

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR FUNDING BETWEEN THE TOWN OF ADDISON AND METROCREST CHAMBER OF COMMERCE IN AN AMOUNT NOT TO EXCEED \$35,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR FUNDING; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

**WHEREAS**, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

**WHEREAS**, the Metrocrest Chamber of Commerce (“Metrocrest”) submitted an Application to the Town for consideration; and

**WHEREAS**, the Town has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

**WHEREAS**, the Town and Metrocrest desire to enter into the Agreement for Funding to set forth the terms and conditions regarding Metrocrest’s use of the public funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**SECTION 1.** The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

**SECTION 2.** The Agreement for Funding between the Town of Addison and Metrocrest Chamber of Commerce in an amount not to exceed \$35,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

**SECTION 3.** This Resolution shall take effect from and after its date of adoption.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **9th** day of **NOVEMBER 2021**.

**TOWN OF ADDISON, TEXAS**

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Joe Chow, Mayor

**ATTEST:**

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Irma Parker, City Secretary

**EXHIBIT A**

STATE OF TEXAS                   §  
  §                   **AGREEMENT FOR FUNDING**  
COUNTY OF DALLAS           §

This Agreement for Funding (the "Agreement") is made and entered into this the 9th day of November, 2021 by and between the Town of Addison, Texas (the "City" or "Addison") and Metrocrest Chamber of Commerce (the "Chamber" or "Organization").

**WITNESSETH:**

**WHEREAS**, the City Council has investigated and determined that it is in the best interest of the City to provide public funds to the Chamber through its Economic Development and Tourism Department (the "Department"). These funds help support the economic development efforts of the community; and

**WHEREAS**, the mission of the Organization is to create economic prosperity for their members by providing programs, resources, and support that assist and benefit businesses, government and citizens resulting in a vibrant place to live and work; and

**WHEREAS**, the City has reviewed the scope of non-exclusive services, hereinafter defined, for the Organization and feels they help fulfill a public purpose and will benefit its businesses and citizens; and

**WHEREAS**, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, Addison and the Organization do hereby agree as follows:

**I. TERM**

The term of this Agreement shall begin on the date of adoption and execution of this Agreement by both Parties, through the 30th day of September, 2022 (the "Expiration Date"), except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

**II. SERVICES**

In connection with this Agreement, the Chamber will provide to the City the following non-exclusive services ("Services"):

- A. *Economic Development Marketing:*
  - i.) Provide marketing support to the Addison Economic Development Department, including support and participation in the Annual Economic Development Luncheon (virtual/in-person).

- ii.) Conduct a Business Expo, in conjunction with Coworking in the Park, with targeted marketing for Addison Businesses and provide educational sessions (virtual/in-person).
- iii.) Target Addison-based Chamber members to renew Business Registration.
- iv.) Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of the Addison Economic Development Department (virtual/in-person).
- v.) Collaborate on BREP (business retention and expansion program) targeting Addison-based businesses and headquarters (virtual/in-person).

B. *Entrepreneur Development/Small Business Support:*

- i.) Highlight local resources available to entrepreneurs (i.e. Small Business Association, The Dallas Metropolitan Small Business Development Center, Dallas SCORE, etc.).
- ii.) Host at least one Chamber event at the Addison TreeHouse (the “TreeHouse”).
- iii.) Provide complimentary one-year chamber membership to business start-ups officing and holding active membership with the TreeHouse.
- iv.) Encourage Treehouse memberships amongst Chamber members; maintain Chamber office at the Treehouse to help bridge business community and entrepreneurs/start-ups in Addison.
- v.) Encourage back to business small group meet-ups and opportunities to connect in TreeHouse space; highlighting use of coworking space for business owners who have had to reimagine office space due to COVID-19.

C. *Addison Business Profile Support:*

- i.) Organize and conduct annual Mayors’ Forum (virtual/in-person).
- ii.) Provide local leadership development opportunity via Leadership Metrocrest (virtual/in-person).
- iii.) Provide ribbon-cutting support for new Chamber members in the Addison area (virtual/in-person).
- iv.) Conduct annual educator appreciation programming for Bush Elementary (virtual/in-person).
- v.) Support Economic Development Department efforts in attracting and retaining businesses; conduct collaborative junctions when advantageous.

*D. Develop Strategies to Connect the Addison Airport Community and the Addison Business Community*

- i.) Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman’s Circle, etc. (virtual/in-person).
- ii.) Increase awareness of the Addison airport, its new customs facility, and its third fixed base operator to chamber members and work with key airport staff to develop strategic community engagement.
- iii.) Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)
- iv.) Support the grand opening of the new customs facility once online (virtual/in-person)

*E. Tourism Support:*

- i.) Consistent brand awareness for Addison, special events, and business amenities.
- ii.) Work with Tourism Manager and Special Events Department to promote hotel packages for Addison’s special events amongst chamber members and business community.

A table reflecting and including these Services is attached to this Agreement as **Exhibit A** and incorporated herein and made a part hereof.

**III. PERFORMANCE REPORTS**

The Chamber shall provide the City with a quarterly report (the “Report”) regarding all Chamber work and activities for the quarter immediately preceding the Report date. The Report shall include, without limitation, (i) all marketing activities of the Chamber, (ii) all expenses and the payment thereof (e.g., payments to performers, other third parties, and proof of such payment), and (iii) all additional activities of the Chamber other than the above and foregoing Services. Quarterly Reports shall be due as follows: (i) first quarter shall be provided by December 31, 2021; (ii) second quarter shall be provided by March 31, 2022; (iii) third quarter shall be provided by June 30, 2022; and (iv) fourth quarter shall be provided by September 30, 2022. Each such report shall be in a form and provide content satisfactory to the City, and shall provide supporting information, including any supporting documentation as the City may reasonably request. Upon the expiration or earlier termination of this Agreement, the Chamber shall provide any and all outstanding Reports, partial reports included, to the City not later than the 25th day following the Expiration Date or the date of termination, as applicable, and the obligation to provide such report shall survive the expiration or earlier termination of this Agreement.

In connection with the Services, the Chamber warrants and represents to the City that:

- A. The Chamber has the skills, qualifications, expertise, experience and financial capability necessary to perform the Services with a high degree of quality and responsiveness;
- B. The Services and work will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards;
- C. The Services shall comply with all applicable federal, state or local statutes, ordinances, laws, rules, standards, codes and regulations;
- D. The Chamber: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Chamber; and
- E. The execution and delivery of this Agreement by the Chamber does not: (i) conflict with, or result in any violation or breach of, any provision of the Chamber's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which the Chamber is a party; or (iii) materially conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to the Chamber.

All Services shall be provided by the Chamber in cooperation and coordination with the City Staff, and in particular with the Addison Director of Economic Development & Tourism (the "Director"). Any and all promotional or other materials regarding the Services which are to be prepared, given or delivered by the Chamber shall be first presented to the Director for the Director's review and approval prior to the public dissemination of any such materials. Standardized language agreed upon by both parties prior to any public dissemination thereof may, after such agreement, be disseminated in Chamber materials without prior review of those materials. Prior to solicitation of any activities and other vendors, the Chamber shall use its reasonable efforts to first obtain the pre-approval from the Director regarding such solicitation; however, the parties hereto recognize that the Chamber may not be able, in all instances, to obtain the pre-approval of the Director prior to a solicitation, and in such event the Organization shall nevertheless, in conducting any solicitation, abide by and comply with such communication standards as the Director shall establish. The Services shall be provided by the Chamber in a professional manner. In identifying, selecting, and recommending entertainers, activities, and vendors pursuant to this Agreement, and in performing all of its Services hereunder, the Chamber understands and recognizes that the events under this agreement are not for religious or political purposes (and are not events that promote or suggest any religious or political agenda), and the Chamber will perform its Services hereunder in accordance therewith.

#### IV. COMPENSATION

For the Services provided by the Chamber in accordance with the terms and conditions of this Agreement and subject to the termination provisions of this Agreement, the City will pay the Chamber a fee as follows:

The City will pay the Chamber **Thirty-five Thousand and No/100 Dollars (\$35,000.00)**, to be paid in four installments as follows: (1) The first installment (“first Installment”) of \$8,750.00 shall be paid by January 15, 2022, (2) the second installment (“second installment”) of \$8,750.00 shall be paid by April 15, 2022, (3) the third installment (the “third installment”) of \$8,750.00 shall be paid by July 15, 2022, and (4) the fourth and final installment (the “fourth installment”) of \$8,750.00 shall be paid by October 15, 2022 upon (i) the completion of the Services (that is, upon completion of all of the Services), and (ii) the satisfactory performance, as reasonably determined by the City, of all Services performed by the Chamber, including, without limitation, the City’s timely receipt of the September 2022 Report and all Reports required prior thereto, in a form and providing content reasonably acceptable to the City. Payment of the third installment shall be by no later than September 31, 2022.

## V. TERMINATION

- A. *Without cause.* Either party may terminate this Agreement at any time by giving at least 30 days written notice of such termination to the other party. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination or upon the expiration of this Agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by the Chamber shall be and become the property of the City and the Chamber shall promptly deliver such items to the City.
- B. *With cause.*
- (i) If (a) the Chamber fails to perform any of the its duties or responsibilities as reasonably determined by the City, or (b) if the Chamber fails to fulfill in a timely and professional manner its obligations under this Agreement, or (c) if the Chamber violates any of the terms or provisions of this Agreement, or (d) if the Chamber, its agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the City, as determined reasonably but solely by the City, then the City shall have the right to terminate this Agreement effective immediately upon the City giving notice thereof, either oral or in writing, to the Chamber.
  - (ii) Notwithstanding subparagraph B(i) above, such right of termination shall not be exercised by the City unless and until the Chamber has been has received notification specifically identifying the failure and the failure remains uncured for a reasonable period of time, as determined by the City.
  - (iii) If the City’s termination of this Agreement for cause is defective for any reason, including but not limited to the City’s reliance on erroneous facts concerning the Chamber’s performance, or any defect in notice thereof, the City’s maximum

liability shall not exceed the amount payable to the Chamber under Section IV above through the quarter in which the termination for cause takes place.

- C. If this Agreement is terminated during the following times, the Chamber shall promptly reimburse the City the corresponding amount. Following such termination, the Chamber shall be entitled to no further payment or compensation hereunder, and all finished or unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by the Chamber shall be and become the property of the City and the Chamber shall promptly deliver such items to the City. The reimbursement obligation set forth herein shall survive the termination of this Agreement.

Termination Date	Reimbursement to City
December 2021	Amount of first installment to the City
January 2022	\$4,375.00
February 2022	\$2,187.50
March 2022	Amount of Second installment to the City
April 2022	\$4,375.00
May 2022	\$2,187.5
June 2022	Amount of Third installment to the City
July 2022	\$4375.00
August 2022	\$2,187.5.
September 2022	Amount of Fourth installment to the City

#### VI. RELATIONSHIP OF PARTIES

The Chamber, during the Term of this Agreement, is and shall be an independent contractor, and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the professional manner in which the Chamber performs the Services which are the subject matter of the Agreement; provided always however that the Services to be provided by the Chamber shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such Services.

#### VII. INSURANCE

At all times in connection with this Agreement, the Chamber shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- |    |  |                             |
|----|--|-----------------------------|
| a. | Commercial General Liability:          | \$1,000,000.00              |
| b. | General Aggregate                      | \$1,000,000.00              |
| c. | Product/Completed Operations Aggregate | \$1,000,000.00              |
| d. | Personal & Adv. Injury                 | \$1,000,000.00              |
| e. | Per Occurrence                         | \$1,000,000.00              |
| f. | Medical Coverage                       | \$5,000.00 (any one person) |



- g. Liquor Liability Endorsement \$1,000,000.00 (if selling beer and/or wine)
- h. Fire Liability (any one fire) \$ 50,000.00
- i. Statutory Limits of Workers Compensation Insurance

All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, (ii) name the City as an additional insured and contain a waiver of the subrogation endorsement in favor of the City, (iii) endorsed to read as primary coverage regardless of the application of other insurance, and (iv) contain no cross liability exclusions or insured versus insured restrictions. Certified copies of all such policies shall be delivered to Addison upon the execution of this Agreement, but in any event no later than two weeks prior to the event; provided, however, that Addison, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance (listing each insurance coverage described and required herein) together with the declaration page of such policies, along with a copy of the endorsements necessary to meet the requirements and instructions contained herein, including, without limitation, the endorsement naming Addison as an additional insured, and shall specifically set forth the notice of cancellation and termination provisions to the City. Each such policy shall provide that it shall not be canceled without at least 30-days written notice thereof being given to Addison. Coverage for Products/Completed Operations must be maintained at least two (2) years after Agreement termination, including any renewal thereof or extensions thereto.

**VIII. RECORDS**

The Chamber shall keep complete and accurate records for the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to City upon request. The Chamber shall assure the confidentiality of any records that are required by law to be so maintained. The Chamber shall prepare and forward such additional or supplementary records as City may reasonably request.

**IX. NOTICE**

For purposes of this Agreement, if written notice or other communication is given, such notice or other communication shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for notice are as follows:

<u>To the City:</u>	<u>To Metrocrest Chamber of Commerce:</u>
Town of Addison, Texas	Metrocrest Chamber of Commerce
5300 Belt Line Road	14681 Midway Road, Suite 200
Dallas, Texas 75254-7606	Addison, Texas 75001
Attn: Wesley S. Pierson	Attn: Hayden Austin

The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

#### **X. REPORTS CONFIDENTIAL**

No Reports, information (either in writing or oral), documents, or other materials given to or prepared by the Chamber under this Agreement which the City requests in writing to be kept confidential, shall be made available to any individual or organization by the Chamber without the prior written approval of the City.

#### **XI. AUTHORITY TO EXECUTE**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

#### **XII. OWNERSHIP OF REPORTS**

The reports, documents and materials prepared by the Chamber under or pursuant to this Agreement shall be the sole property of the City.

#### **XIII. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of the Chamber, the Chamber has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void *ab initio*.

#### **XIV. RIGHTS AND REMEDIES CUMULATIVE; NON-WAIVER**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by either party of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

#### **XV. APPLICABLE LAW; VENUE**

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

#### **XVI. ENFORCEABILITY**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**XVII. FORCE MAJEURE**

In the event either the City or the Chamber shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of electrical grid, governmental authority, federal or state executive order, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

**XVIII. NO THIRD-PARTY BENEFICIARIES**

This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**XIX. INCORPORATION OF RECITALS**

The above and foregoing recitals to this Agreement are true and correct and are incorporated herein and made a part hereof for all purposes.

**XX. CONSTRUCTION OF CERTAIN TERMS**

Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

**XXI. SEVERABILITY**

The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect. In lieu of any such illegal, unlawful, unconstitutional, or void provision, the parties agree to seek to negotiate to add to this Agreement another provision that would be permitted that is as close to the intent of the original provision as possible.

**XXII. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

**XXI. SOVEREIGN IMMUNITY**

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

**XXII. NO BOYCOTT ISRAEL**

Pursuant to Texas Government Code Chapter 2271, the Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

**SIGNED** by each of the respective parties on the date set forth below.

**TOWN OF ADDISON, TEXAS**

**METROCREST CHAMBER OF  
COMMERCE**

By: \_\_\_\_\_  
Wesley S. Pierson, City Manager

By: \_\_\_\_\_  
Hayden Austin, President

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

Date: 10-29-21