

AGREEMENT

This Agreement ("Agreement") is made and entered into this 10th day of July, 2018 ("Effective Date"), by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, ("COUNTY"), and the Economic Development Corporation, a public-private nonprofit organization serving Fresno County, whose address is 906 "N" Street, Suite 120, Fresno, CA 93721 ("CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR is implementing a broad-based economic strategy to improve economic conditions in Fresno County; and

WHEREAS, COUNTY has adopted an Economic Development Strategy and the Economic Development Element of the Fresno County General Plan to create jobs, diversify the economy, and improve the skills of the workforce in Fresno County; and

WHEREAS, CONTRACTOR, in coordination with the County Administrative Office, is also responsible for implementing policies and programs of the Economic Development Element of the General Plan; and

WHEREAS, on August 9, 2011, the Board of Supervisors of the COUNTY approved assignment of COUNTY'S current economic development responsibilities to CONTRACTOR, including but not limited to the management of the administration of COUNTY'S Blue Ribbon Business Committee, and implementation of COUNTY'S Comprehensive Economic Development Strategy; and

WHEREAS, in early 2013, the Blue Ribbon Business Committee was disbanded; and, after consultation with CONTRACTOR, replaced by a newly created "Strategy Committee"; and

WHEREAS, CONTRACTOR has provided and will continue to provide administration of the Strategy Committee; and

WHEREAS, it is recognized by the Board of Supervisors of the COUNTY that reductions in unemployment and underemployment through said economic development goals and strategies are necessary to meet the economic and social needs of the population of the COUNTY; and

WHEREAS, it is recognized by both COUNTY and CONTRACTOR that effective implementation of these strategies requires a combined commitment of resources from both the private and

1 public sectors.

2 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained
3 here, the parties agree as follows:

4 1. OBLIGATIONS OF CONTRACTOR

5 CONTRACTOR shall provide COUNTY with quarterly reports within thirty (30) days after the end of each
6 quarter, detailing activities of CONTRACTOR toward meeting the obligations of CONTRACTOR under this
7 Agreement. CONTRACTOR shall expend an amount, not to exceed \$38,000, to provide the following
8 essential services:

9 a. Performance Based Services:

- 10 i. CONTRACTOR will provide site visits to businesses interested in locating in Fresno
11 County. Contractor will report the number of site visits, including the name of the
12 business (unless business expressly requests to remain anonymous), type of
13 industry, and location in the quarterly report to the County.
- 14 ii. CONTRACTOR will provide technical assistance to businesses staying in Fresno
15 County or expanding their operations.
- 16 iii. CONTRACTOR will allow COUNTY access to CONTRACTOR'S industrial inventory.
- 17 iv. CONTRACTOR will maintain, monitor, and draft any required revisions of the
18 COUNTY Economic Development Strategy for approval by COUNTY, help
19 COUNTY achieve the progress made towards economic development objectives of
20 the COUNTY Economic Development Strategy, evaluate the progress made
21 towards achieving the goals and targets of the COUNTY Economic Development
22 Strategy at least every five years, and provide a report to the COUNTY Board of
23 Supervisors. CONTRACTOR will continue to work with COUNTY in implementing
24 COUNTY's Economic Development Strategy in smaller cities and unincorporated
25 areas of Fresno County, and will administer COUNTY'S Strategy Committee.
- 26 v. CONTRACTOR, in coordination with the County Administrative Office, will help
27 implement policies and programs of the Economic Development of the County
28 General Plan.

1 b. Performance Based Technical Assistance Services:

2 In an effort to encourage the location of new industry within the cities and
3 unincorporated communities of COUNTY and to retain and expand those businesses currently within the
4 COUNTY, CONTRACTOR shall provide valuable technical expertise to businesses in small cities and
5 unincorporated areas to complement and supplements the COUNTY'S Economic Development resources,
6 including:

7 i. CONTRACTOR will provide location packaging to businesses interested in relocating
8 to COUNTY.

9 B. CONTRACTOR will help identify financing options, screen for eligible tax incentive programs, and
10 make referrals to partner agencies for additional services including but not limited employee
11 recruitment, marketing, business plan development, and energy efficiency assessments.

12 2. OBLIGATIONS OF COUNTY

13 A. COUNTY shall provide an amount not to exceed \$38,000 to CONTRACTOR
14 to promote and market the resources and economy of COUNTY as provided under this
15 Agreement.

16 3. TERM

17 The term of this Agreement shall be for a period of one (1) year, commencing on July 1, 2018
18 through and including June 30, 2019.

19 4. TERMINATION

20 A. Non-Allocation of Funds - The terms of this Agreement, and the services to
21 be provided hereunder, are contingent on the approval of funds by the appropriating government
22 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
23 Agreement terminated, at any time by giving CONTRACTOR thirty (30) days advance written
24 notice.

25 B. Breach of Contract - COUNTY may immediately suspend or terminate this
26 Agreement in whole or in part, where in the determination of COUNTY there is:

- 27 1) An illegal or improper use of funds;
28 2) A failure to comply with any term of this Agreement;

- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY of any funds disbursed to CONTRACTOR under this Agreement, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

5. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows: quarterly compensation in an amount not to exceed \$9,500, with the maximum total compensation in an amount not to exceed \$38,000 for the term of the Agreement. CONTRACTOR shall submit quarterly invoices electronically to the County of Fresno County Administrative Office with the quarterly activity report required in Section 1 of this Agreement, within thirty (30) days after the end of each quarter. COUNTY shall remit payment within forty-five (45) days from date of receipt of invoice and activity report by the County.

In no event shall services performed under this Agreement be in excess of \$38,000 during the term of this Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

6. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which

1 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
2 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
3 terms and conditions thereof.

4 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
5 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

6 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
7 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
8 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
9 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
10 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
11 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
12 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

13 7. MODIFICATION: Any matters of this Agreement may be modified from time to time by the
14 written consent of all the parties without, in any way, affecting the remainder.

15 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement
16 nor their rights or duties under this Agreement without the prior written consent of the other party.

17 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at
18 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
19 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
20 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
21 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
22 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
23 or corporation who may be injured or damaged by the performance, or failure to perform, of
24 CONTRACTOR, its officers, agents, or employees under this Agreement.

25 10. INSURANCE

26 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any third parties,
27 CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies
28 or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint

1 Powers Agreement (JPA) throughout the term of the Agreement:

2 A. Commercial General Liability

3 Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000)
4 per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on
5 a per occurrence basis. COUNTY may require specific coverages including completed operations,
6 products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability, or any other
7 liability insurance deemed necessary because of the nature of this contract.

8 B. Automobile Liability

9 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
10 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
11 used in connection with this Agreement.

12 C. Professional Liability

13 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
14 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
15 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

16 D. Worker's Compensation

17 A policy of Worker's Compensation insurance as may be required by the California Labor
18 Code.

19 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
20 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
21 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
22 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
23 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
24 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
25 a minimum of thirty (30) days advance written notice given to COUNTY.

26 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
27 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
28 foregoing policies, as required herein, to the County of Fresno, County Administrative Officer, 2281 Tulare

1 Street, Room 304, Fresno, California 93721, stating that such insurance coverage have been obtained and
2 are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any
3 premiums on the policies; that such Commercial General Liability insurance names the County of Fresno,
4 its officers, agents and employees, individually and collectively, as additional insured, but only insofar as
5 the operations under this Agreement are concerned; that such coverage for additional insured shall apply
6 as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
7 agents and employees, shall be excess only and not contributing with insurance provided under
8 CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a
9 minimum of thirty (30) days advance, written notice given to COUNTY.

10 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
11 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
12 Agreement upon the occurrence of such event.

13 All policies shall be issued by admitted insurers licensed to do business in the State of California,
14 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
15 FSC VII or better.

16 11. AUDITS AND INSPECTIONS: CONTRACTOR shall at any time during business hours,
17 and as often as COUNTY may deem necessary, make available to COUNTY for examination all of its
18 records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, upon
19 request by COUNTY, permit COUNTY to audit and inspect all of such records and data necessary to
20 ensure CONTRACTOR'S compliance with the terms of this Agreement.

21 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
22 the examination and audit of the California State Auditor for a period of three (3) years after final payment
23 under contract (Government Code Section 8546.7).

24 12. NOTICES: The persons and their addresses having authority to give and receive notices
25 under this Agreement include the following:

26 COUNTY
27 COUNTY OF FRESNO
County Administrative Officer
28 2281 Tulare Street, Room 304

CONTRACTOR
Economic Development Corporation
Lee Ann Eager
906 N Street, Suite 120

Fresno, CA 93721

Fresno, CA 93721

All notices between COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

14. DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of the agreement, CONTRACTOR changes its status to operate as a corporation.

Members of CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors

1 shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-
2 Dealing Transaction Disclosure Form, attached as Exhibit A and incorporated by reference, and
3 submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately
4 thereafter.

5 15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between
6 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
7 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
8 understanding of any nature whatsoever unless expressly included in this Agreement.

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2 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
3 first hereinabove written.
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5 **CONTRACTOR**

6 
7 (Authorized Signature)

8 Lee Ann Eager, President/CEO
9 Print Name & Title

10 Economic Development Corp.
11 906 N Street, Suite 120, Fresno, CA
12 93721

13 Mailing Address
14
15

16 **COUNTY OF FRESNO**

17 
18 Sal Quintero, Chairperson of the Board of
19 Supervisors of the County of Fresno

20 **ATTEST:**

21 Bernice E. Seidel
22 Clerk of the Board of Supervisors
23 County of Fresno, State of California
24
25

26 By: Susan Bishop
27 Deputy
28

29 **FOR ACCOUNTING USE ONLY:**

30 ORG No.: 2540
31 Account No.: 7845
32 Requisition No.:
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Exhibit A

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit A

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	