

PROFESSIONAL SERVICES AGREEMENT

VEDC for Visalia Economic Development

This Agreement, entered into as of July 1, 2022, by and between the City of Visalia, hereinafter referred to as the "CITY", and **Visalia Economic Development Corporation** hereinafter referred to as the "VEDC".

WITNESSETH

WHEREAS, CITY is committed to enhancing economic development opportunities and maintaining the CITY's role as the regional commercial and industrial center for Tulare, Kings and southern Fresno Counties; and

WHEREAS, to help achieve economic growth for its citizens, CITY must retain, grow and attract "primary" industries, that is, industry that make products and services that are sold outside of the CITY thereby creating new wealth to be circulated within the CITY; and

WHEREAS, a primary source of "primary" industries can be found in, or consider locating to, CITY's Industrial Park, CITY should focus certain efforts on growing the Industrial Park; and

WHEREAS, VEDC was formed in partnership with CITY to provide leadership in economic and job development, financial support from the private sector to support economic development activities, private assistance with business expansion, retention and attraction activities; and

WHEREAS, VEDC focuses its efforts on assisting existing and potential Industrial Park businesses; and

WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described in Section I below, and hereinafter referred to as the "PROJECT"; and

WHEREAS, the VEDC represents it is qualified and willing to provide such services pursuant to terms and conditions of this Agreement.

NOW, THEREFORE, CITY and VEDC agree as follows:

I. SERVICES TO BE PERFORMED BY THE VEDC

- A. Scope of Work: The VEDC agrees to perform all work necessary to complete, in a manner satisfactory to the CITY, those tasks described below:
 1. Assistance with marketing Visalia as a prime CA location for industrial expansion
 2. Maintenance of updates to the visaliaedc.com web site
 3. Monthly marketing campaigns which can include direct mailers, social media or other marketing mediums
 4. Participate in ongoing collaboration with the CITY regarding marketing opportunities or prospect relations, promptly referring any prospect leads received directly to CITY for follow up

5. Maintenance of an Industrial Park Directory that will include some information on type of products/services in an effort to encourage business to business activity
6. Assist utility partners to address any necessary utility infrastructure needs on behalf of existing Industrial Park companies
7. Coordination and marketing of the Industrial Roundtable monthly meetings
 - i. Conduct regular outreach to industrial businesses to generate participation in the monthly Roundtable meetings
 - ii. Roundtable meetings will prioritize time for Visalia industrial companies to discuss current issues, trends, or potential strategies to encourage growth and retention of existing industrial companies. Other supporting agencies such as utilities, workforce development, education and service providers may have beneficial information for participating companies, but the format of such meetings must streamline industry's ability to both receive information and communicate needs and issues to supporting agencies partnering with the VEDC
8. Conduct follow up activity related to findings of the 2021 Visalia Economic Strategic Plan completed by Applied Development Economics, such as conducting direct outreach to Visalia Industry Targets prospect list and informing local business outreach efforts
9. Act as Resource Navigator specific to workforce development and training resources available to industrial companies in Visalia. This role should aid both industrial companies and workforce development/education partners to leverage existing training resources and maximize the efforts of those applicable partners to increase local hiring and improve skills attainment necessary for industrial occupational growth in Visalia
10. Conduct at least 4 Business Visitation meetings per month with existing industrial companies in Visalia
 - i. Business Visitations will focus on 'checking in' with company leadership to determine if there are any issues, opportunities, threats, or needs they may have that VEDC or CITY may be able to assist with or acquire more information on. In addition, a standard set of survey information should be acquired so as to maintain regular intelligence about conditions in the industrial park and possible needs to address
 - ii. Information gathered in these visitations is to be uploaded and maintained in a customer relationship management (CRM) program, should such a program be available at no cost to the CITY or VEDC
 1. Both VEDC and CITY will have regular access to so as to assess trend data, act on expressed needs of participating companies and inform economic development and workforce development initiatives

II. COORDINATION FROM CITY

- A. CITY will make an effort to include VEDC in all industrial prospect and local industrial business outreach meetings or communicate activity on a regular basis to the VEDC Executive Director
- B. CITY will attempt to participate in each scheduled Business Visitation meeting with existing industrial companies
- C. CITY will utilize shared CRM program to access data, act on expressed needs of participating companies, and strategize with VEDC and other applicable public partners on

- various economic development and workforce development initiatives that could result from gathered intelligence
- D. CITY will promptly follow up on all prospect leads received following up on information requests, site visits or meeting requests received
- E. CITY will assist in identifying resource information for monthly industrial roundtable meetings based on participating company requests
- F. CITY will assist in following up on specific matters brought up by industry in the Industrial Roundtable meetings, business visitation meetings, or via general communications with VEDC
- G. CITY will assist with all follow up activity related to the 2021 Visalia Economic Strategic Plan completed by Applied Development Economics

III. TIME OF PERFORMANCE

The term of this Agreement shall commence on July 1, 2022 and expire on June 30, 2023, unless earlier terminated by the parties. The initial contract shall be for a twelve (12) month period and shall, at the City's option and upon mutually agreeable terms, be renewable annually thereafter for one (1) additional one-year period. Additionally, this Agreement may be terminated for convenience. In the event of termination or expiration of this Agreement, CONTRACTOR shall transfer to CITY any funds and/or accounts receivable on hand attributable to the use of CITY funds.

IV. PERFORMANCE REVIEW

The CITY shall review the performance and fees of VEDC in furnishing the services provided hereunder, and the compensation provisions hereof. The parties may agree to changes or amendments hereto, including, but not necessarily limited to, changes in compensation provisions, which changes or amendments shall be evidenced by written amendment authorized by specific action of the City Council. Nothing in this paragraph shall be deemed to prevent or inhibit more frequent review of performance, compensation, or other matters relating to this Agreement or otherwise inhibit the free and candid exchange of views between the parties hereto, to the end that the legal interests of the CITY shall best be served and VEDC shall fairly be compensated for services rendered.

V. COMPENSATION

- A. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the VEDC agrees to accept, sixty thousand dollars (\$60,000) per contract year.
- B. Payment of Compensation: The VEDC shall be compensated biannually per CITY's receipt of an invoice.

VI. AUTHORIZED REPRESENTATIVE

- A. CITY: The Economic Development Manager or their designee shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Visalia is specifically required.
- B. As a right of this contract the CITY shall hold one voting board member position, that position to be held by the current/active city councilperson identified by the City Council to serve in this capacity. As a privilege of this contract and position of the council seat, the board member will be allowed to attend Executive Board meetings. In addition to this, the

current Economic Development Manager will also be allowed to attend Executive Board meetings.

C. VEDC: The VEDC Executive Director or the VEDC Board of Directors designee shall represent and act as principle for VEDC in all matters pertaining to the services to be rendered by it under this Agreement.

VII. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

A. Termination By Either Party Without Cause: The CITY or VEDC may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.

B. Termination of Agreement for Cause: The CITY may by written notice to the VEDC specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:

1. If the VEDC fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
2. If the VEDC fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.

C. Post-Termination:

1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
2. Except with respect to defaults of subcontractors, the VEDC shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the VEDC. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a subcontractors, the VEDC shall not be liable for failure to perform, unless the services to be furnished by the subcontractors were obtainable from other sources in sufficient time and within budgeted resources to permit the VEDC to meet the required delivery schedule or other performance requirements.
3. Should the Agreement be terminated with or without cause, the VEDC shall provide the CITY with all finished and unfinished documents, data, studies,

services, drawings, maps, models, photographs, reports, etc., prepared by the VEDC pursuant to this Agreement.

4. Upon termination, with or without cause, VEDC will be compensated for the services satisfactorily completed to the date of termination according to compensation provisions contained herein. In no event, shall the total compensation paid VEDC exceed the total compensation agreed to herein.
5. If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the VEDC was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

VIII. INTEREST OF OFFICIALS AND THE VEDC

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 1. Participate in any decision relating to this Agreement which effects his/her personal interest or the interest of any corporation, partnership, or association in which he/she has, directly or indirectly, any interest; or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his/her tenure or for one year thereafter.

IX. NO PERSONNEL AGENCY OR COMMISSION

The VEDC warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the VEDC for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

X. SUBCONTRACTING

- A. The VEDC shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the CITY.
- B. In no event shall the VEDC subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a VEDC performing the particular type of project.

XI. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the VEDC shall be, and is, an independent contractor and is not an agent or employee of the CITY. The VEDC has and shall retain the right to exercise full control and supervision of all persons assisting the VEDC in the performance of said services hereunder. The VEDC shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

XII. SPECIFICATIONS

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

XIII. DOCUMENTS/DATA

A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents prepared by VEDC pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from VEDC will be at CITY's sole risk and without liability to VEDC. Further, any and all liability arising out of changes made to VEDC's deliverables under this Agreement by CITY or persons other than VEDC is waived as against VEDC, and the CITY assumes full responsibility for such changes unless the CITY has given VEDC prior notice and has received from VEDC written consent for such changes.

B. Publication: No report, information, or other data given or prepared or assembled by the VEDC pursuant to this Agreement, shall be made available to any individual or organization by the VEDC without the prior written approval of the CITY. Notwithstanding the foregoing, however, the VEDC shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.

C. Copyrights: The VEDC shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

XIV. INDEMNIFICATION AND INSURANCE

A. As respects acts, errors, or omissions in the performance of services, VEDC agrees to indemnify and hold harmless CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, losses,

defense costs, liability or consequential damages arising directly out of VEDC's negligent acts, errors or omissions in the performance of his/her services under the terms of this Agreement, except to the extent those arise out of the negligence of CITY.

- B. CITY agrees to indemnify and hold harmless VEDC, its officers, employees, and designated volunteers from and against any and all losses, defense costs, liability or consequential damages to the extent arising out of CITY'S negligent acts, errors or omissions in the performance of this Agreement.
- C. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, VEDC agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with VEDC's (or VEDC's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise out of the negligence of CITY.
- D. Without limiting CITY's right to indemnification, it is agreed that VEDC shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
 - 1. Workers' compensation insurance as required by California statutes.
 - 2. Professional liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000).
 - 3. Comprehensive Automobile Liability 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.
- E. CITY'S Risk Manager is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the CITY'S best interest.
- F. Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Visalia, 707 W. Acequia, Visalia, CA 93291."
- G. Prior to commencing any work under this Agreement, VEDC shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, VEDC shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be VEDC's responsibility to see that CITY receives

documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

H. In addition to any other remedies CITY may have if VEDC fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
2. Order VEDC to stop work under this Agreement and/or withhold any payment(s) which become due to VEDC hereunder until VEDC demonstrates compliance with the requirements hereof; or
3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for VEDC's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which VEDC may be held responsible for payments of damages to persons or property resulting from VEDC's or its subcontractor's performance of the work covered under this Agreement.

XV. NON-DISCRIMINATION

VEDC and all subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or sex in the performance of this Agreement. The VEDC shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

XVI. MISCELLANEOUS PROVISIONS

- A. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- B. Prohibition of Assignment: Neither the CITY nor VEDC shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- C. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- D. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the VEDC, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

CITY OF VISALIA
220 N. Santa Fe St.
Visalia, CA 93292
Attention: City Clerk

Visalia EDC
P.O. Box 2722
Visalia, CA 93279
Attention: VEDC Executive Director

- E. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The VEDC hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- F. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the VEDC as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the VEDC.
- G. Conflict With Law: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- H. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- I. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- J. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- K. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.

CITY OF VISALIA

VEDC

City Manager

Date

Chair of Board

Date

Approved as to Form

City Attorney

Date

Risk Manager

Date