

COOPERATION AGREEMENT

THIS AGREEMENT is made and entered into pursuant to a minute order adopted by the City Council of the City of Visalia at its meeting held on the _____ (“Effective Date”), by and between the Visalia Arts Consortium, Inc., a California nonprofit corporation, with a mailing address at 340 E. Oak Avenue, Suite 112 Visalia, California hereinafter referred to as “Consortium”, and the City of Visalia, a municipal corporation of the State of California, hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, City has developed and adopted a cultural arts plan (“the Plan”); and

WHEREAS, in furtherance of the Plan, City desires to obtain the services of a third party organization to, among other things, publicize and coordinate various cultural art events and to administer an arts grant program; and

WHEREAS, Consortium is duly incorporated pursuant to the California Nonprofit Public Benefit Corporation Law and is authorized by law to provide the services contemplated by this Agreement; and

WHEREAS, Consortium may, in performing services contemplated herein, determine that other opportunities for furthering the cultural arts in Visalia exist, and may suggest other ways that Consortium and City may cooperate on additional projects; and

WHEREAS, Consortium desires to secure a funding source that will enable it to obtain the services of an executive director for the purpose of performing the services contemplated herein; and

WHEREAS, Consortium will secure the services of an administrator; and in accordance with the terms and conditions set forth herein to render such services.

WHEREAS, City is empowered to contract with Consortium in accordance with the terms and conditions set forth herein to render such services.

NOW, THEREFORE, in consideration of the above premises, City and Consortium do hereby agree to the following:

1. TERM OF CONTRACT.

The term of this Agreement shall commence upon execution by the parties and shall remain in effect until December 31, 2027 unless and until terminated pursuant to the applicable terms hereof.

2. CONSORTIUM’S RESPONSIBILITIES.

Consortium shall provide the following services:

- A. Secure the services of an administrator or executive director on at least a 16-hour-per-week basis.

B. Implement, to the extent possible within a 16 hour per week schedule of a Consortium administrator or executive director, the following elements of City's Plan:

- i. Develop, maintain, and distribute an annual coordinating calendar.
- ii. Update the community calendar at least weekly, and provide same information to appropriate media outlets, hotels, and other outlets. The goal is to have at least 500 Visalia arts and culture events listed on the calendar in the next year. (Events are listed by days so one event that runs for 5 days would equal 5 listings.)
- iii. Maintain the Arts Consortium website with updates at least weekly.
- iv. Maintain an active Facebook (or similar social media website) page with a minimum of 50 postings during the year. Hold general and subcommittee meetings as needed to implement the City's Cultural Plan.
- v. Assist with at least 5 arts-related events a year in Visalia by performing at least 2 of the following activities for each event: information distribution or publicity, meet with the key organizers and provide organizational information or data such as forms (special events, applications, agreements, etc), provide calendar listings, provide mailing lists, provide facility or venue information and guidelines, serve on the organizing committee. In addition, produce the Taste the Arts special event in the fall of 2024 and 2025.

3. CITY'S RESPONSIBILITIES.

City will assist Consortium in providing the aforementioned services by temporary and occasional use of space, materials, equipment, postage, and mail handling services on an as-needed basis to the extent that they are available and at a level to be determined by the City Manager or their designee.

- A. Consortium's use of resources provided by the City shall be scheduled by and subject to the approval of the City Manager or their designee.
- B. City will pay to Consortium the sum of \$30,529 in 2026 and \$31,444 in 2025 for the express purposes of employing the Consortium's Administrator or Executive Director and other expenses related to Visalia portion of the Consortium's activities. Consortium shall provide proof that it has secured the services of an Executive Director (or Administrator as the case may be) for no less than 16 hours per week. The Executive Director shall be an employee or independent contractor of the Consortium and shall have no employment relationship with the City. Payment for this portion of the contract will be made in two equal payments, one after January 1, of each year, and one after July 1, of each year. Payments will be made within 30 days of receipt of an invoice for the appropriate amount.
- C. City shall also provide up to \$15,500 in 2026 and \$15,500 in 2027 for use in sponsoring specific Visalia events, namely the Taste the Arts event and for live/in-person First Friday events. Said money may instead be

utilized for live art performances, lessons, demonstrations, or public art for the community benefit, in accordance with the processes developed in conjunction with City staff, should any or all of the events not be held. Payment for this portion of the contract will be upon confirmation of the event(s) and within 30 days of receipt of an invoice for the appropriate sponsorship amount.

- D. City shall have no duty, obligation, or liability of any kind to Consortium, to Consortium's employees, officers, agents, vendors, or subcontractors, or to anyone or party whatsoever, to make any payment except as provided by this Agreement.

4. PAYMENT OF COSTS INCURRED BY CITY ON BEHALF OF CONSORTIUM.

- A. City may not solicit, receive, accept, or distribute any donations or grants nor create costs in the name of Consortium without the prior written approval of Consortium.
- B. In the event City and Consortium agree that City shall incur costs for a Consortium project for which Consortium agrees to reimburse City, the City shall determine the method of billing for and payment of such costs, subject to approval by Consortium.

5. PROJECT AGREEMENT

- A. City and Consortium may identify a specific event or project that is not encompassed within the services to be provided pursuant to this agreement, and in such event, the parties will enter into a separate agreement ("Project Agreement") for each project pertaining to the City indicating the specific responsibilities of City and Consortium. No such additional project or event shall be undertaken until each such agreement has been executed by the President of the Consortium and the City's City Manager. The Project Agreement shall, at a minimum, identify project budgets, respective funding responsibilities, fundraising mechanisms that are available and acceptable (for example, naming rights, sales price, schedules, where applicable), project scope, and respective responsibilities for administration of physical construction of projects where applicable (including, whether volunteer labor will be a component of the project, who will be responsible for such labor, and how the value of such labor will be accounted for).
- B. A Project Agreement shall be entered into for the following general types of projects that entail: i) fundraising and obtaining of private donations which will be paid to the City to offset the specific cost of a specific cultural event or project; ii) the joint underwriting and planning of cooperative fundraising events or programs, the net proceeds of which will be used in Consortium activities for an identified benefit to the City; iii) the joint underwriting and planning of a community-wide event; or iv) the obtaining of a grant from a third party source for a cooperative project. Neither the City nor the Consortium shall undertake any of the above

noted activities without first entering into a Project Agreement which details the agreed approach.

6. CONSORTIUM INITIATED PROJECTS.

Consortium may initiate projects to be undertaken on City facilities and recreation areas. However, said projects will be subject to express City approval (in the form of a Project Agreement as required herein) with the understanding that such projects will become the property of the City with all right, title, interest, and responsibility for same becoming the City's upon completion. A separate agreement will be drafted for each such project and said project may not be undertaken before execution of said agreement by parties herein.

7. CONFLICT OF INTEREST.

Consortium and its agents and employees shall comply with all applicable federal, state and City laws and regulations governing conflict of interest. To this end, Consortium will make available to its agents and employees copies of all applicable federal, state and City laws and regulations governing financial disclosure and conflict of interest.

8. TERMINATION.

City or Consortium may terminate this Agreement at any time during the term of this Agreement subject only to providing the other party sixty (60) days' written notice which shall be served as provided in Paragraph 19 of this Agreement. All operations under this Agreement shall cease on and after the sixtieth (60th) day following service of notice of termination, and the obligations under this Agreement shall cease on that date, except said obligation that accrued prior to the termination date which shall be fulfilled in accord with the Agreement.

9. USE OF SERVICES.

This Agreement is founded on the premise that the program contemplated is for the purpose of furthering the objectives recited herein and that the services provided under this Agreement are within the power of City and Consortium to provide. In the event that program monitoring discloses that said services are not being used for that purpose or that City or Consortium has adopted or amended its Bylaws amended its Articles of Incorporation with the result that, as determined by the City Manager and/or the President of Consortium, Consortium's or City's policies or programs conflict with the purposes of this Agreement, Parties may immediately terminate this Agreement, and neither shall be entitled to further services.

10. PROGRAM ADMINISTRATION.

This Agreement will be administered jointly by the City Manager or their designee and the President and/or Board of the Consortium. City's Agreement Coordinator shall be its City Manager or his/her designee. That person shall have the authority to administer City's obligations under this Agreement on behalf of the City. Consortium's Agreement Coordinator shall be its President or their designee. That person shall have the authority to administer Consortium's obligations under this Agreement on behalf of Consortium.

11. INDEMNIFICATION/INSURANCE.

Indemnification: City and Consortium agree to indemnify, defend, protect and hold harmless each other, their agents, officers, employees and volunteers (the "Indemnified Parties") from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, except those stemming from the active negligence and/or willful misconduct of the Indemnified parties, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with each parties obligations, operations, or its services hereunder.

Insurance - Liability: Throughout the term of this Agreement, at Consortium's sole cost and expense, Consortium shall keep or cause to be kept in force, for the mutual benefit of City and Consortium, comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the activities carried out pursuant to the Agreement and any Project Agreement, providing protection for bodily injury or death to any one person, at least \$1,000,000 for any one accident or occurrence, and at least \$1,000,000 for property damage. Also, at Consortium's sole cost and expense, Consortium shall keep or cause to be kept in force, workers' compensation insurance as required by law.

Insurance - General Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act or negligence (except active negligence or willful misconduct) of City that might otherwise result in a forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives and the City waives the right of subrogation against Consortium and against Consortium's agents and representatives, (3) the policies are primary and noncontributing with any insurance that may be carried by City, (4) they cannot be canceled or materially changed except after 30 calendar days written notice by the insurer to City or City's designated representative identified in Paragraph 20 of this Agreement, and (5) City shall be named an additional insured. Consortium shall furnish City with binders representing all insurance required by this Agreement. Consortium may apply for its own account any insurance not required under this Agreement. Consortium may provide by blanket insurance covering the activities and any locations affected by this Agreement. Consortium shall deliver to City, in the manner required for notices, copies or certificates of all insurance policies required by this Agreement, together with evidence satisfactory to City of payment required for procurement and maintenance of the policy, within thirty (30) calendar days after the execution of this Agreement and at least 30 calendar days before expiration or other termination of an existing policy. If Consortium fails or refuses to procure or to maintain insurance as required by this Agreement or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right at City's election and on 5 days' notice, to procure and maintain such insurance.

12. ASSIGNMENT.

This Agreement, or any provision hereof or any right or obligation arising hereunder, is not assignable by either party in whole or in part, without the express written consent of the other party.

13. BINDING EFFECT.

All of the provisions of this Agreement and any amendment thereto shall extend to and be binding upon and inure to the benefits of the successors of the respective parties.

14. NONDISCRIMINATION AND CIVIL RIGHTS COMPLIANCE.

- A. Parties hereby certify and agree that they will comply with Title VI of the Civil Rights Act of 1975, Title XI of the Education Amendments of 1975, Title XI of the Education Amendments of 1972, where applicable, and Title 43, Part 17 of the Code of Federal Regulations, Subparts A and B, to the end that no persons shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or handicap, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.
- B. Parties certify and agree that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap and in compliance with all federal and state laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the State Fair Employment Practices Act.
- C. Parties certify and agree that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age, or handicap.
- D. All employment records, subject to lawful privileges and protections of employee information, shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of non-discrimination by Consortium in the areas heretofore described.
- E. If either Party finds that any of the above non-discrimination provisions have been violated, the same shall constitute a material breach of contract upon which either Party may determine to cancel, terminate or suspend this Agreement.

15. RELIGIOUS PROSELYTIZING AND PARTISAN PROPAGANDIZING.

Services under this Agreement will be used exclusively for performance of the work required under this Agreement and no services made available under this

Agreement shall be used to promote any religious or partisan activities.

16. COMPLIANCE WITH LAWS.

The parties agree to be bound by all applicable federal, state and local laws, ordinance, and directives insofar as they pertain to the performance of this Agreement.

17. GOVERNING LAW.

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

18. SEVERABILITY.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

19. NOTICE.

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested.

All notices to City shall be sent addressed to the following:

City Manager
City of Visalia
220 N Santa Fe
Visalia, CA 93292

All notices to Consortium shall be sent addressed to the following:

President of Visalia Arts Consortium or Executive Director
340 E. Oak Avenue Suite 112
Visalia, CA 93291

20. WAIVERS.

The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach.

21. CONSTRUCTION.

This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

22. NO THIRD PARTY BENEFICIARIES INTENDED.

Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

23. EXHIBIT AND RECITALS.

The Recitals and any Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

24. ATTORNEY'S FEES.

If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced by any party to this Agreement the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, reasonable attorneys' fees, costs and expenses incurred in the action, proceeding, or arbitration by the prevailing party.

25. FURTHER ASSURANCES.

Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.

26. EFFECTIVE DATE.

This Agreement shall become effective as of the date of approval by the City Council of the City of Visalia.

27. ENTIRE AGREEMENT/MODIFICATION

This Agreement represents the entire Agreement between the City and Consortium as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

IN WITNESS WHEREOF, Parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures. By their signatures, each party represents that they are authorized to sign the Agreement and bind the respective signing party.

CITY

City of Visalia

CONSORTIUM

Arts Consortium

By: _____
Leslie Caviglia, City Manager

By: _____
President

Approved as to Form

City Attorney

Risk Management