

**MARKETING AGREEMENT BETWEEN THE CITY OF LEAGUE CITY
AND THE BAY AREA COASTAL PROTECTION ALLIANCE**

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This Agreement (“Agreement”) is entered into between the City of League City (“City”) and the Bay Area Coastal Protection Alliance (“Organization”), collectively referred to as the “Parties” on the date set forth below.

RECITALS

WHEREAS, on September 13, 2008, Hurricane Ike caused devastation and destruction across the Houston-Galveston region with massive flooding from storm surge waters, with Galveston Island and the Bolivar Peninsula being the hardest hit areas; and

WHEREAS, on June 25, 2013, the City Council passed Resolution 2013-29 which pledged its support to the “Ike Dike Project” for a coastal barrier to be completed for the protection of the Houston-Galveston region from hurricane storm surges including Galveston Bay; and

WHEREAS, the City Council has been asked to provide funding to the Organization for marketing efforts related to the creation of a video in support of a coastal barrier for the Houston-Galveston region.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree to the following terms.

TERMS

1. **Recitals.** The above-listed recitals are true and correct and are hereby incorporated into this Agreement.
2. **Term.** The term of this Agreement shall commence upon execution of this Agreement and terminate upon the completion of the video described in Section 3 of this Agreement.
3. **Scope of Work.** The Organization shall engage a third-party production company to create an educational video to give members of the public and government agencies information about the need for a coastal barrier system and as further described in **Exhibit A**, which is attached and incorporated herein. The City understands and acknowledges that it shall have no right to control or direct the content of the video and that all such rights of control, direction and approval shall remain solely with the Organization.
4. **Compensation.** The City shall provide up to Fifteen Thousand Dollars (\$15,000) for the completion of the work described in Section 3 of this Agreement. The City shall provide the funding to the Organization as a lump-sum within thirty days (30) from the execution of this Agreement.

5. **Rights to Work.** The work described in Section 3 of this Agreement shall remain at all times the sole and exclusive property of the Organization. Once the work is completed, the Organization hereby grants to the City a non-exclusive license to use the work described in Section 3 of this Agreement for educational purposes only; provided, however, that the City shall not in any modify or alter the work and shall at all times include any and all copyright marks reflecting the ownership of the work.
6. **Tax-exempt Status.** The Organization shall maintain its status as a legal non-profit tax-exempt organization, comply with any federal or state requirements applicable by virtue of the Organization's legal status, and comply with any other laws, regulations or requirements applicable by virtue of the Organization's legal status. During the term of this Agreement, Organization will notify the City with three (3) days of any loss of its tax-exempt status.
7. **Independent Organization.** This Agreement shall not be construed to create a partnership, joint venture, or other agency relationship between the parties, who are independent of one another. The relationship of the Organization to City is and shall continue to be that of an independent organization, and no liability or benefits such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, sub-contractor or employee, as a result of this Agreement or its performance. No relationship, other than that of independent organization, shall be implied between the parties or between either party and the other party's agent, employee, or sub-contractor. This provision shall survive the termination of this Agreement.
8. **Assignability.** The parties recognize that this Agreement is based upon the skill and expertise of the parties and therefore agree that the Agreement and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this Agreement. Provided, however, the City expressly agrees and acknowledges that the Organization has retained a third-party production company to create the video described in Section 3 of this Agreement.
9. **Termination.** The City may terminate this Agreement for any reason upon seven (7) days written or electronic notice to the Organization. In the event the City terminates the Agreement, the Organization will be entitled to retain any portion of the funding provided by the City to cover costs and expenses incurred by the Organization on or prior to the date the Organization receives such notice of termination.
10. **Severability.** If at any time subsequent to the date of this Agreement, any clause or provision of this Agreement is held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect. In addition, the invalidation of any clause or provision of the Agreement will have no effect on the remaining provisions of this Agreement, and as such, the remaining Agreement will remain in full force and effect, and will be interpreted as consistently as possible.
11. **Non-Waiver.** The failure of either party hereto to insist in any instance upon the strict performance of any provision of this Agreement or to exercise any election contained herein shall not be construed as a waiver or relinquishment for the future of such provision or election.

No waiver or modification by any party shall have been deemed to have been made unless expressed in writing by such party.

12. **Choice of Law/Venue.** This Agreement is performable in Galveston County, Texas and will be construed in accordance with the laws of the State of Texas. The parties agree that any lawsuit filed claiming any breach of this Agreement or seeking to enforce or declare any rights under this Agreement shall be brought exclusively in a court of proper jurisdiction in Galveston County, Texas.
13. **Entire Agreement.** This Agreement constitutes the final and complete understanding of the parties regarding the subject matter hereof, superseding any prior agreements or understandings between them. This Agreement may not be amended or modified except by a subsequent written instrument evidencing the express consent of each of the parties, duly executed by the parties.

Executed this _____ day of _____, 2017.

BAY AREA COASTAL PROTECTION ALLIANCE

(Signature)

(Name, Position)

THE CITY OF LEAGUE CITY, TEXAS

John Baumgartner, City Manager

ATTEST:

Diana Stapp, City Secretary

APPROVED A TO FORM:

Nghiem V. Doan, City Attorney

Exhibit A

SCOPE OF PROJECT

Bay Area Coastal Protection Alliance (BACPA) and the Center for Texas Beaches and Shores Ike Dike Ship Channel Protection *Creative Program Treatment*

This proposed program treatment is submitted in response to a request from BCPA and the Center for Texas Beaches and Shores to create a short film that informs and educates the viewer about the danger of storm surge, flooding, and runoff to the Port of Houston as a result of storms and hurricanes, and how the Ike Dike will mitigate the risks to property, commerce and human life.

Working in cooperation with the Center for Texas Beaches and Shores and Texas A&M University - Galveston, Space City Films will provide the creative and production resources needed to design, develop, and produce a professional, broadcast-quality high definition video program that achieve the established objectives.

The program will address two primary audiences: The first is Texas state representatives, urging them to add their name to the growing list of Ike Dike supporters to push for federal aid. The second primary audience is representatives on a national level, with the intent of demonstrating the federal government's crucial role in the construction of the Ike Dike.

Audience Profile

The primary State audience consists of 142 males and 36 females, fairly evenly divided through the ages of 35 and 65, with the highest concentration in their late fifties. The majority of the members are white, with an additional 63 minority members. All but 11 members have a Bachelor's degree or higher.

The primary National audience consists of the Senate and House of Representatives, whose average age is 57 and 61, respectively. The overwhelming majority of both are college educated. Of the 441 members, 102 are minorities. There are 108 women.

The secondary audience consists of residents and businesses along the upper Texas Gulf Coast, chambers of commerce, insurance companies, bankers, investors, and developers.

Communications Objectives

Purpose

The purpose of the program is to capture the viewers' attention and provide a solid explanation of the Coastal Spine concept and why it is necessary to protect the Port of Houston. The program will engage and inform the target audience in a dramatic, interesting manner, present the potentially disastrous scenario, and motivate them to take action in favor of the Coastal Spine. At the end of the program, the audience will come away with knowledge and understanding of the very real threat of storm surge, knowledge of the leading solution, and a sense of urgency to prevent catastrophe.

Key Messages

The film will include content about the many businesses and refineries in the Port, its extensive import/export function, and the many nationwide effects that will be felt by its potential destruction. There will be a description of the Coastal Spine as a preventative solution for protecting the Port; specifically focused on the Ike Dike component.

- ☐ The Texas coastal region is one of the fastest-growing coastal regions in the United States - one in every four Texans lives along the Gulf Coast. Most residents are not aware of the risks associated with living along the coast.
- ☐ Texas has sixteen major ports and more than 3,300 miles of bays and estuaries.

- ☐ The area made up of Galveston, Harris, and Chambers Counties is one of the most flood-prone areas of the United States.
- ☐ The Port of Houston produces a large percentage of import, chemical, and manufacturing activity in the United States, and has an economic impact of billions of dollars annually.
- ☐ A direct hit of a major storm and the resulting storm surge could potentially destroy business, (refineries, and specialty chemical plants along the Houston Ship Channel and Port of Houston – a catastrophic loss that could cripple the U.S. economy.
- ☐ A storm is coming: 4,000 day drought. We have passed the 8-year tipping point.
- ☐ Description of the Coastal Spine as a proven, economically viable solution.
- ☐ Storm damage prevention is cheaper than repair.
- ☐ The elderly and poor are especially vulnerable and disproportionately affected by catastrophic weather.
- ☐ The construction of the Coastal Spine creates jobs and protects existing ones.
- ☐ The Coastal Spine is cheaper than the response aid that went to New York for Hurricane Sandy (and New Orleans for Hurricane Katrina, and would protect a larger population and infrastructure.
- ☐ The federal government must pay the majority of the construction costs as part of a non-partisan effort to save lives, the economy, and the region.
- ☐ The Coastal Spine concept has widespread support from coastal cities, organizations, counties, industry unions, and advocacy groups – all of which make up the voter constituency.
- ☐ The Coastal Atlas tool provides evidence of the potential billions of dollars in damage if the area is left unprotected.

- ☐ The Army Core of Engineers is moving too slowly to make meaningful change.
- ☐ After Hurricane Katrina, the U.S. Government provided \$16 Billion in Federal funding to rebuild the levees and build a coastal spine.
- ☐ After Super Storm Sandy, the U.S. Government provided \$5 Billion in Federal funding.
- ☐ After Hurricane Ike, the U.S. Government has provided ZERO funding to date, even though the population density along the upper Texas coast is one of the largest in the country, and the Gulf of Mexico and Houston Ship Channel are at extremely high risk if another storm of Ike's size were to hit. And it *will* – it is just a matter of time.
- ☐ Protecting the Port of Houston is a matter of national security as the majority of weapon and aircraft related fuels and chemicals are produced here.
- ☐ Damage to the Port and Ship Channel will result in a potential nationwide economic catastrophe.
- ☐ Industries in congressional districts across the country will be negatively impacted.
- ☐ The Ike Dike has the full support of the Texas legislature and constituency.
- ☐ The program will be approximately ten to twelve minutes long.

Look and Feel

The film will include a dramatic introductory scenario, high-end motion graphics and animations, green screen composites, enhanced reality scenarios, and imagery recorded on location and in- studio.

Images shall be crisply lit, meticulously composed, and interesting to view. The pace will be dramatic and serious, but will not idle or move slowly. Quick editing and a pointed message will keep the viewer interested. All graphics and animation will be bright, clean, and have a legible, stylish look that

incorporates special effects to augment the images.

The Production Approach

Our goal in planning the production of this program is to create a visual and verbal message that communicates urgency and the danger of a potential storm surge, and the importance of the Coastal Spine.

The project will be shot on location in the greater Houston and Galveston areas. Program location components will be recorded in 4K Ultra High Definition video in a 16x9 widescreen format. Supplemental b-roll and historic footage will complement the captured imagery to demonstrate the reality of failed storm suppression.

Program Outline

I. Program Open

- A. Cinematic intro of executives and plant workers preparing for a storm
- B. News segment describes most severe storm in history
- C. The two men cross paths and deal with the damaged plant's effect on their job – representing both the common man/civil aspect, and logistic/national industry aspect

II. Storm Legacy – Extreme Danger to Texas Gulf Coast

- A. Long history of dangerous storms
- B. Currently in a “drought” and overdue for another major storm

III. Problem – Consequences of Inaction

- A. Risk to ship channel - Catastrophic consequences
- B. Risk to Port of Houston

C. Risk to national economy and industry

D. Risk to human life

IV. Solution –Coastal Spine

A. Introduce Coastal Spine

B. Dr. Merrell

C. Explain what the Spine is (3 parts), focusing on Ike Dike component

D. Benefits of proactive protection and construction

V. Close / Call to action

A. State – Support Ike Dike concept and push to federal government

B. National – adopt proposal and fund construction.