

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), effective as of the ___ day of December 2022 ("Effective Date"), by and between The Village of Estero (hereinafter referred to as "CLIENT") and VIESTE, LLC, an Indiana Limited Liability Company, (hereinafter referred to as "PROGRAM MANAGER"), with offices at 27299 Riverview Center Boulevard, Suite 200, Bonita Springs, FL 34134.

WITNESSETH

WHEREAS, CLIENT has chosen to undertake one or more projects that require additional staff support to execute (hereinafter referred to as "PROJECT");

WHEREAS, CLIENT does not have staff expertise or availability to execute the PROJECT and prefers not to hire such staff,

WHEREAS, CLIENT desires instead to hire VIESTE, LLC as its exclusive Program Manager and extension of staff to provide such execution, oversight and assistance in executing a solicitation process in which the Village will seek qualified private sports, recreation and entertainment providers for a mixed-use development project contemplated by the Village on Williams Road, among other tasks as desired by CLIENT for the PROJECT,

WHEREAS, PROGRAM MANAGER and its affiliates constitute an organization of professional personnel who are experienced and fully qualified to perform the various functions with respect to the project management of the PROJECT; and

WHEREAS, CLIENT desires to engage PROGRAM MANAGER to provide the professional expertise required by it with respect to project management of the PROJECT, and PROGRAM MANAGER desires to be so engaged by CLIENT for this purpose; and

NOW, THEREFORE, in consideration of the premises aforesaid and of the mutual covenants and undertakings hereinafter provided, the parties hereto agree as follows:

I. SERVICES

PROGRAM MANAGER will represent CLIENT and assist CLIENT in the Development of the PROJECT with tasks described on the Menu of Services in **Attachment A**. The Menu of Services may be adjusted from time to time with mutual consent of CLIENT AND PROGRAM MANAGER. Specifically required services will be addressed by this Agreement and an addenda to it that may be agreed by the parties.

II. PROJECT

The PROJECT being contemplated under this Agreement is identified and described on **Attachment B** and may contain multiple task projects as directed by CLIENT.

III. PROGRAM MANAGER'S RESPONSIBILITIES

PROGRAM MANAGER shall, subject to the terms and provisions of this AGREEMENT:

- Appoint one or more individuals who shall be authorized to act on behalf of PROGRAM MANAGER and with whom CLIENT may consult at all reasonable times and whose instructions, requests and decisions will be binding upon PROGRAM MANAGER as to all matters pertaining to this Agreement and the performance of the parties hereunder.
- Use all reasonable efforts to complete the services within the time period mutually agreed upon, except for reasons beyond its control.
- Perform the services in accordance with generally accepted standards in existence at the time of performance of services.

IV. CLIENT'S RESPONSIBILITIES

CLIENT shall at such times as may be required for the successful and expeditious completion of the services:

- Provide all criteria and information as to CLIENT'S requirements and designate a person with authority to act on CLIENT'S behalf on all matters concerning the services.
- Furnish the PROGRAM MANAGER all existing studies, reports, and other available data pertaining to the services and obtain additional reports, data and services as may be required for the project. PROGRAM MANAGER may be entitled to rely upon all such information, data, and the results of such other services in performing the Services hereunder.
- Engage any and all third-party professional resources required to advance PROJECT.
- Provide all required capital resources to fund fees, expenses and costs related to the advancement of PROJECT.

V. COMPENSATION AND TERMS OF PAYMENT

The terms of compensation and payment are as follows:

CLIENT will pay PROGRAM MANAGER a Program Management Fee payable monthly pursuant to the Fee Matrix as depicted in **Attachment D**. All invoices will be due and payable on or before the 10th of each month for the prior months' work.

Reimbursable Expenses will be billed monthly at actual expense in addition to the Program Management Fee. Expenses will include, but not be limited to, travel, entertainment, document delivery, technology

expenses directly related to the services rendered under this agreement. No expenses will be incurred or billed without prior consent from CLIENT.

VI. TERMINATION

The term of this contract shall not exceed 150 days from the Effective Date, which is reflected in the Project Schedule depicted in **Attachment C**, unless required by CLIENT or CLIENT'S procurement process.

In the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, it may be terminated upon 10 days' notice. In either case, PROGRAM MANAGER shall be paid for all expenses incurred and invoice value to the date of the termination. Specific projects that are undertaken by virtue of an addendum to this Agreement may survive this termination provision.

VII. INDEPENDENT CONTRACTOR

PROGRAM MANAGER shall be an independent contractor with respect to the services to be performed hereunder. Neither PROGRAM MANAGER nor any of its sub-PROGRAM MANAGERS, nor the employees of either, shall be deemed to be servants, employees, or agents of CLIENT. It will be solely responsible for providing compensation and benefits to its employees.

VIII. MISCELLANEOUS

This agreement constitutes the entire agreement between the parties hereto and supersedes any oral or written representations, understandings, proposals, or communications heretofore entered into by or on account of the parties and may not be changed, modified, or amended except in writing signed by the parties hereto. In the event of any conflict between this contract document and any of the exhibits hereto, the terms of and provisions of this contract document shall control. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.

CLIENT represents that its engagement of PROGRAM MANAGER to perform the services is not in breach of, or otherwise in violation of, any known contract, restriction, or covenant between CLIENT and any third party.

This Agreement shall be governed by the laws of the State of Florida.

In no event shall either party be liable to the other for indirect or consequential damages, including, but not limited to, loss of use, loss of profit or interruption of business, whether arising in contract, tort (including negligence), statute or strict liability.

In the event CLIENT uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only, and any typed provision in conflict with the terms of this Agreement and all preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.

This Agreement gives no rights or benefits to anyone other than CLIENT and PROGRAM MANAGER and does not create any third-party beneficiaries to the AGREEMENT.

IV. CONFIDENTIALITY AND PROPRIETARY INFORMATION

The parties understand that they may work with others to concurrently pursue similar PROJECT outside of this Agreement. No non-public information regarding PROJECT contemplated under this agreement will be shared with those other third parties unless expressly disclosed and approved in advance, in writing.

CLIENT represents that its engagement of PROGRAM MANAGER to perform the Services does not infringe upon, or otherwise in violation of, any intellectual property right held by any third party.

CLIENT is a local government under the laws of the State of Florida. Therefore, if any provision of this Agreement would be inconsistent with state law or the Charter, it will not apply.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

**CLIENT:
NAME**

**PROGRAM MANAGER:
VIESTE, LLC**

DATE: _____

DATE: _____

ATTACHMENT A
MENU OF SERVICES

MENU OF SERVICES
FORMAL SOLICITATION PROCESS
Receipt and review of proposals
Facilitation and oversight of publishing and opportunity periods
Communication with interested parties
Coordinate and attend meetings with Village staff and interested parties
Lead negotiations with interested parties on behalf of the Village
Lead drafting process of interim (if applicable) and definitive agreements on behalf of the Village
Work with Village Manager and attorney to create definitive agreements to execution
Attend all required meetings as directed by Village Manager
DEVELOPMENT PLANNING
Prepare Preliminary CAM Program & Budget
Assist the Village on Branding, Marketing & Visibility of the Estero "Village Center Hub"

ATTACHMENT B
PROJECT DESCRIPTION

In this scope of work VIESTE LLC will be responsible for the execution, oversight, and assistance in executing a formal solicitation process in which the Village will seek qualified private sports, recreation and entertainment providers for a mixed-use development project contemplated by the Village on Williams Road. In summary, this scope will include oversight of the solicitation and procurement process, , negotiations with interested parties, production of definitive agreements and assisting the Village Manager throughout.

VIESTE LLC will also prepare preliminary common area maintenance program and budget, and work with the Village on branding, marketing, and visibility of the Estero "Village Center Hub".

ATTACHMENT C PROJECT SCHEDULE

TASKS	NOVEMBER 2022	DECEMBER 2022	JANUARY 2023	FEBRUARY 2023	MARCH 2023
SOLICITATION					
Continued prospect recruitment	[Task bar spanning Nov 2022 to early Dec 2022]				
Transaction structuring concepts	[Task bar spanning Nov 2022 to early Dec 2022]				
Solicitation #1					
Unsolicited proposal received	[Task bar starting in early Nov 2022, ending in early Dec 2022]				
Two week publishing period	[Task bar starting in early Nov 2022, ending in early Dec 2022]				
21 day opportunity period	[Task bar starting in early Dec 2022, ending in early Jan 2023]				
Interim Agreement (if applicable)	[Task bar starting in early Jan 2023, ending in early Feb 2023]				
Comprehensive Agreement	[Task bar starting in early Feb 2023, ending in early Mar 2023]				
Council approvals	[Task bar starting in early Mar 2023, ending in early Apr 2023]				
Solicitation #2					
Unsolicited Proposal received	[Task bar starting in early Dec 2022, ending in early Jan 2023]				
Two week publishing period	[Task bar starting in early Dec 2022, ending in early Jan 2023]				
21 day opportunity period	[Task bar starting in early Jan 2023, ending in early Feb 2023]				
Interim Agreement (if applicable)	[Task bar starting in early Feb 2023, ending in early Mar 2023]				
Comprehensive Agreement	[Task bar starting in early Mar 2023, ending in early Apr 2023]				
Council approvals	[Task bar starting in early Apr 2023, ending in early May 2023]				
DEVELOPMENT PLANNING					
Boundary survey	[Task bar spanning Nov 2022 to early Dec 2022]				
Topo survey	[Task bar spanning Nov 2022 to early Dec 2022]				
Utilities Locate	[Task bar spanning Nov 2022 to early Dec 2022]				
Scaled site plan - Existing Conditions Map	[Task bar spanning Dec 2022 to early Jan 2023]				
PLANNING, ZONING & ENTITLEMENT					
[Task bar spanning Nov 2022 to early Dec 2022]					

ATTACHMENT D
FEE SCHEDULE

ROLE	RATE	FEE	STAFF
Senior Executive	\$ 300	\$ 72,000	MAC
Project Management	\$ 250	\$ 25,000	DWC
Associate Project Management	\$ 150	\$ 30,000	LAS
Administration/Communication Support	\$ 100	\$ 10,000	JKC
Administration/Project Accounting	\$ 100	\$ 3,000	LP
TOTAL		\$ 140,000	