

**Land Use License Between
Downtown Visalians
and the CITY OF VISALIA
701 E. Race Ave., Visalia, CA**

This Land Use License (the “License”) made and effective April __, 2025, by and between the City OF VISALIA, a Municipal Corporation and charter law city of the State of California (hereinafter “COV”), and VISALIANS, INC. dba DOWNTOWN VISALIANS (hereinafter “Downtown Visalians”). COV and Downtown Visalians may be referred to herein individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, COV and Downtown Visalians have previously entered into various agreements, consistent with their respective powers and purposes, in order to collaboratively and economically benefit both Parties’ efforts to provide public services in the downtown Property and Business Improvement District “PBID”); and

WHEREAS, COV owns the real property and improvements located at 701 E. Race Ave., which shall be referred to herein as “the Property”; and

WHEREAS, Downtown Visalians has previously utilized City owned properties for storage of personal property related to its powers and purposes of supporting business in the downtown PBID; and

WHEREAS, the Parties desire to enter into an agreement to allow Downtown Visalians to store personal property at the Property pursuant to a limited non-exclusive license; and

WHEREAS, the purpose of this License is to document the terms and conditions under which Downtown Visalians may locate and utilize a storage container and parking for two (2) service vehicles and one (1) trailer on open space at the Property.

NOW, THEREFORE, based upon the mutual covenants contained herein, the parties agree as follows:

1. **PURPOSE:** The intent of the Parties in entering into this License is to allow Downtown Visalians to locate a storage container on the Property for purposes of storing the personal property of the Downtown Visalians. This License would also allow Downtown Visalians to park two (2) service vehicles and one (1) trailer on the Property.

2. **TERM OF AGREEMENT:** The term of this License shall be for one (1) year, to be effective April __, 2025, and ending on April __, 2026. This License may be renewed for two (2) additional one (1) year terms upon the mutual agreement of the Parties.

3. **TERMINATION:**
 - a) COV shall have the right to terminate this License at any time by giving Downtown Visalians at least ninety (90) days prior written notice by either personal delivery or first-class mail postage prepaid, specifying the effective date of termination.
 - b) Downtown Visalians shall have the right to terminate this License at any time by giving COV prior written notice by either personal delivery or first-class mail postage prepaid, specifying the effective date of termination.
 - c) Either Party shall have the right to terminate this License based upon any failure by a Party to comply with the terms, covenants, and requirements contained herein. Upon notice from one Party to the other Party of any breach of this License, the Party receiving such notice shall have one (1) month to cure the breach. Failure to cure the breach within one (1) month shall result in immediate termination.

4. **NON-EXCLUSIVE USE OF PROPERTY:** In recognition of the public purposes associated with activities of the Downtown Visalians, COV hereby grants to Downtown Visalians a limited, non-exclusive right to locate a forty (40) foot storage container and to park its two (2) service vehicles and one (1) trailer on the grounds of the Property. City shall, at its sole discretion, determine the positioning and placement of the storage container and the areas for parking on the grounds of the Property. Downtown Visalians shall not have any right to access or utilize the structures or improvements on the Property unless expressly authorized by COV. Downtown Visalians understands and agrees that COV may utilize the Property for additional purposes and activities, including use by third parties under contract with COV.

5. **PROPERTY RENDERED UNUSABLE:** If the Property shall be partially or wholly rendered unusable or unsuitable for location of a storage container and parking of vehicles and trailer due to an occurrence beyond the control of the COV, then COV may terminate this License by delivering written notice of such election to Downtown Visalians within one (1) week of such occurrence.

6. **VACATE:** Upon the termination of this License, Downtown Visalians shall remove its storage container, service vehicles and trailer from the Property and shall, at the time of vacation, leave the area where the storage container was located in a condition equivalent to the condition of that location at the inception of this License, ordinary wear and tear, and damage by the elements of fire, earthquake, flood, act of God, or public calamity, excepted.

7. **COV COVENANTS:**

- a. COV shall identify a location at the Property upon which the storage container shall be located, as well as an area for the parking of its two (2) service vehicles and one (1) trailer. COV shall coordinate with representatives of Downtown Visalians to schedule and participate in the delivery
- b. COV shall provide with the means, procedures, guidelines for accessing the Property for the sole purpose of accessing the storage container, the vehicles and the trailer.

8. **DOWNTOWN VISALIANS COVENANTS:**

- a. Procure and coordinate delivery and location of the storage container on the Property in conjunction with the COV covenants above.
- b. Conduct all maintenance of the storage container and the immediate grounds surrounding the storage container consistent with any standards determined and provided by COV. Keep the area around the storage container organized and free and clear of any trash or debris. This excludes the irrigation system, which is COV's sole responsibility.
- c. Upon request of COV staff members, conduct visits to inspect the storage container and the immediate grounds surrounding the storage container during the term of this License to review any conditions related to the Property.
- d. Provide and necessary security for the storage container, vehicles and trailer. Downtown Visalians shall indemnify City, consistent with Section 10 below, for any damage to or theft of the storage container and its contents, the vehicles and the trailer stored on the Property by Downtown Visalians.

9. **INSURANCE:**

- a. Required Policies: Downtown Visalians agrees to immediately secure and maintain during the Term of this License, and prior to commencement of any work hereunder, insurance coverage as follows:
 - I) Commercial General Liability and Property Damage: Commercial general liability insurance with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance shall include products/completed operations liability, owner's and contractor's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage.
 - II) Comprehensive Automobile Liability: Commercial coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.
- b. Additional Insured: The Comprehensive Automobile and General Liability/Property Damage policies shall:
 - I) Name COV, its appointed and elected officials, offers, employees, and agents as additional insureds;
 - II) Be primary with respect to any insurance or self-insurance programs maintained by COV;
 - III) Shall apply separately to each insured against whom claims are made or suit is brought, except with respect to limits of the insurer's liability;
 - IV) Contain standard cross-liability provisions.
- c. No Material Change, Termination, or Expiration Without Notification: Each required policy shall provide that such insurance shall not be materially changed, terminated, or allowed to expire except on seventy-two (72) hours prior written notice to COV.
- d. No Subrogation: Each required policy shall be endorsed to include a waiver of subrogation against the COV, its officers, officials, agents, and employees.

- e. Duration: This insurance shall be maintained during the Term of this License until the Term expires if an occurrence policy form is used. If a claims-made policy is used, coverage shall be maintained during the License Term and for a period extending five (5) years beyond the License Term. Downtown Visalians shall replace such certificates for policies expiring prior to the expiration of the Term of this License and shall continue to furnish certificates five (5) years beyond the License Term when Downtown Visalians utilizes claims- made form(s).
- f. Failure to Maintain Insurance: If Downtown Visalians for any reason fails to maintain insurance coverage which is required pursuant to this License, the same shall be deemed a material breach of this License. COV, at its sole discretion, may terminate this License and obtain damages from Downtown Visalians resulting from said breach.

10. **INDEMNIFICATION**: Downtown Visalians agrees to indemnify and save harmless COV and its officers, officials, agents employees and assigns from and against any and all claims, demands, suits, loss, damage, injury, and liability, including cost and expenses incurred in connection therewith, resulting from, arising out of, or in any way connected with the performance of this License, including delivery, location, securing and/or removal of the storage container, regardless of the passive, concurrent negligence on the part of the COV or anyone acting under its direction or control on its behalf. It is further the intent of the Parties that this indemnification requirement is not intended to relieve the COV from liability for the active negligence or misconduct of the COV, its officers, appointed and elected officials, agents, and employees. This Hold Harmless clause is in no way an admission of liability on the part of the COV, or any of its officers, officials, agents, or employees.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

11. **NOTICES**: Any notice, demand, or communication required or permitted to be given by the terms of this License, or by any law, may be given by either party by depositing said notice, demand, or communication in the U.S. Mail, postage prepaid, addressed to the other at the party's address or any new address provided by such party in writing to the other. Service of said notice, demand, or communication shall be complete five (5) calendar days after the deposit of said notice, demand, or communication in the mail.

Notices and communication concerning this License shall be sent to the following addresses:

COV

City of Visalia
Attn: City Clerk
220 N. Santa Fe St.
Visalia, California 93292

Downtown Visalians

Downtown Visalians, Inc.
Attn: Executive Director
120 S. Church Street
Visalia, CA 93291

Either party may, by notice to the other party, may change the address specified above. Service of notice of change of address shall be complete when received at the designated address.

12. MISCELLANEOUS PROVISIONS:

- a. Authority: COV and Downtown Visalians and its respective signatories represent that the signatory holds the position set forth below their signature and that the signatory is authorized to execute this License and to bind said party hereto.
- b. Assignment: Neither this License nor any of the rights hereunder may be assigned without prior written consent of COV.
- c. Interpretation /Headings: The headings/captions are for convenience and reference only and are not intended to define or limit the scope of any provision and shall have no effect on the License's interpretation. When required by the contest of this License, the singular shall include the plural.
- d. Amendments: This License may only be modified or amended in writing and signed by both parties.
- e. Severability: If any term, condition, covenant, provision, or part thereof of this License is, or is declared invalid, void, or unenforceable for any reason, the remainder of the License shall continue in full force and effect.
- f. Governing Law: The laws of the State of California shall govern the interpretation and enforcement of this License and any legal actions arising out of the terms of this License shall be brought in Tulare County.
- g. Attorney's Fees/Costs: In the event of legal action arising from this License, the non-prevailing party agrees to pay the prevailing party reasonable

attorney's fees and costs.

- h. Contract Enforcement: The City Manager of COV shall be responsible for the enforcement of this License on behalf of COV and shall be assisted therein by those officers and employees of COV having duties in connection with the administration thereof.
- i. Cumulative Rights and Remedies: Except as otherwise expressly stated in this License, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times or any other rights or remedies.

IN WITNESS WHEREOF, the parties hereto have entered into this License on the date first written above.

City of Visalia

Visalians, Inc. dba Downtown Visalians

By _____

Leslie Caviglia, City Manger

By _____

By: Steve Nelsen, Executive Director