

- (ii) Improving education and training for the purpose of strengthening community economic development efforts;
- (iii) Marketing the region for the purpose of generating opportunities that will result in economic expansion and diversification;
- (iv) Supporting networking opportunities for sharing knowledge and experience, and the development of professional relationships throughout the County and in the Rio Grande Valley and
- (v) Such other services as are agreed between the County and Council.

Without limiting the generality of the foregoing, the County and the Council agree that the services provided hereunder to the County include assistance with website development and design, market research and studies, creation of beta tables, marketing materials and similar materials, and participation in trade shows and missions. The means and methods for providing such services shall be subject to the County's prior review and approval. The County shall be provided the opportunity to give input into all creative processes and designs, and shall have final approval of all marketing and creative endeavors and other services for the County. The Council shall abide by all applicable laws, rules, ordinances, orders and regulations in providing services hereunder. Upon its creation, all rights in and to all materials created by the Council specifically for the County hereunder in whatever form or media (collectively, the "Work"), and any derivative works thereof, shall be exclusively owned by and vested in the County as works made for hire (including, without limitation, all copyrights). All rights in the Work created specifically for the County, including all copyrights, trademarks and other intellectual property, belong exclusively to County, including the exclusive right to use, reproduce, alter, record, perform and synchronize the Work for any purpose in any media without further agreement or payment, and the exclusive right to register all copyrights anywhere in the world in the Work in County's name.

2. **Payment.** In consideration for the complete and satisfactory performance by the Council of the Council's obligations hereunder, the County shall pay the Council \$17,500.00 for the provision of services as set forth herein, which amount is the County's dues attributable to its class of membership in the Council, as such is set forth in Article 2 of the By-laws of the Council. Such amount is payable on or before February 1, 2018, and satisfies the dues requirement of the By-laws of the Council such that no additional payment shall be due from the County. The payment provided for herein shall be paid solely from lawfully available funds that have been appropriated by the County. Under no circumstances shall the County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.
3. **Use of Funds.** The Council shall use the funds received from the County only for the purposes set forth in this Agreement.
4. **Annual Report.** The Council agrees to, at least annually or more frequently upon request by the County, present a report to the Commissioners Court of the County of the activities and accomplishments of the Council.

5. **Representations and Warranties of Council.** The Council represents and warrants to the County, as of the date hereof, as follows:
 - A. **Organization.** The Council is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to do business in the State of Texas.
 - B. **Authority.** The execution, delivery and performance by the Council of this Agreement are within the Council's powers and have been duly authorized by all necessary action of the Council.
 - C. **County Obligation Limited.** The Council acknowledges that the County is not committed or obligated to pay any expenditure incurred with respect to the operation of the Council or the provision of services hereunder, and is only obligated to make the payment specifically provided in paragraph 2 of this Agreement.
6. **Representations and Warranties of County.** To the actual knowledge of the Commissioners' Court, as of the date hereof, the County represents and warrants to the Council that the execution, delivery and performance by the County of this Agreement are within its powers and have been duly authorized by all necessary action.
7. **Information; Audit.** The Council shall, at such times and in such form as the County may request from the Council, provide information concerning the status of the performance of the Council's obligations under this Agreement. The Council agrees that the County will have the right to audit the financial and business records of the Council that relate specifically to the Program and Council's compliance with the terms of this Agreement at anytime in order to determine compliance with this Agreement. To the extent reasonably possible, the Council shall make all records related to the Program and other records related to compliance with the terms of this Agreement available in electronic form or otherwise available to be accessed through the internet following reasonable advance notice by the County and shall otherwise cooperate fully with the County during any audit.
8. **INDEMNIFICATION: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES INCLUDING ATTORNEY'S FEES FOR THE DEFENSE OF ANY ACTION AGAINST COUNTY ARISING OUT OF, RESULTING FROM, OR CONNECTED WITH THE PROVISION OF THE SERVICE BY COMPANY UNDER THIS CONTRACT. SAID INDEMNITY SHALL COVER ANY ACT OR FAILURE TO ACT BY THE COMPANY, ITS AGENTS OR EMPLOYEES.**
9. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of

County pursuant to the provisions of Tex. Loc. Govt. Code Ann. 271.903 (Vernon Supp. 1996).

10. Immunities. Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

11. Additional Instruments' and Documents. County and the Council hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

12. Nondiscrimination. County and Council, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded program or activity when providing any service described herein under this Agreement.

13. Miscellaneous.

A. **Effective Date.** This Agreement shall be effective on January 1, 2018 (the "Effective Date"), and shall continue in full force and effective until December 31, 2018 (the period from the Effective Date to such termination date, the "Term").

B. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.

C. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by all parties, except for the County's right to terminate this Agreement as set forth below.

D. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

E. **Remedies.** Upon breach of any of the covenant, representation, warranty or agreement contained in this Agreement, which breach is not cured within thirty (30) days of notice from the aggrieved party to the other party, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages. Without limiting the generality of the foregoing, the Council acknowledges and agrees that under no circumstances will the County have any liability in excess of the amount payable as set forth in paragraph 2 of this Agreement. In the event the County is the aggrieved party, the County shall also be entitled to terminate this Agreement upon notice to the Council and to a refund of the payment made pursuant to paragraph 2 above, which refund shall be

calculated pro rata based on the amount the percentage of the Term remaining at the time of such termination.

F. **Notices.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

If to the County: Hidalgo County
100 E. Cano, Ste 201
Edinburg, Texas 78539
Attn: County Judge
Telephone: (956) 318-2600
Facsimile: (956) 318-2699

If to the Council: Rio South Texas Economic Council
301 W. Railroad Street, Building D,
Weslaco, TX 78599
Attn: Matt Z. Ruszczak, Executive Director
Telephone: (956) 647-7832

G. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Hidalgo County, Texas.

H. **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

I. **No Third-Party Beneficiaries.** The County and the Council intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the County and the Council.

J. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

K. **Assignments.** This is an Agreement for the services of the Council. Accordingly, the Council may not assign this Agreement or any of its rights or obligations

hereunder without the prior written consent of the County, and any assignment by the Council in violation of the terms hereof shall be void ab initio and of no force or effect.

L. **Counterparts.** This Agreement may be executed in multiple counterparts all of which shall be considered one and the same document.

EXECUTED AS OF THIS THE _____ DAY OF _____, 2017.

COUNTY OF HIDALGO, TEXAS

By: _____
Ramon Garcia, Judge

ATTEST:

By: _____
Arturo Guajardo, Jr., Clerk

RIO SOUTH TEXAS ECONOMIC COUNCIL

Chairman

ATTEST:

Secretary

APPROVED AS TO FORM:

Hidalgo County Criminal District Attorney's Office
Ricardo Rodriguez, Jr.

BY: _____
Victor M. Garza, Assistant District Attorney