Attachment 1

FY 2016-17 Annual Agreement with Economic Vitality Corporation

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 _____, 2016, 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 an agency responsible for implementing some of its programs; and

WHEREAS, the EVC submitted an application to the County for a grant of $148,775 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 21, 2016.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, the parties agree as follows (Italics represent additions and strikethroughs represent deletions):

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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, 2017. The following quantified objectives will be employed by the County to evaluate the EVC performance under this Agreement:

A. 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.

D. Act as a referral agency to the County, engaging cluster industry stakeholders and facilitating input on proposed policy adoption and modification actions. Topics for which such referral services will be needed by the County include but are not limited to workforce housing amendments and procedures for economic impact analyses of discretionary permit applications.

E. Monitor opportunities for statewide action pertaining to economic initiatives such as California Forward, the California Economic Summit, and the California Stewardship Network. Engage cluster industry and the community stakeholders as feasible and appropriate.

F. Establish and maintain collaborative relationships with economic development and workforce development partners locally and in adjacent regions (Monterey, Santa Barbara, Ventura).

2. **Compensation**

The County hereby agrees to transfer to the EVC the amount of $148,775 in County funds in return for completing the Scope of Work described in paragraph1 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 $148,775 in County funds to the EVC in four quarterly payments as follows:

A. August 2015: $37,193.75

B. October 2015: $37,193.75

C. January 2016: $37,193.75

D. April 2016: $37,193.75

4. Term of Agreement

The term of this Agreement shall commence on the date first written above and shall terminate on June 30, 2017, 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, 2017, 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 the EVC under paragraph 6 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

To the fullest extent permitted by law, EVC shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with EVC's performance or attempted performance of work hereunder, or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by sole negligence or willful misconduct of the County.

11. Insurance

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

a. **Commercial General Liability** (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **$1,000,000** per occurrence. If aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
b. **Automobile Liability:** ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit of no less than **$1,000,000** per accident for bodily injury and property damage.
c. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an

Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the contractor.

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:

a. 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

b. to interview any officer or employee of the Contractor or a 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 County's 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 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: Suzan Ehdaie, County 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, 735 Tank Farm Road, Suite 264, San Luis Obispo, California, 93401. 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 and CEO

Dated: August 4, 2016

COUNTY OF SAN LUIS OBISPO

By: _____

Chairman of the Board of Supervisors

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ATTEST:

_____

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL

County Counsel

By: _____ Dated: 8.4.16

Deputy County Counsel