

CONSULTANT SERVICE CONTRACT

This Contract, made this 17th day of October, 2017, by and between the CITY OF NORTHFIELD, a Minnesota municipal corporation (the "CITY") 801 Washington Street, Northfield, MN 55057, and the NORTHFIELD DOWNTOWN DEVELOPMENT CORPORATION, a nonprofit corporation organized under the laws of the state of Minnesota, 105 E. Fourth Street, Suite 110, P.O. Box 55, Northfield, MN 55057 ("CONSULTANT"), (collectively the "Parties").

WHEREAS, the CITY requires professional services to assist the CITY in completing its economic development initiatives in the CITY's Downtown Business District (the "Project"); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the parties hereto pursuant to Section VI, Paragraph G of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give written notice to the CITY of any additional services prior to furnishing such additional services. The CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate in writing, prior to the CITY's authorization of the changed scope of services.
- C. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or trade.
- D. **Insurance.**
 - 1. CONSULTANT agrees to maintain, at CONSULTANT's expense, statutory worker's compensation coverage.
 - 2. CONSULTANT agrees to maintain, at CONSULTANT's expense, general

liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT's general business activities (including automobile use).

- i. The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$2,000,000.
 - ii. The liability insurance policy shall name the City of Northfield as additional insured.
 - iii. The liability insurance policy shall provide a minimum aggregate limit of \$4,000,000.
3. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to the CITY by CONSULTANT and are attached hereto as Exhibit 2.

SECTION II – THE CITY'S RESPONSIBILITIES

- A. The CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's City Administrator, or their designee, in accordance with Section III of this Contract.
- B. The CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. The CITY's City Administrator, or their designee, shall serve as the liaison person to act as the CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CITY's policies with respect to the Project and CONSULTANT's services.

Such person shall be the primary contact person between the CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. The CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** The CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If the CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's City Administrator, or their designee, as detailed in Exhibit 3,

CONSULTANT, without waiving any claim or right against the CITY and without incurring liability whatsoever to the CITY, suspend services due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall commence on January 1, 2018 written above and be in effect until December 31, 2020.
- B. **Termination.** This Contract may be terminated by either party for any reason or for convenience by either party upon ninety (90) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorney and consultant fees reasonably incurred by CITY in enforcing this Contract.
- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by the CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's City Administrator, or their designee, prior to CONSULTANT's receipt of written notice from the CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's City Administrator, or their designee, as determined by the CITY.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, hold harmless and insure the CITY, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages which may arise out of or be caused by CONSULTANT or its agents, employees, contractors, subcontractors, or sub-consultants with respect to CONSULTANT's performance of its obligations under this Contract. CONSULTANT shall defend the CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense,

with counsel reasonably acceptable to the CITY. The CITY, at its expense, shall have the right to participate in the defense of any Claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by the negligence or willful misconduct of the CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- B. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against the CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for the CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents thereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** The PARTIES' representatives for notification for all purposes are:

THE CITY:

City Administrator
City of Northfield
801 Washington Street
Northfield, MN 55057

CONSULTANT:

Executive Director
Northfield Downtown Development Corporation
PO Box 55
Northfield MN 55057

- D. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the CITY for any

purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of the CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of the CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein.

CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

- E. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of the CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants.
- F. **Assignment.** This Contract may not be assigned by either Party without the written consent of the other Party.
- G. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the CITY and CONSULTANT.
- H. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that the CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract.

CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- I. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or

delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the party affected by force majeure shall give written notice with explanation to the other party immediately.

- J. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- K. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- L. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with the CITY.
- M. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- N. **Interest by City Officials.** No elected official, officer, or employee of the CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- O. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- P. **Governing Law.** This Contract shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.

- Q. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- R. **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- S. **Patented Devices, Materials and Processes.** If this Contract requires, or the CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- T. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- U. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- V. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- W. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision

hereof.

- X. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any Party or PARTIES, and any undischarged obligations of the CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- Y. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

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SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: NORTHFIELD DOWNTOWN DEVELOPMENT CORPORATION

By: _____
(Signature)
Title: _____
Print Name: _____

Date: _____

By: _____
(Signature)
Title: _____
Print Name: _____

Date: _____

CITY OF NORTHFIELD:

By: _____
Rhonda Pownell, Its Mayor

Date: _____

By: _____
Deb Little, Its City Clerk

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services as its contractual obligation to the CITY:

1. Develop and implement a strategy for CONSULTANT's organizational sustainability as well as to potentially serve as a funding option for other priority projects in the downtown.
 - a. Complete a comprehensive report on Special Service Districts as a potential model for long term financial sustainability for the administration services of the Northfield Downtown Development Corporation and services that are not ordinarily provided throughout the city or are provided at an increased level than the rest of the City, in accordance with Minnesota Statute 428A, or applicable law, which authorizes the City to establish Special Service Districts and impose annual service charges on eligible properties within the District.
 - i. Illustrate how this may be applicable for implementation in the context of financial sustainability.
2. Implement Main Street America Program in collaboration with Economic Development Partners (i.e. Chamber of Commerce, Convention and Visitors' Bureau and Northfield Enterprise Center).
3. Develop strong collaborative relationships with City staff, Northfield Economic Development Authority (EDA), and the Northfield Area Chamber of Commerce & Tourism on projects and programs which relate to the support and improvement of downtown Northfield.
 - a. Work collaboratively with the Northfield Area Chamber of Commerce & Tourism to accomplish a single source community events calendar.
 - b. Work collaboratively with the Northfield Area Chamber of Commerce & Tourism to accomplish single source location maps.
 - c. Work collaboratively with the Northfield Area Chamber of Commerce & Tourism to accomplish single source marketing materials.
 - d. Pursue options for a co-located operation with the Northfield Area Chamber of Commerce & Tourism for more direct alignment of resources and coordinated work plans.
4. Communicate with businesses, both in person and through other means, to assemble a useful picture of the needs and concerns of the business district in general, to inform of CITY projects affecting the district, and address specific issues of recruitment and retention.
5. Support CITY strategic initiatives pertaining to the opportunity of

expanding and revitalizing the Cannon River corridor in the downtown area.

6. Support Economic Development Authority (EDA) strategic initiatives related to development, redevelopment, and other business opportunity in the downtown.
7. Educate downtown business owners on C-1 District signage regulations and CITY regulations and resources pertaining to the C-1 District.
8. Assist CITY, as requested, in providing downtown stakeholder input related to items such as downtown parking initiatives, acting as primary coordinator for garbage enclosure initiative, marketing downtown projects and others that may arise. Identify private funds and volunteer opportunities to achieve these ideas.
9. Report to the CITY twice per year during 2018, 2019 and 2020, at mid-year and year-end. The CONSULTANT will report on CONSULTANT's activities, specifically identifying those areas of work CONSULTANT has undertaken to assist the CITY in accomplishing its economic development initiatives and the CITY's Economic Development Authority's work plan initiatives. The CONSULTANT will submit a written report before the meeting and make a verbal presentation at the meeting. Finally, the CONSULTANT will also submit its year-to-date financial report for the meeting.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations and conditions set forth in this Exhibit, the CITY will pay CONSULTANT a fee not to exceed \$105,000.00 ("Contract price") for CONSULTANT's services, including expenses, under this Contract for the Term hereof.

The CITY will make periodic payment of the Contract Price to CONSULTANT, in the following manner and according to the following schedule of payments:

1. \$ 17,500.00 following the signing of this Consultant Service Contract by all Parties payable after January 1, 2018 and before January 15, 2018;
2. \$ 17,500.00 within thirty (30) days of completion of CONSULTANT's mid-year report to the CITY Council, which report shall be made in either June or July 2018;
3. \$ 17,500.00 within thirty (30) days of completion of CONSULTANT's 2018 year-end report to the CITY Council, which report shall be made in January 2019; and
4. \$ 17,500.00 within thirty (30) days of completion of CONSULTANT's mid-year report to the CITY Council, which report shall be made in either June or July 2019.
5. \$ 17,500.00 within thirty (30) days of completion of CONSULTANT's 2019 year-end report to the CITY Council, which report shall be made in January 2020; and
6. \$ 17,500.00 within thirty (30) days of completion of CONSULTANT's mid-year report to the CITY Council, which report shall be made in either June or July 2020.

The CITY's responsibility to make the payments described above after the first payment shall be contingent upon CONSULTANT first demonstrating, to the CITY's satisfaction when reporting to the CITY Council, progress in:

1. Accomplishing its responsibilities listed in Exhibit 1; and
2. Improving cooperation and collaboration with the CITY and all its partnering organizations related to this Contract.