

RESOLUTION NO. R2023-64

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AUTHORIZING HOTEL OCCUPANCY TAX FUNDS TO BE EXPENDED FOR THE CONSTRUCTION OF A CONFERENCE CENTER WITHIN A HOTEL TO BE CONSTRUCTED IN THE CROSSING AT 281 COMMERCIAL SUBDIVISION

Whereas, the City currently levies a local Hotel Occupancy Tax (HOT), as authorized by Texas Tax Code Chapter 351; and

Whereas, Section 351.001(a) thereof authorizes the City to expend HOT for inter alia, *“the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers”*; and

Whereas, TEKMAK BURNET QOZB HOTEL LP has entered into an Unimproved Commercial Property Contract and a Performance Agreement for the construction of a Hotel within the Crossings at 281 Commercial Subdivision; and

Whereas, TEKMAK BURNET QOZB HOTEL LP has proposed adding a Conference Center within the Hotel; and

Whereas, City Council finds the proposed Conference Center will *“promote tourism and the convention and hotel industry”* and is a qualified HOT expenditure.

NOW THEREFORE BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Approval. The CONFERENCE CENTER HOT FUNDING AGREEMENT attached hereto is hereby approved.

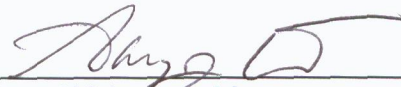
Section two. Authorization. The mayor is hereby authorized to execute an agreement in substantial form as the attachment hereto and take such further action, and execute such ancillary documents, as may be reasonably necessary to facilitate the purpose of this resolution.

Section three. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Section four. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.


PASSED AND APPROVED this the 22nd day of August 2023.

CITY OF BURNET, TEXAS

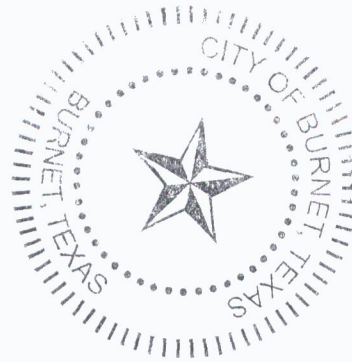


Gary Wideman, Mayor

ATTEST:



Kelly Dix, City Secretary



CONFERENCE CENTER HOT FUNDING AGREEMENT

This Agreement is made and entered into by and between the City of Burnet; and TEKMAK BURNET QOZB HOTEL LP. The City and TEKMAK may jointly be referred to herein as the "Parties" and individually as a "Party."

RECITALS:

Whereas, the City currently levies a local Hotel Occupancy Tax (HOT), as authorized by Texas Tax Code Chapter 351; and

Whereas, Section 351.001(a) thereof authorizes the City to expend HOT for inter alia, "*the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers*"; and

Whereas, TEKMAK has entered into an Unimproved Commercial Property Contract and a Performance Agreement for the construction of a Hotel; and

Whereas, TEKMAK has proposed adding a Conference Center within the Hotel; and

Whereas, City Council finds the proposed Conference Center will "*promote tourism and the convention and hotel industry*" and is a qualified HOT expenditure.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties below, the Parties do mutually agree as follows:

ARTICLE 1 - DEFINITIONS

The terms in italics (*italics*) have the meanings that follow:

Agreement means this Conference Center HOT Funding Agreement.

Appropriation means the appropriation, approved by City Council, of HOT Funds, in an amount sufficient to service the City's obligation as a line-item expenditure in the City's annual budget each Fiscal Year during the term of this Agreement.

City means the City of Burnet, Texas incorporated in Burnet County, Texas as a home rule municipality.

City Council means the governing body of the City.

City Manager means the individual appointed by City Council to serve as the chief executive officer of the City.

City's Maximum Liability Amount means the total amount of money the City may be held liable to TEKMAK for breach of this Agreement and is calculated by determining the difference between the amount budgeted by City Council less the amount received by TEKMAK for the Fiscal Year the breach was alleged to occur and a final judgment of default is rendered against the City by a court having jurisdiction.

Completion Date means the date by which the Hotel shall be required to receive a final certificate of occupancy and be open for business to the general public in order to be eligible to receive any incentive under this Agreement; said Completion Date being June 1, 2026.

Conference Center means, as more fully described in Article 3 below, a facility built within the Hotel and designed to host conferences, seminars, workshops other types of meetings.

Effective Date means August 23, 2023.

Fiscal Year means the City's fiscal year which begins each year on October 1 and ends on September 30 of the subsequent year.

Funds means any money received by TEKMAK from the City under this Agreement.

HOT means tax proceeds received by the City from the HOTEL pursuant to Chapter 351 Texas Tax Code.

Hotel means a Hotel, located on the Real Property, with no less than Eighty-Seven (87) guestrooms furnished and maintained to the standard of a TownePlace Suites by Marriott hotel.

Performance Agreement means that certain agreement between the Burnet Economic Development Corporation and TEKMAK facilitating the development of the Hotel on the Real Property.

Real Property means Lot 1B of the Replat of The Crossings at 281 Subdivision Lot 1, Block A recorded as Document No. 202304945 on April 24, 2023, in the Public Records of Burnet County Texas.

TEKMAK means TEKMAK BURNET QOZB HOTEL LP a limited partnership form under the laws of Texas.

Unimproved Commercial Property Contract means that certain agreement between the Burnet Economic Development Corporation and TEKMAK facilitating the conveyance of the Real Property.

ARTICLE 2 - HOT Reimbursement

All payments under this Agreement shall be subject to the following:

- (a) No HOT reimbursement shall be authorized unless a Certificate of Occupancy for the Conference Center, as described in Article 3, is issued on or before Completion Date; and
- (b) The City shall begin collecting HOT for reimbursement on the date the Hotel receives Certificate of Occupancy; and
- (c) HOT reimbursement payments shall be made over a 36-month period in monthly installments in the percentages that follows:
 - (1) **Months One through Twelve:** the amount of HOT TEKMAK shall receive shall equal to 100% of the HOT the City receives from the Hotel the first twelve months after the Hotel receives a Certificate of Occupancy; and

- (2) **Months Thirteen through Twenty-four:** the amount of HOT TEKMAK shall receive shall equal to 95% of the HOT the City receives from the Hotel the twelve months after Month Twelve; and
- (3) **Months Twenty-five through Thirty-six:** the amount of HOT TEKMAK shall receive shall equal to 90% of the HOT the City receives from the Hotel the twelve months after Month Twenty-four; and
- (d) The City shall make the monthly payments of HOT reimbursement within 30 days of receipt of HOT for said month from TEKMAK; and
- (e) All payments shall be conditioned on Appropriations as provided in Article 5.

ARTICLE 3 - CONFERENCE CENTER REQUIREMENTS AND SPECIFICATIONS.

In order to receive any HOT Reimbursement under this Agreement TEKMAK shall be required to receive a Certificate of Occupancy for the Conference Center on, or before, the Completion Date; and said Conference Center shall meet, or exceed the specifications that follows:

A Meeting Space (inclusive of a pre-function area) that shall be a minimum of 3,000 square feet of flexible, targeted-service meeting and event space for up to 150 guests. The Meeting Space shall have the capacity to host weddings, special events and corporate meetings. The Meeting Space will feature upscale finishes in a modern design, with state-of-the-art audio-visual equipment, multiple seating and table configurations and skilled and experienced catering services.

ARTICLE 4 - OTHER REQUIREMENTS

4.1 **Construction Contract.** Prior to proceeding with Hotel Construction TEKMAK shall provide the City with a copy of the Construction Plans, which shall include Conference Center specifications.

4.2 **Expenditure verification.** Each year during construction of the Hotel TEKMAK shall provide quarterly reports, within such schedule mutually agreed by the City Manager and TEKMAK. The reports shall provide information as to construction progress and construction expenditures for that quarter. The City Manager shall be authorized to request additional information that may be reasonably necessary to verify an expenditure is reimbursable and to reject any expenditure that he determines does not qualify for reimbursement under Chapter 351 Texas Tax Code.

4.3 **City's use of the Conference Center.** Subject to availability, the City shall have the right of use of the Conference Center six days each calendar year, during the term of this Agreement, for City Events without charge. The City shall provide TEKMAK with a proposed date and seating and Conference Center requirements at least 30 days prior to a City Event. TEKMAK shall set up the Conference Center seating and Conference Center configuration at least 24 hours prior to the City Event. The City shall be entitled to use of all audio visual and all other amenities of the Conference Center without charge. All setup, breakdown and other costs associated with providing the Conference Center for all City Events shall be incurred by TEKMAK, save and except food and beverage costs, if any, which shall be incurred by City. Should the requested reservation date be

unavailable, TEKMAK shall work in good faith with the City Manager to provide a mutually agreeable alternative date for the City Event.

ARTICLE 5 - ANNUAL APPROPRIATION

Notwithstanding any provision of this Agreement to the contrary the City's monetary obligations for each Fiscal Year shall be subject to annual Appropriation and should Funds not be appropriated for any Fiscal Year this agreement shall terminate on September 30th of the preceding Fiscal Year.

ARTICLE 6 - TERMINATION

6.1 **By Final Act of Performance.** Unless otherwise terminated sooner pursuant to the provisions below in this Article, this Agreement shall terminate upon TEKMAK's receipt of payment of HOT for the Thirty-six month.

6.2 **TEKMAK Default.** The City may terminate this Agreement by furnishing written notice to TEKMAK if at any time during the term of this Agreement TEKMAK fails to perform any of its obligations under Articles 3, 4 or Section 6.3 subject to the right to cure as provide below in this Article.

6.3 **Termination of Agreements with Burnet Economic Development Corporation.** Notwithstanding any provision of this Agreement to the contrary, the termination of the Performance Agreement or the failure to close the Unimproved Commercial Property Contract, by the closing date set out in that agreement, shall cause the immediate termination of this Agreement.

6.4 **City's Default.** City Default shall mean the failure of the City to comply with or to perform its obligation to provide Appropriated Funds to TEKMAK when due, as stated in Article 2, subject to the right to cure as provide below in this Article.

6.5 **Notice of default.** If the either party is in default of this Agreement, the non-defaulting party may terminate this Agreement by written notice and sue for damages, subject to the limitations of Article 7; and subject to the right to cure as provided in the section immediately below.

6.6 **Right to cure.** Subject to Force Majeure a defaulting party shall have no more than 30 days after written notice is given by the non-defaulting party to cure a default or defaults.

ARTICLE 7 - LIABILITY OF TEKMAK AND CITY

7.1 **Immunity and City Personnel Liability protection.** TEKMAK agrees that no provision of this Agreement is intended to, or shall, be interpreted to negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas. Further, TEKMAK agrees that it may assert claims only against the assets of City and that under no circumstances shall any officer or employee of City or the City ever be personally liable for any of the obligations of City under this Agreement.

7.2 **INDEMNIFICATION. TEKMAK AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS,**

DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, TEKMAK'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR TEKMAK'S MISUSE OF FUNDS AND/OR THE MISMANAGEMENT OF SUCH FUNDS.

7.3 REIMBURSEMENT OF FUNDS. IF THIS AGREEMENT OR THE USE OF FUNDS AS PROVIDED HEREIN IS DEEMED TO BE IMPERMISSIBLE BY A COURT HAVING JURISDICTION OVER THE PARTIES AND SUBJECT MATTER, AND A FINAL NON-APPEALABLE JUDGEMENT REQUIRES TEKMAK TO RETURN SUCH FUNDS, THEN TEKMAK AGREES THAT ANY AND ALL FUNDS RECEIVED FROM THE CITY PRIOR TO SAID JUDGMENT SHALL BE REIMBURSED TO THE CITY

7.4 **City's Liability Limitations.** Subject to Article V, and the right to cure stated in this Article, should City fail to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Act of Default by City; provided however, the City's liability under this Agreement shall in no event exceed the City's Maximum Liability Amount, it being the parties intent that the City shall never be liable for more than the amount City Council budgeted for Hot reimbursement for the fiscal year a default occurs.

7.5 **Attorney's Fees.** Neither Party shall be liable to the other for any Attorney's Fees or costs incurred in the enforcement of this Agreement.

ARTICLE 8 – NOTICES

Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by: (i) delivering the same in person to the Party to be notified, (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the Party to be notified at the address herein specified, or (iii) delivery by private courier with proof of delivery required. If notice is deposited in the United States mail pursuant to (ii) of this Article, it will be effective from and after the date of receipt or delivery thereof if refused. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purpose of notice, the address of the parties shall be, until changed as hereinafter provided for, as follows:

TEKMAK:

TEKMAK Development
3021 Ridge Rd, A-120
Rockwall, TX, 75032
Telephone: (214) 802-2964

CITY:

City of Burnet
Attn. David Vaughn, City Manager
P.O. Box 1369
Burnet, Texas 78611

The Parties shall have the right, at any time, to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other Party. Each Party shall have the right from time to time to specify additional parties

to whom notice hereunder must be given by delivering to the other Party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that neither Party shall have the right to designate more than two (2) such additional parties. Notice required to be delivered hereunder to either Party shall not be deemed to be effective until the additional parties, if any, designated by such Party have been given notice in a manner deemed effective pursuant to the terms of this Article.

ARTICLE 9 - RELATIONSHIP

TEKMAK shall at all times be the independent contractor of the City and not the employee or agent of the City, with respect to the matters provided for herein. TEKMAK shall have no right or power to contract with third parties for, on behalf of, or in the name of the City or to otherwise bind or obligate the City.

ARTICLE 10 - SUCCESSORS AND ASSIGNS; ASSIGNABILITY

10.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Parties and their respective heirs, representatives, successors and permitted assigns.

10.2 **Assignment by TEKMAK.** TEKMAK shall not be permitted to assign this Agreement, in whole or in part, unless such assignment is first approved by City Council.

ARTICLE 11 - TERM

This Agreement shall be effective as of its Effective Date. Unless earlier terminated under the terms of this Agreement, this Agreement shall terminate on TEKMAK's receipt of final HOT Reimbursement.

ARTICLE 12 - MISCELLANEOUS

12.1 **Amendments.** This agreement may be amended only by a written instrument so stating which is executed by the Parties hereto.

12.2 **Severability.** If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby but shall be enforced to the greatest extent permitted by law.

12.3 **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

12.4 **Force Majeure.** It is expressly understood and agreed by the Parties that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable

to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

12.5 **Waivers.** No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

12.6 **Governing Law and Venue.** This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by the laws applicable to the State of Texas. Venue for any disputes arising under this Agreement shall be in Burnet County, Texas.

12.7 **Authority.** The person executing this Agreement on behalf of the TEKMAK and the City each represents that he/she has the power and authority to do so and to bind his/her principal to the terms of this Agreement.

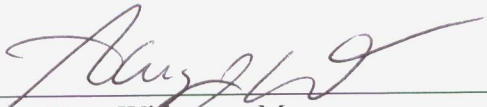
12.8 **Recitals.** The recitals set out above are incorporated herein by reference for all purposes.

12.9 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.


SIGNATURES ON FOLLOWING PAGE

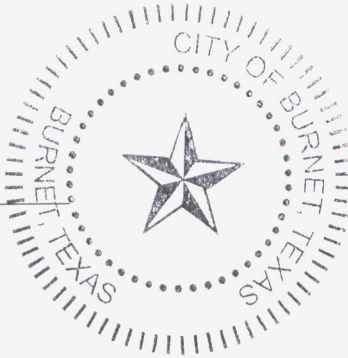
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the day and year first above written.

CITY OF BURNET

By: 
Gary Wideman, Mayor

ATTEST:


Kelly Dix, City Secretary



TEKMAK BURNET QOZB HOTEL LP

By: 
Glenn Decker, Manager