

**CITY OF VISALIA
TOWN - CENTER BUSINESS IMPROVEMENT AREA
MANAGEMENT AGREEMENT**

THIS TOWN- CENTER BUSINESS IMPROVEMENT AREA MANAGEMENT AGREEMENT is made and entered into June 30, 2023 by and between the CITY OF VISALIA, a Municipal Corporation, whose address of record is 707 W. Acequia, Visalia, California 93291, hereinafter referred to as "CITY" and the DOWNTOWN VISALIANS, INC., a California Nonprofit Mutual Benefit Corporation, whose address of record is 120 S Court Street, Visalia, California, 93291, hereinafter referred to as "CONTRACTOR".

WHEREAS, upon petition by property and business owners in the CITY' s downtown business district pursuant to the Parking and Business Improvement Area Law of 1965 (the 1965 Statute)¹, the Town-Center Business Improvement Area (TCBIA) was established by the CITY Council of the CITY of Visalia on November 21, 1966, through adoption, of Ordinance No. 1195 (hereafter "TCBIA Ordinance");² and,

WHEREAS, businesses located within the TCBIA boundaries (as shown on the approved boundary map attached hereto as Exhibit "A") are assessed an additional amount of general business tax equal to 100 percent of the business tax assessed on businesses in other areas of the CITY; and,

WHEREAS, as set forth in Visalia Municipal Code (VMC) section 5.52.070 of the TCBIA Ordinance, the uses to which the proceeds obtained from the additional tax on the businesses within the TCBIA may be put are: The acquisition, construction and maintenance of parking facilities for the benefit of the area; Decoration of any public place in the area; Promotion of public events which are to take place on or in public places in the area; Furnishing of music in any public place in the area; The general promotion of retail trade activities in the area; and,

WHEREAS, as set forth in VMC section 5.52.080 of the TCBIA Ordinance, an advisory board is authorized to be established for the purpose of advising the CITY Council on the manner in which the revenue from the additional business tax is to be used in furtherance of the purposes set forth above; and

WHEREAS, following establishment of the TCBIA, the Visalia CITY Council designated CONTRACTOR as the agency to administer the funds derived from the additional business tax, subject to periodic budget and reporting requirements.³

¹ Streets and Highways Code §§ 36000 - 36081. All further statutory references are to the Streets and Highways Code unless otherwise indicated.

² Originally codified in the Visalia Municipal Code at §§ 6100 -6110, currently codified at Chapter 5. 52 (TOWN CENTER BUSINESS IMPROVEMENT AREA), §§ 5. 52.010 - 5. 52. 110.

³ Pursuant to Resolution 462, adopted February 6, 1967.

WHEREAS, CONTRACTOR, as a private, nonprofit mutual benefit corporation, represents that it possesses the labor and professional skills and expertise to administer and implement the activities and improvements of the TCBI and further that its governing board, consisting of 15 members, is qualified to serve as the TCBI advisory board as provided for in the TCBI Ordinance; and,

WHEREAS, the CITY and CONTRACTOR desire to establish an agreement setting forth the specific manner in which CONTRACTOR will administer the funds and carry out the activities in furtherance of the TCBI Ordinance and establishing the CONTRACTOR governing board as the TCBI advisory board.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. INCORPORATION OF RECITALS. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.
2. SCOPE OF SERVICE. CONTRACTOR shall furnish the following services:
 - A. Administer and implement, either directly or through sub-contracts as specified hereafter, all of the activities and improvements of the TCBI as stated, listed, or otherwise described in annual reports, all of which shall be consistent with the purposes of the TCBI as set forth in the TCBI Ordinance. It is anticipated that CONTRACTOR will sub-contract with other parties, persons or entities to provide some or all of the services and improvements as may be specified in the annual operation budget. Any such sub-contract shall be between CONTRACTOR and such third parties, CONTRACTOR shall solely be responsible for all obligations arising thereunder, and the CITY of Visalia shall not be deemed an agent, principal or joint venturer of CONTRACTOR for the purpose of such sub-contracts.
 - B. Prepare and provide to the CITY, for review by the City Council, an annual operations report for all matters covered under this Agreement no later than May 31 of each year. Such annual report shall account for: (i) all actual revenue, activities and expenditures during the Program Year of the TCBI (Program Year is hereby defined as January 1 of each calendar year through December 31 of each succeeding calendar year) prior to the year of the report; and (ii) a specific management plan, including operating budget, for the Program Year commencing January 1 of the year following the report, specifying the actual activities and improvements proposed to be completed in that Program Year. The City Council shall approve the report as filed, provided the Council finds the report is consistent with the TCBI Ordinance.
 - C. Provided the bylaws or other operating rules of CONTRACTOR continue to provide that any business or property owner who pays the additional TCBI business tax is entitled to membership in CONTRACTOR, and provided the CONTRACTOR, governing board consists of no more than 17 members, the governing board of CONTRACTOR as it may

from time to time be constituted, shall be deemed the TC BIA advisory board and is hereby appointed as such by the City Council of the CITY of Visalia. A list of the current CONTRACTOR governing board members is attached hereto as Exhibit "B". An updated list of governing board members shall be included with the annual budget report as provided for in Paragraph 2.B. above. No other services shall be performed by CONTRACTOR unless approved in advance in writing by the CITY, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with CITY and the results of the work shall be monitored by the City Manager or his/her designee; however, the means by which the work is accomplished shall be the sole responsibility of CONTRACTOR

3. TERM OF AGREEMENT, This Agreement shall be effective as of July 1, 2023, for a period of one year, and shall continue thereafter on a year-to-year basis. Acceptance and approval of the annual report as provided in Paragraph 2.B. above shall constitute renewal of the agreement for an additional one-year term, to commence on July 1 following approval of the report. All terms and conditions contained in this Agreement shall apply to any renewal term.
4. SCHEDULE FOR PERFORMANCE. CONTRACTOR agrees that time is of the essence in the performance of all of the services under this Agreement, and further agrees to produce all required reports and documents in the times stated in this Agreement. Deviations from time schedule may be made only with the prior written approval of the CITY Manager or his/her designee. In the event of any inconsistency between terms of this Agreement and any other document, the terms of this Agreement shall control.
5. CITY OBLIGATIONS
 - A. COLLECTION OF ASSESSMENT. CITY shall collect the TC BIA assessment in the same manner as all other general business taxes, and shall account for additional assessments under the TC BIA Ordinance separately from other general business taxes collected. CITY shall not collect, deduct or charge an administrative fee related to such collected assessments. Neither the CITY's general fund nor any other fund or monies of the CITY, other than the actual additional TC BIA tax levy received by CITY, is liable for any payment under this Agreement. The base general business tax paid by businesses within the TC BIA (that amount equal to the business tax paid by businesses in areas outside of the TC BIA) are not subject to this agreement, and shall be retained by the CITY and used for general fund purposes. Obligations under this Agreement are not a debt of the CITY, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the CITY' s property, income, receipts, or revenues.
 - B. COLLECTION REPORTS. CITY shall provide the following reports to CONTRACTOR (provided that such reports are ordinarily prepared by CITY):
 1. Monthly list of new business tax payers located in TC BIA areas.
 2. Yearly record of all businesses tax payers located in TC BIA.
 3. Quarterly statement of delinquent business tax payers in TC BIA, and amount of delinquency.

4. Quarterly summary of sales tax revenue generated within the TCBIA.
6. COMPENSATION. After deducting any amounts due CITY from CONTRACTOR under separate agreements between the parties, CITY shall forward CONTRACTOR any remaining balance of the TCBIA assessment actually collected and received by CITY. CITY shall make quarterly payments to CONTRACTOR, as follows: (i) payment in April for taxes collected in January to March; (ii) payment in July for taxes collected April to June; (iii) payment in October for taxes collected July to September; and (iv) payment in January for taxes collected October to December.
7. BROWN ACT AND PUBLIC RECORDS ACT. CONTRACTOR shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the TCBIA are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the TCBIA.
8. WORK PRODUCT. It is understood and agreed that all plans, studies, specifications, digital media, records, files, reports, etc., in possession of CONTRACTOR relating to the matters covered by this Agreement shall be the property of the CITY, and CONTRACTOR hereby agrees to deliver the same to the CITY upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the CITY and are not necessarily suitable for any future or other use.
9. CONTRACTOR'S BOOKS AND RECORDS. During the term of this Agreement, and for three years after the term expires or terminates or for any longer period required by law, CONTRACTOR shall maintain detailed records pertaining to the TCBIA's administration, including but not limited to ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or concerning budgeting, charges, expenditures, subcontractors (e. g., bid records), insurance, permits, administrative expenses, and overhead. CONTRACTOR shall make all such records available to CITY for inspection, audit, and/or copying at all reasonable times. If requested by CITY, CONTRACTOR shall obtain and provide to CITY, at CONTRACTOR's sole cost, an independent financial audit of CONTRACTORs' use of TCBIA funds for any or all years of the TCBIA' s operation; provided CONTRACTOR shall not be obligated to provide an independent financial audit more than once every five years.
10. INDEPENDENT CONTRACTOR. It is expressly understood that CONTRACTOR is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the CITY. CONTRACTOR shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should CONTRACTOR desire any insurance protection, CONTRACTOR is to acquire same at its expense. In the event CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be

eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR shall indemnify, protect, defend, and hold harmless the CITY for the payment of any employee and/ or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

11. INSURANCE. CONTRACTOR agrees to maintain insurance coverage as set forth in Exhibit "C" attached hereto and incorporated herein by reference throughout the term of this Agreement.
12. INDEMNITY. Visalians, Inc, shall indemnify, protect, defend, save and hold CITY, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of CONTRACTOR or its officers, employees, agents, volunteers, contractors, and subcontractors during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of CONTRACTOR or its officers, employees, agents, volunteers, contractors, or subcontractors, or by the quality or character of CONTRACTOR' s work or activities, or resulting from the negligence of the CITY, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the CITY. It is understood that the duty of CONTRACTOR to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by CITY of insurance certificates and endorsements required under this Agreement does not relieve CONTRACTOR from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply and shall survive the termination of this Agreement. By execution of this Agreement, CONTRACTOR acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

CITY shall indemnify, protect, defend, save and hold CONTRACTOR, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of CITY, or its officers, employees, agents, volunteers, contractors, and subcontractors, other than during performance of this Agreement. It is understood that the duty of CITY to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

13. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by CONTRACTOR and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of CONTRACTOR under this Agreement will be permitted only with the express written consent of the CITY, which may be withheld at the CITY' s sole and complete discretion.

14. CONFLICT OF INTEREST. CONTRACTOR certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. CONTRACTOR agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. CONTRACTOR further agrees to complete any statements of economic interest required by either CITY ordinance or State law.
15. CONFORMANCE TO APPLICABLE LAWS. CONTRACTOR shall comply with all applicable Federal, State, and municipal laws, rules, and ordinances. No discrimination shall be made by CONTRACTOR in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex, or religion of such person.
16. WAIVER. In the event that either CITY or CONTRACTOR shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.
17. SEVERABILITY. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Tulare.
19. ATTORNEY' S FEES. In any litigation, arbitration or any other proceeding where CITY seeks to enforce any provision of this Agreement, or seeks a declaration of the rights and obligations of the parties, the prevailing party shall be awarded reasonable attorneys' fees, together with any costs and expenses incurred to resolve the dispute and to enforce any provision of this Agreement.
20. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.
21. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.
22. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/ or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.
23. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute

this Agreement on behalf of their entity and has/ have the authority to bind their party to the performance of its obligations hereunder.

24. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

Downtown Visalians, Inc.,
A California Nonprofit Mutual
Benefit Corporation

*Must be signed by two officers of the
corporation, one of which is the Financial
Officer.)*

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

CITY OF VISALIA, A Municipal Corporation:

Date

Leslie Caviglia, City Manager

ATTEST:

ORIGINAL APPROVED AS TO FORM:

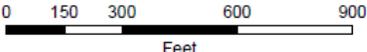
Michelle Nicholson, City Clerk

Kenneth J Richardson, City Attorney

Exhibit A – Map of TCBIA Boundaries



Town-Center Business District



Downtown Visalia Board Members

Executive Board

Duane Rodriguez	President
Janeen Robbins	Vice President
Laura Rocha	Treasurer
Kerry Hydash	Secretary
Nate Mustain	Member at Large

Board Members

- Bree Singleton**
- Haylie Silva**
- John Lawson**
- Johnathon Anderson**
- Michael Parades**
- Mike Fistolera**
- Steven Torres**
- Taylor Rodriguez**
- Dulce Ugalde Arellano**

INSURANCE REQUIREMENT

A. During the term of this Agreement, Downtown Visalians Inc. shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence: One Million Dollars (\$ 1, 000,000)

Products & Completed Operations: One Million Dollars (\$1,000,000)

Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).

Exhibit C – Insurance Requirement

- c. The limits of liability per accident shall not be less than:

Combined Single Limit: One Million Dollars (\$1,000,000)

- d. If General Liability coverage, as required above, is provided by the Commercial General Liability form, the Automobile Liability policy shall include an endorsement providing automobile contractual liability.

3. Worker's Compensation

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless Downtown Visalians Inc. is a qualified self-insurer with the State of California), and Employers Liability coverage.

- b. Employer's Liability Coverage shall not be less than the statutory requirements.

- c. Downtown Visalians Inc. shall sign and file with the Director of Finance of the City of Visalia the Worker's Compensation Certificate that is contained in this Exhibit.

4. Insurance Required in the Supplementary Conditions: Downtown Visalians Inc. shall be required to comply with all conditions as stipulated in the Standard Construction Specifications as applicable.

5. Other Insurance Provisions:

- a. Downtown Visalians Inc.'s General Liability, Automobile Liability, any Excess or Umbrella Liability, shall contain the following provisions:

The City, its officials, employees, agents and volunteers shall be covered as additional insured as respects liability arising out of activities performed by or on behalf of Downtown Visalians Inc., products and completed operations of Downtown Visalians Inc., premises owned, occupied, or used by Downtown Visalians Inc., or automobiles owned, leased, hired, or borrowed by Downtown Visalians Inc.

The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.

- b. For any claims related to the project, Downtown Visalians Inc.'s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, or volunteers shall be excess of Downtown Visalians Inc.'s insurance and shall not contribute to it.

- c. Any failure to comply with reporting or other provisions of the policies on the part of Downtown Visalians Inc., including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or

volunteers.

- d. Downtown Visalians Inc.'s Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
 - e. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after 30 days prior written notice by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
6. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
 7. Downtown Visalians Inc. shall furnish the City with Certificates of Insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, and any Supplementary Conditions. Downtown Visalians Inc. shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder.
 8. Downtown Visalians Inc. shall report, by telephone to the City within 24 hours, followed by a report in writing to the City within 48 hours, after Downtown Visalians Inc. or any of its Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of the City or others, arising out of any work done by or on behalf of Downtown Visalians Inc. as part of the contract.
 9. Such report shall contain:
 - a. the date and time of the occurrence,
 - b. the names and addresses of all persons involved, and
 - c. a description of the accident or occurrence and the nature and extent of the injury or damage.
 10. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 11. If Downtown Visalians Inc. fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due Downtown Visalians Inc. under the contract.

Exhibit C – Insurance Requirement

12. Failure of the City to obtain such insurance shall in no way relieve Downtown Visalians Inc. from any of its responsibilities under the contract.
13. The making of progress payments to Downtown Visalians Inc. shall not be construed as relieving Downtown Visalians Inc. or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
14. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Agreement.