to the City for review and approval.

**ARTICLE 5.**  
**BUILDING MATERIALS**

The parties agree that the Property following the Renovation shall be at least seventy-five percent (75%) masonry. For the purposes of this Article, “masonry” shall mean building materials including brick, stucco, concrete, concrete tilt wall, stone, rock, or other material of equal characteristics, but shall not include concrete masonry units, exterior insulating finishing system or similar applications, and fiber reinforced cementitious boards or panels designed to be attached directly to studs or sheathing by nails, screws or other types of mechanical connectors. The parties further agree that: 1) the terms contained within this Article constitute a material term of this Agreement; 2) the building materials restriction, as described in this Article, constitutes a material inducement for the City to authorize the incentives described herein; 3) the terms contained herein shall run with the land for the term of this Agreement and shall bind BISD and all successors and assigns; and 4) this Article shall survive termination of this Agreement.

**ARTICLE 6.**  
**AUTHORITY; COMPLIANCE WITH LAW**

- 6.01 The City finds and determines that this Agreement is authorized and governed by the Act.
- 6.02 The parties hereby represent and warrant they have full lawful right, power, and authority to execute and perform the terms and obligations of this Agreement; and the execution and delivery of this Agreement has been duly authorized by all necessary actions by the Parties; and this Agreement constitutes the legal, valid, and binding obligation of the Parties, and is enforceable in accordance with its terms and provisions.
- 6.03 Notwithstanding any other provision of this Agreement, the Parties shall comply with all federal, state, and local laws.
- 6.04 During the term of this Agreement, Hill College agrees not to knowingly employ any undocumented workers at the Property, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Hill College shall repay the amount of the Reimbursement forgiven under this Agreement as of the date of such violation within 120 business days after the date Hill College is notified by the City of such violation, plus interest at the rate City is paying on the most recent issuance of bonded indebtedness prior to Hill College’s violation of this Section.

**ARTICLE 7.**  
**DEFAULT AND REMEDIES**

- 7.01 Default by Hill College. In the event: (i) Hill College fails to fulfill its obligations of this Agreement; (ii) Hill College has delinquent ad valorem or sales taxes owed to the City provided that Hill College retains the right to timely and properly protest and/or contest any such taxes; (iii) Hill College materially breaches any of the material terms and conditions of this Agreement, then Hill College after the expiration of the notice and cure

periods described herein, or (iv) Hill College experiences an Event of Bankruptcy shall be in default of this Agreement. In the event of such a default, the City shall give Hill College written notice of such breach and/or default, and if Hill College has not cured such breach or default within ninety (90) days after receipt of such notice, the City may terminate this Agreement by written notice to Hill College, and the City shall have no further obligation to Hill College. This Section shall survive termination of this Agreement.

- 7.02 Failure of Hill College to Remain for Term of the Lease. If the Property is converted to a use other than a higher education facility or Hill College terminates the Lease Agreement, the Reimbursement shall be repaid at an amount equal to the total amount of the Reimbursement less \$50,000.00 for every full year Hill College remained on the Property under the Lease Agreement and in accordance this Agreement.
- 7.03 Failure of BISD to Lease the Property. Should BISD terminate the Lease Agreement prior to the end of the term, it shall be responsible to pay the City an amount equal to the total amount of the Reimbursement less \$50,000.00 for every full year Hill College remained on the Property under the Lease Agreement and in accordance with this Agreement.
- 7.04 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 Parties.

## **ARTICLE 8.** **VENUE AND GOVERNING LAW**

This Agreement is fully performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. To the extent permitted by law, the substantive 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 courts in Johnson County, Texas.

## **ARTICLE 9.** **FORCE MAJEURE**

Performance of BISD and Hill College's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and BISD and Hill College'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, inability to obtain, any permit and/or legal authorization (including engineering approvals by any governmental entity), inability to obtain, 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 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 10.**

#### **GIFT TO PUBLIC SERVANT OR TO HILL COLLEGE REPRESENTATIVE**

- 10.01 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 a contribution or expenditure made and reported in accordance with law.
- 10.02 Right of Reimbursement. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditure made to Hill College as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

#### **ARTICLE 11.**

#### **ASSIGNMENT**

No Party may assign any part of this Agreement without consent or approval of the other Parties.

#### **ARTICLE 12.**

#### **INDEMNIFICATION**

- 12.01 TO THE EXTENT PERMITTED BY TEXAS LAW IN EFFECT AT THE TIME THIS AGREEMENT IS SIGNED, EACH PARTY **EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER PARTIES, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, 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 A PARTY OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT.** This Section shall survive termination of this Agreement.
- 12.02 Nothing in this Agreement shall be construed as waiving any governmental immunity available to the Parties under state law.
- 12.03 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 (including its past, present, and future officers, elected officials, directors, employees and

agents of the City) does not assume any responsibility to any third party in connection with BISD and Hill College's construction of the Renovation.

**ARTICLE 13.**  
**MISCELLANEOUS MATTERS**

- 13.01 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.
- 13.02 Agreement Subject to Applicable Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws, violation of which shall constitute a default of this Agreement.
- 13.03 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.
- 13.04 Counterparts Deemed Original. 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.
- 13.05 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.
- 13.06 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.
- 13.07 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 mails, 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.



**BISD:** Burleson Independent School District  
1160 SW Wilshire Blvd  
Burleson, TX 76028  
Attn: Superintendent

**CITY:** City of Burleson  
141 W Renfro Street  
Burleson, Texas 76028  
Attn: City Manger  
Telephone: (817) 426-9600

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107  
Telephone: (817) 332-2580

**HILL COLLEGE:** Hill College  
112 Lamar  
Hillsboro, Texas 76645  
Attn: President  
Telephone: (254) 659-7500

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

13.09 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.

*[The remainder of this page intentionally left blank.]*

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

**CITY OF BURLESON**

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

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

Title: \_\_\_\_\_

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

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of the City of Burleson, on behalf of said City.

[Notary Seal]

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

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

**HILL COLLEGE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of Hill College, on behalf of said entity.

[Notary Seal]

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

**BURLESON INDEPENDENT SCHOOL  
DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, known personally by me to be the Superintendent of Burleson  
Independent School District, on behalf of said entity.

[Notary Seal]

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

Exhibit "A"



Exhibit "B"





Exhibit "B"



Exhibit “B”



Exhibit “B”





Exhibit "B"



Exhibit "B"





Exhibit "B"



Exhibit "B"





Exhibit "B"

