

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

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** (this "Agreement") is made and entered into this 26 day of March 2019, by and between **AVALANCHE CONSULTING, INC.** (the "Contractor"), a Texas for-profit corporation, and **PLFUGERVILLE COMMUNITY DEVELOPMENT CORPORATION** (the "Client"), a Texas nonprofit corporation. The Contractor and the Client may be referred to individually as "Party" and collectively as the "Parties."

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 February 15, 2019, a copy of which is attached hereto as Appendix B and incorporated herein (the "Proposal"). The full set of services includes:
1. Phase 1: Discovery, which shall include a kick-off meeting, information review, stakeholder input (20 interviews, 3 focus groups, 3 steering committee workshops, Pflugerville Community Development Corporation meeting, and Pflugerville Community Development Board and City Council presentations), community assessment, workforce and educational institution analysis, infrastructure & site review, an updated strengths, weaknesses, opportunities, and threats ("SWOT") analysis, and a target industry validation and update.
  2. Phase 2: Comprehensive Strategy, which shall include a 3-year comprehensive economic development strategy (which shall include an updated vision statement, goals, objectives, tactical action plan, and Target Industry Marketing Plans), an Implementation Plan (which shall include an implementation timeline and performance metrics), and a Final Report that compiles all findings from Phase 1 and 2 into a single document at the conclusion of the project.
  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.

(Collectively the "Project").

Within 7 days of receipt of the CONTRACTOR's draft report, the CLIENT shall provide the CONTRACTOR with the CLIENT's comments thereto, if any, and CONTRACTOR shall promptly thereafter make appropriate revisions and resubmit to CLIENT. The CLIENT may provide one more round of additional comments

thereto, if any, within 7 days of receipt of a resubmitted draft, and the 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 in good faith, diligently, and completely in accordance with the CONTRACTOR'S professional standards of conduct and performance, and to the satisfaction of the CLIENT.
- C. This Agreement shall be valid immediately upon the CONTRACTOR's receipt of the signed Agreement, and all final deliverables shall be completed no later than September 1, 2019, unless otherwise mutually agreed upon by the Parties.

## **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 \$97,500 plus expenses. Expenses will not exceed \$2,000 and will include travel expenses. 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. \$32,500 paid upon contract start date (April 1, 2019)
  - 2. \$32,500 paid upon successful completion of Phase 1
  - 3. \$32,500 paid upon successful completion of final Phase 2 report and presentation to Pflugerville Community Development Corporation Board and City Council.

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. The 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 the 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 shall 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 the 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, the CLIENT shall pay the CONTRACTOR any undisputed fees and amounts due and outstanding as of the date of such termination and the CONTRACTOR shall immediately deliver to the 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 the CLIENT shall remain the exclusive property of the CLIENT. The CONTRACTOR shall not retain any copies of the foregoing without the CLIENT's prior written permission. Upon the termination of this Agreement, the CONTRACTOR shall immediately deliver to the 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 shall have primary responsibility for administering and approving services to be performed by the CONTRACTOR.

- B. Upon request, the CONTRACTOR shall 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 the 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, the CONTRACTOR's Proposal, or any compensation due hereunder without the prior written consent of the CLIENT.
- E. The CLIENT shall be the owner of all Work Product generated by the CONTRACTOR pursuant to this Agreement, and the CONTRACTOR shall not use such Work Product for any other client, without written permission from the 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 the 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. These indemnification provisions and liability limits shall survive the termination of this Agreement.
- C. 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, shall 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 shall 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 30 days from the date the dispute was notified to the other Party, venue for any suit shall be with a district court located in Travis County, Texas.
  
- H. 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"):

1108 Lavaca Street  
Suite 110-483  
Austin, Texas 78701  
(512) 917-3815

Amy Holloway, President & CEO

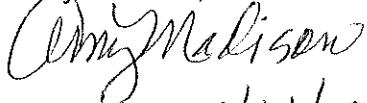


Date: February 26, 2019

**PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION**

16225 Impact Way, Suite #2  
Pflugerville, TX 78660  
(512) 990-3725

Amy Madison, Executive Director



Date: 3/14/2019

APPENDIX A: PROJECT BUDGET

Task	2019				Cost
	Mar	Apr	May	Jun	
<b>PHASE 1: DISCOVERY</b>					
Project Set Up					<i>included</i>
Kick-off Meeting - Trip 1 (1 Day with 2 consultants)	T				\$ 5,000.00
Information Review					\$ 500.00
Trip 2 (1.5 days with 2 consultants)		T			\$ 8,500.00
Community Assessment					\$ 12,000.00
Workforce & Educational Institution Analysis					\$ 10,000.00
Infrastructure & Site Review					\$ 7,500.00
- OPTIONAL: Subcontract with Site Selection Team					\$ 20,000.00
Trip 3 (1 day with 2 consultants)			T		\$ 6,000.00
Updated SWOT Analysis					\$ 5,000.00
Target Industry Validation and Update			D		\$ 9,500.00
<b>PHASE 2: COMPREHENSIVE STRATEGY</b>					
Trip 4 (1 day with 2 consultants)				T	\$ 5,500.00
3-Year Comprehensive Economic Development Strategy					\$ 20,000.00
Implementation Plan				D	\$ 5,000.00
PCDC Board Meeting (1/2 day with 1 consultant)				T	\$ 1,500.00
City Council Meeting (1/2 day with 1 consultant)				T	\$ 1,500.00
<b>Total without optional Services</b>					<b>\$ 97,500.00</b>
<b>Expenses Not to Exceed (travel and data)</b>					<b>\$2,000</b>
<b>TOTAL PROJECT COST WITHOUT OPTION PLUS EXPENSES (NOT TO EXCEED)</b>					<b>\$ 99,500.00</b>
<b>TOTAL PROJECT COST WITH OPTIONAL SITE SELECTION TEAM</b>					<b>\$119,500.00</b>
T = Trip      D = Deliverable					
Additional Trip Days as Requested by Client (Per Day/Per Senior Staff)					\$ 3,000.00
Additional Trip Days as Requested by Client (Per Day/Per Support Staff)					\$ 2,500.00
Additional Services not Included in Proposal (Average Blended Hourly Rate)					\$ 250.00



APPENDIX B: PROPOSAL