

## **AGREEMENT FOR PROFESSIONAL SERVICES ECONOMIC DEVELOPMENT STRATEGY**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** (this “Agreement”) is made and entered into this        day of July, 2016, by and between **AVALANCHE CONSULTING, INC.** (the “Contractor”), a Texas for-profit corporation, and **PLFUGERVILLE COMMUNITY DEVELOPMENT CORPORATION** (the “Client”).

In consideration of the mutual promises and obligations hereinafter set forth, the parties hereto agree as follows:

### **I. SCOPE AND SCHEDULE OF WORK**

- A.** Except as supplemented or revised hereby, the CONTRACTOR agrees to perform those services described in its proposal to the CLIENT dated June 13, 2016, a copy of which is attached hereto as Appendix B and incorporated herein (the “Proposal”). The full set of services includes:
1. Phase 1: Community Assessment, which includes an information review, stakeholder input (20 interviews, 8 focus groups, 3 steering committee workshops, Pflugerville Community Development Corporation staff meeting, and a tour of Pflugerville), economic analysis, target industry analysis, workforce and educational institution analysis, and a SWOT analysis summarizing the findings of Phase 1.
  2. Phase 2: Economic Development Plan, which includes best practice research, a Vision & Strategic Plan (which will include a vision statement, goals, objectives, and tactical action plan), an Implementation Plan (which will include an implementation timeline and performance metrics), a Final Report that compiles all findings from Phase 1 and 2 into a single document at the conclusion of the project, and participation in a community Roll Out event to present the final Economic Development Plan.
  3. Over the course of Phases 1 and 2, the CONTRACTOR agrees to make 4 scheduled trips to visit the CLIENT – one each month during the four-month project contract. The CONTRACTOR will additionally host the CLIENT at a half-day planning workshop at the CONTRACTOR’S Austin office.

CLIENT shall provide CONTRACTOR with CLIENT’S comments thereto, if any, within 7 days of receipt of the draft report, and CONTRACTOR shall promptly thereafter make appropriate revisions and resubmit to CLIENT. The CLIENT shall provide one more round of additional comments thereto, if any, within 7 days of receipt of resubmitted draft, and CONTRACTOR shall promptly make appropriate revisions and deliver a final written economic development plan to the CLIENT.

- B.** All obligations and services of the CONTRACTOR undertaken pursuant to this agreement shall be performed diligently and completely in accordance with CONTRACTOR'S professional standards of conduct and performance, and to the satisfaction of the CLIENT.
- C.** This Contract will be valid immediately upon CONTRACTOR's receipt of the signed Agreement, and all final deliverables will be completed no later than November 30, 2016, unless otherwise mutually agreed upon by CONTRACTOR and CLIENT.

## **II. COMPENSATION AND PAYMENT**

- A.** As detailed in the attached budget breakdown, total compensation to be paid the CONTRACTOR for services provided under this Agreement shall be \$147,500.00. Such payment shall be the total compensation for all work performed under this Agreement.
- B.** The CONTRACTOR shall be paid according to the following schedule:
  - 1. \$49,165 paid upon contract start date (August 1, 2016)
  - 2. \$49,165 paid upon successful completion of Phase 1
  - 3. \$49,170 paid upon successful completion of final Phase 2 report and roll out event

The CONTRACTOR shall submit an original written invoice with necessary and appropriate supporting documentation (including any documentation reasonably requested by the CLIENT) for each applicable payment. CLIENT shall pay all invoices within 30 days of receipt.

- C.** The CLIENT may withhold payment to the CONTRACTOR for any work not completed to the CLIENT's sole satisfaction within two cycles of revisions and for which the CLIENT notifies CONTRACTOR in writing of such problems along with a reasonable time to cure such deficiency. Such withholding shall last until such time as the CONTRACTOR modifies such work to the reasonable satisfaction of the CLIENT as set out in the written notice of deficiency.

## **III. TERMINATION OF AGREEMENT**

- A.** The CLIENT may suspend this Agreement, at its discretion, upon 30 days advance, written notification to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for services or expenses incurred up to the date of suspension will be due upon notification. The CONTRACTOR shall resume performance of services under this Agreement without delay when the suspension period ends. Notwithstanding the foregoing, if the period of suspension exceeds 30 days, then CLIENT may terminate this

Agreement with no further liability except for any reimbursement amounts described above.

- B.** Neither party shall be considered to be in default in the performance of this Agreement to the extent that performance is substantially prevented or delayed by force majeure (e.g., fire, flood, acts of God, war, terrorist acts, strike, or intervention of any government authority) or any cause that is beyond the reasonable control of the affected party; provided that the affected party provide prompt written notice thereof to the other party. Should such conditions or consequences cause delays in performance hereunder exceeding 30 days, then the non-affected party shall have the right to terminate this Agreement upon written notice to the other party.
- C.** Except as otherwise provided for herein, either party may terminate this Agreement for Cause (as defined below) without waiving any other rights it may have in law or in equity, if such Cause remains uncured for thirty (30) days following written notice to the non-terminating party. For purposes of this Agreement, "Cause" shall mean: (a) a party commits a material breach of this Agreement; (b) a party ceases to operate or otherwise abandons its business; (c) there shall be filed against a party any petition for any relief under the bankruptcy laws now or hereafter in effect or any proceeding shall be commenced with respect to such party under any insolvency, readjustment of debt, reorganization, dissolution, liquidation or similar law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity); or (d) a party is dissolved.
- D.** Upon the termination of this Agreement for any reason, CLIENT shall pay CONTRACTOR any undisputed fees and amounts due and outstanding as of the date of such termination and CONTRACTOR shall immediately deliver to CLIENT any Work Product (as defined herein) relating to the Project or otherwise prepared or developed hereunder. All files, records, documents, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the business of CLIENT shall remain the exclusive property of CLIENT. CONTRACTOR shall not retain any copies of the foregoing without CLIENT's prior written permission. Upon the termination of this Agreement, CONTRACTOR shall immediately deliver to CLIENT all such files, records, documents, specifications, information (including any items of Confidential Information), and other items in its possession or under its control.

#### **IV. CONTRACT ADMINISTRATION AND MANAGEMENT**

- A.** The CLIENT will have primary responsibility for administering and approving services to be performed by the CONTRACTOR.

- B.** Upon request, the CONTRACTOR will provide the CLIENT with updates pertaining to the progress of work and services undertaken pursuant to this Agreement.
- C.** At all times during the term of this Agreement, the CONTRACTOR and CLIENT shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- D.** The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest, or claim to or under this Agreement and stated in the CONTRACTOR's Proposal or for any of the compensation due hereunder without the prior written consent of the CLIENT.
- E.** CLIENT shall be the owner of all Work Product generated by CONTRACTOR pursuant to this Agreement, and CONTRACTOR shall not use such Work Product for any other client, without written permission from CLIENT, which may be withheld in the CLIENT's sole discretion.

## **V. INDEPENDENT CONTRACTOR STATUS**

- A.** The CONTRACTOR is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the CLIENT. No agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Except as otherwise provided herein, neither party shall have the power to obligate or bind the other party. Personnel supplied by each party shall work exclusively for that party and shall not, for any purpose, be considered employees or agents of any other party.
- B.** The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the CONTRACTOR'S status as an independent contractor.
- C.** This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

## **VI. INDEMNIFICATION**

- A.** The CONTRACTOR agrees to indemnify, defend and hold harmless CLIENT, and the CLIENT's officers, directors, agents and employees, from and against all claims and damages, including costs and attorney's fees, arising from CONTRACTOR's actions taken pursuant to the terms of this Agreement or in any way pertaining to the CONTRACTOR's performance or breach of this Agreement.

- B.** Other than as expressly set forth herein, in no event shall any party or its affiliates be liable to any other party or its affiliates for any indirect, incidental, special or consequential damages of any kind or form whatsoever.
- C.** These indemnification provisions and liability limits shall survive the termination of this Agreement.
- D.** A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement.

## **VIII. NONDISCRIMINATION**

At all times during the term of this Agreement, the CONTRACTOR shall comply with all federal, state, and local laws and policies regarding nondiscrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical handicap.

## **IX. CONFLICT OF INTEREST**

No Board member, officer, or employee of the CLIENT, nor any member of the immediate family of any such Board member, officer or employee as defined by applicable Texas law, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. At all times during the term of this Agreement, the CONTRACTOR shall comply with all federal and state conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the CLIENT or any affiliate or related organization which will conflict in any manner or degree with the performance of the CONTRACTOR's services and obligations hereunder.

## **X. CONFIDENTIAL INFORMATION**

- A.** As used herein, the term "Confidential Information" may include, without limitation, descriptions of the CLIENT's strategic and business plans, the identity of one or more other parties with whom the CLIENT does business, descriptions of the CLIENT's business operations, financial projections, descriptions of the CLIENT's computer systems, networks, strategies, operations, and billing and receivable operations, software, technical systems, marketing and operational procedures and strategies, client lists, marketing techniques, channels of distribution, trade secrets, names of creditors or partners, market projections, models and other confidential and proprietary information relating to the business and operations of the CLIENT. Any such information disclosed by the CLIENT to the CONTRACTOR or known by the CONTRACTOR as a consequence of or through its association

with the CLIENT (including information conceived, originated, discovered or developed by the CONTRACTOR), whether provided before or after the date of this Agreement, whether oral or written, and regardless of the form of communication or the manner in which it is furnished, is also deemed to be Confidential Information.

- B. At all times hereafter, the CONTRACTOR shall hold all of the Confidential Information in strict confidence, and except with the prior written consent of the CLIENT, will not disclose or reveal such Confidential Information to any third person(s).
- C. In the event that the CONTRACTOR is required by applicable law or regulation or by legal process (which requirement shall not have been caused by the acts of the CONTRACTOR) to disclose any Confidential Information or any other information concerning the CLIENT, the CONTRACTOR agrees that it shall provide the CLIENT with prompt notice of such request or requirement in order to enable the CLIENT to seek an appropriate protective order or other remedy.
- D. The CONTRACTOR agrees that all Confidential Information developed or generated wholly or partially by the CONTRACTOR during its association with the CLIENT, including all intermediate and partial versions thereof ("Work Product"), whether or not protected by copyright, is the property of the CLIENT.

#### **XI. INTERPRETATION AND VENUE; MISCELLANEOUS**

- A. The execution, validity, interpretation and implementation of this Agreement as well as the settlement of disputes arising from or in connection with this Agreement shall be governed by the laws of the State of Texas without giving effect to principles of conflict of laws.
- B. If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.
- C. This Agreement, including the attachments hereto, constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter of this Agreement, and may be modified only by a writing signed by both parties.
- D. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.
- E. Any provisions in this Agreement that require survival beyond the termination of this Agreement in order to give them meaningful effect shall survive.

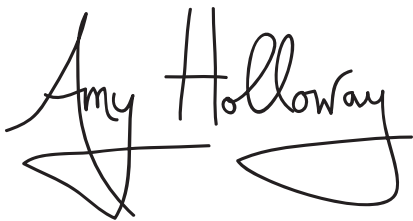
- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- G. In the event that a dispute or controversy arises between the parties out of or in connection with this Agreement, either party shall formally notify the other party in writing of the substance of the dispute or the controversy and the parties shall endeavor, in good faith, to reach an amicable settlement of the dispute through friendly negotiations. If an amicable solution cannot be reached within 45 days from the date the dispute was notified to the other party, it is agreed that such dispute shall be finally settled by the courts of competent jurisdiction located in Texas.
- H. The parties hereby knowingly, voluntarily and intentionally waive the right any of them may have to a trial by jury in respect of any litigation based hereon or arising out of, under or in connection with this Agreement and any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the parties' acceptance of this Agreement.
- I. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

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

Accepted and agreed to by:

**AVALANCHE CONSULTING, INC.** (the "CONTRACTOR"):  
101 West 6<sup>th</sup> Street, Suite 612  
Austin, Texas 78701  
(512) 917-3815

Amy Holloway, President & CEO

A handwritten signature in black ink that reads "Amy Holloway". The signature is fluid and cursive, with a large loop at the end of the last name.

Date: \_\_\_\_\_

**PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION**

16225 Impact Way, Suite #2

Pflugerville, TX 78660

(512) 990-3725

Amy Madison, Executive Director

Date: \_\_\_\_\_

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## APPENDIX A: PROJECT BUDGET

Project Tasks	2016				
	Aug	Sep	Oct	Nov	Cost Range
<b>PROJECT SET UP</b>					\$2,500
Contract Finalized					included
Project Set Up Guide					included
Form Steering Committee					included
Milestones Calendar					included
Bi-Monthly Phone Calls and Other Client Communication					\$7,500
<b>PHASE 1: COMMUNITY ASSESSMENT</b>					
1.1 Information & Literature Review					\$2,000
1.2 Stakeholder Input (5 1-day trips, with Trip 1 requiring 2 days and Trips 2-4 requiring 1 day)					\$37,500
Staff Meeting	T1				included
Steering Committee Meetings	T1		T3	T4	included
Interviews & Focus Groups (in-person and telephone)	T1	T2	T3		included
Tour	T1				included
1.3 Data Analysis & Competitive Benchmarking					\$18,000
1.4 Cluster, Location Quotient & Target Industry Analysis					\$10,000
1.5 Workforce & Educational Institution Analysis					\$15,000
1.6 SWOT Analysis					\$9,000
<b>PHASE 2: COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN</b>					
2.1 Best Practice Profiles					\$10,000
2.2 Vision & Strategic Plan					\$25,000
Half-Day Strategic Planning Workshop at Avalanche Offices					\$5,000
2.3 Implementation Plan					\$5,000
2.4 Final Report Printing Cost				D	\$1,000
2.5 Roll Out				T4	included
<b>TOTAL PROJECT COST, INCLUDING EXPENSES</b>					<b>\$147,500</b>
<i>Additional Trip Days as Requested by Client (Per Day/Per Senior Staff)</i>					\$3,000
<i>Additional Trip Days as Requested by Client (Per Day/Per Support Staff)</i>					\$2,000
<i>Additional Staff Workshops at Avalanche Offices as Requested by Client</i>					\$2,000
<i>Optional: Community Survey</i>					\$4,000
<i>Optional: Annual Check Up</i>					\$12,000

APPENDIX B: PROPOSAL

[add PDF of June 13, 2016, proposal]

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