

**AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO
AND THE ECONOMIC VITALITY CORPORATION OF SAN LUIS OBISPO COUNTY
FOR PROVISION OF ECONOMIC DEVELOPMENT SERVICES**

THIS AGREEMENT is made and entered into on _____, 2012, by and between the **ECONOMIC VITALITY CORPORATION OF SAN LUIS OBISPO COUNTY**, a California non-profit corporation (hereinafter referred to as "the EVC"), and the **COUNTY OF SAN LUIS OBISPO**, a political subdivision of the State of California (hereinafter referred to as "the County").

WITNESSETH:

WHEREAS, the Economic Element of the San Luis Obispo County General Plan establishes programs to retain, expand and attract businesses in order to enable residents to find employment and pursue the lifestyles that they value; and

WHEREAS, the Economic Element of the San Luis Obispo County General Plan identifies the EVC as the agency responsible for implementing some of its programs; and

WHEREAS, the EVC submitted an application to the County for a grant of \$80,775 in County funds for services which the EVC will provide to implement Economic Element programs (hereinafter referred to as "the Project"); and

WHEREAS, the EVC is also assisting the County by facilitating implementation of a countywide economic strategy; and

WHEREAS, the County finds that the Project is eligible for a County grant of County funds as a community project; and

WHEREAS, the Board of Supervisors approved funding for the Project by adopting the budget on June 19, 2012.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, the parties agree as follows:

1. Scope of Work

The Scope of Work shall include tasks and activities deemed necessary by the EVC to implement economic development programs identified in the Economic Element of the County General Plan. Said tasks and activities shall be completed prior to July 1, 2012. The following quantified objectives will be employed by the County to evaluate the EVC performance under this Agreement:

- A. Acting as lead agency, assist the County by facilitating implementation and preparing updates as needed for a countywide economic strategy.
- B. Obtain matching funds in an amount at least equal to the amount of funding provided by the County (any non-county funding secured by the EVC for the countywide economic strategic plan shall be counted toward this matching funds performance objective);
- C. Convene at least one seminar on a topic related to the economic strategy that will assist and improve county businesses and the county economy.

2. Compensation

The County hereby agrees to transfer to the EVC the amount of \$80,775 in County funds in return for completing the Scope of Work described in paragraph 1 of this Agreement. The EVC understands and agrees that the County has no obligation to award further, additional or ongoing grants beyond those provided under this Agreement.

3. Billing

The County shall approve and authorize payment of the \$80,775 in County funds to the EVC in four quarterly payments as follows:

- A. August 2012: \$20,193.75
- B. October 2012: \$20,193.75
- C. January 2013: \$20,193.75
- D. April 2013: \$20,193.75

4. Term of Agreement

The term of this Agreement shall commence on the date first written above and shall terminate on June 30, 2013, unless sooner terminated as hereinafter provided.

5. Reporting

EVC shall prepare and submit quarterly progress reports to the Planning and Building Department within 15 days after each quarter and a final report prior to July 31, 2013, both describing performance of tasks identified in the Scope of Work, Paragraph 1 of this Agreement.

6. Termination of Contract for Convenience of Either Party

Either party may terminate this Agreement at any time by giving to the other party 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event that the EVC terminates this Agreement prior to completion of the Scope of Work, EVC shall reimburse the County for any work not satisfactorily completed prior to the effective date of said termination.

7. Termination of Contract for Cause

If EVC fails to perform EVC 's duties to the satisfaction of the County or if EVC fails to fulfill in a timely and professional manner EVC 's obligations under this contract or if EVC shall violate any of the terms or provisions of this Contract or if EVC, EVC 's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County, then County shall have the right to terminate this Contract effective immediately upon the County giving written notice thereof to the EVC. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event that the County terminates this Agreement prior to completion of the Scope of Work, EVC shall reimburse the County for any work not satisfactorily completed prior to the effective date of said termination. If County's termination of EVC for cause is defective for any reason, including but not limited to County's reliance on erroneous facts concerning EVC 's performance, or any defect in notice thereof, County's maximum liability shall not exceed the amount payable to EVC under paragraph 7 above.

8. Employment Status

Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship or a joint venture relationship between the County and EVC. Neither EVC nor any of EVC's agents, employees or contractors are or shall be

considered to be agents or employees of the County in connection with the performance of EVC's obligations under this Agreement.

9. Audit

(a) All records, accounts, documentation and other materials deemed to be relevant to the Project by the County shall be accessible at any time to the authorized representatives of the County, on reasonable prior notice, for the purpose of examination or audit. The County may require EVC, at its sole expense, to have its records and accounts audited annually by an accountant licensed by the State of California and approved in advance by the County Auditor-Controller, and to present said audit to the County within thirty (30) days after completion of the audit. County may make its own audit of EVC's records and accounts at any time, if County so desires. Financial records should clearly demonstrate that the County funds have been spent for the intended purposes as described in the Scope of Work under this Agreement.

(b) The County shall have the right through its representative, and at all reasonable times, to inspect such books and records; and EVC hereby agrees that all such records and instruments are available to the County. All State and Federal tax returns of EVC insofar as this Agreement is concerned shall also be made available to the County for accounting purposes if requested.

10. Indemnification

EVC shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, including EVC, and that arise out of or are made in connection with the negligent acts or omissions, or willful misconduct, of EVC in the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses are brought by the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission, including, but not limited to the following:

- (a) Violation of statute, ordinance, or regulation.
- (b) Professional malpractice.
- (c) Willful, intentional or other wrongful acts, or failures to act.
- (d) Negligence or recklessness.
- (e) Furnishing of defective or dangerous products.
- (f) Premises liability.
- (g) Strict Liability.
- (h) Inverse condemnation.
- (i) Violation of civil rights.
- (j) Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when EVC is not an independent contractor.

It is the intent of the parties to provide the County the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

11. Insurance

EVC, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of EVC's work under this Agreement and acceptance by the County. Any failure to comply with reporting provision(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

- (a) Minimum Scope and Limits for Required Insurance Policies

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. Commercial General Liability Insurance Policy ("CGL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);

\$1,000,000 for personal injury liability;

\$1,000,000 aggregate for products-completed operations; and,

\$1,000,000 general aggregate.

The general aggregate limits shall apply separately to EVC's work under this Agreement.

2. Business Automobile Liability Policy ("BAL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. EVC shall not provide a Comprehensive Automobile Liability policy that specifically lists scheduled vehicles without the express written consent of County.

3. Workers' Compensation and Employer's Liability Insurance Policy ("WC/EL")

This policy shall include at least the following coverages and policy limits:

i. Workers' Compensation insurance as required by the laws of the State of California; and

ii. Employer's Liability Insurance Coverage B with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and one million (\$1,000,000) dollars each employee BI by disease.

(b) Deductibles and Self-Insurance Retentions

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by EVC and approved by the County before work is begun pursuant to this Agreement. At the option of the County, EVC shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its offices, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

(c) Endorsements

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the insurance policies indicated in parentheses below:

1. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);
2. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of EVC's performance of work under this Agreement (CGL & BAL);
3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL);
4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL & BAL);
5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL & WC/EL);

6. The EVC and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

7. Deductibles and self-insured retentions must be declared (All Policies).

(d) **Absence of Insurance Coverage**

County may direct EVC to immediately cease all activities with respect to this Agreement if it determines that EVC fails to carry, in full force and affect, all insurance policies with coverages at or above the limits specified in the Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered EVC's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to EVC.

(e) **Proof of Insurance Coverage and Coverage Verification**

Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, EVC, or each of EVC's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for EVC shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to: Dana Lilley, Supervising Planner, Department of Planning and Building, 976 Osos Street, Room 300, San Luis Obispo, CA 93408.

12. Equal Employment Opportunity

During the performance of this Agreement, EVC agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and specifically agrees to comply with the provisions of Section 202 of Presidential Executive Order No. 11246.

13. Entire Agreement and Modification

This Agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding any matters are

hereby superseded or terminated in their entirety. No changes, amendments, or alterations shall be effective unless in writing and signed by all parties hereto. EVC specifically acknowledges that in entering into and executing this Agreement, EVC relies solely upon the provisions contained in this Agreement and no others. The parties intend to conduct a review of this Agreement after six months to determine whether any amendments are needed.

14. Funding for Additional Services

Funding of any programs, projects, or services beyond the term of this Agreement, by any new agreement or amendment or extension of this Agreement, have not been authorized and will depend upon County's determination of satisfactory performance of this Agreement by EVC and upon the availability to County of additional grant funds allocated for such purposes. Neither County nor any employee of County has made any promise or commitment, express or implied, that any additional funds will be paid or made available to EVC for the purpose of this Agreement over and above the funds expressly allocated under the terms of this Agreement.

15. Compliance with Laws and Regulations

EVC agrees that it is familiar with and will comply with all City, County and State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity and all other matters applicable to EVC, its subcontractors, and the undertaking enabled by this Agreement. In addition, as specified in the Title IX of the Recovery Act, the Comptroller General of the United States and his representatives are authorized:

(1) to examine any records of the Contractor or any of its subcontractors, or local agency administering this contract, that directly pertain to, and involve transactions relating to, this contract or subcontract; and

(2) to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.

16. Non-Assignment of Agreement

Inasmuch as this Agreement is intended to secure the specialized services of EVC, EVC shall not have the right to assign or transfer this Agreement, or any part hereof or monies payable hereunder, without the prior written consent of County, and

any such assignment or transfer without the County's prior written consent shall be considered null and void.

17. Law Governing and Venue

This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

18. Enforceability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. Effect of Waiver

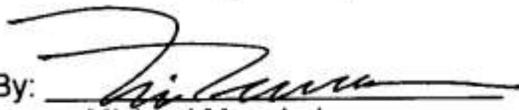
County's waiver of a breach of any one term, covenant or other provision of this Agreement shall not be a waiver of a subsequent breach of the same term, covenant or provision of this Agreement or of the breach of any other term, covenant or provision of this Agreement.

20. Notices

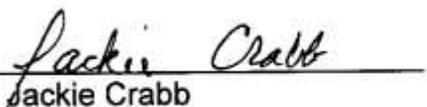
Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to the County shall be addressed as follows: Dana Lilley, Supervising Planner, Department of Planning and Building, 976 Osos Street, Room 300, San Luis Obispo, CA 93408. Notices required to be given to the EVC shall be addressed as follows: Executive Director, Economic Vitality Corporation of San Luis Obispo County, P.O. Box 5257, San Luis Obispo, California, 93403. Provided that any party may change such address by notice in writing to the other parties and thereafter notices shall be transmitted to the new address.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ECONOMIC VITALITY CORPORATION OF SAN LUIS OBISPO COUNTY
A California non-profit corporation

By: 
Michael Manchak
President & CEO

Dated: 8/8/12

By: 
Jackie Crabb
Secretary of the EVC Board of Directors

Dated: Aug. 8, 2012

(Insert Corporate Acknowledgment here)

COUNTY OF SAN LUIS OBISPO

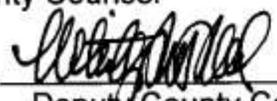
By: _____
Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN
County Counsel

By:  Dated: 8/13/12
Deputy County Counsel