

## **AMENDED AND RESTATED CONSULTANT SERVICE CONTRACT**

This Contract (the "Contract") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORTHFIELD, a public corporation and political subdivision of the State of Minnesota, 801 Washington Street, Northfield, MN 55057 (the "EDA"), and the RIVERWALK MARKET FAIR, INC., a nonprofit corporation under the laws of the State of Minnesota, 107 Sixth Street West, Northfield, MN 55057 ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, pursuant to Minn. Stat. § 469.101, the EDA is authorized to carry out public relations activities to promote the city and its economic development and to enter into contracts in furtherance of such public purpose; and

WHEREAS, CONSULTANT organizes and operates the Riverwalk Market Fair ("Project") in downtown Northfield every Saturday from June through October, which the EDA finds promotes economic development in the City of Northfield (City) by creating a regional market destination by showcasing the City's local entrepreneurial visual artists, small growers and producers, food artisans, accomplished musicians, beautiful riverwalk and historic downtown and local businesses;

WHEREAS, the PARTIES entered into a Consultant Service Contract, dated February 29, 2016 (the "Original Contract"); and

WHEREAS, the Parties desire to amend the provisions of the above-referenced Original Contract and agree that this Amended and Restated Contract shall govern and supersede the Original Contract ; and

WHEREAS, CONSULTANT agrees to furnish the various services and perform the various functions required herein related to the Project; and

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 services and functions as detailed in Exhibit 1, Services, Functions and Fee Schedule, attached hereto and incorporated herein by reference.
- B. **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 industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. CONSULTANT shall put forth

reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

**C. Insurance.**

1. CONSULTANT agrees to maintain, at CONSULTANT's expense, with coverage for itself, a commercial general liability insurance policy with limits of at least \$1,000,000.00 per occurrence and at least \$2,000,000.00 aggregate coverage and an umbrella policy with limits of at least \$1,000,000.00. Such insurance policies shall cover all losses related to the events, including set-up and take-down.
2. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to the EDA by CONSULTANT and are attached hereto as Exhibit 2. The Certificate of Liability insurance must specify that all licensees in the events are covered by the required insurance policies, and shall name the City as an additional insured. CONSULTANT shall deliver a list of all licensees in the Project and certificate(s) of insurance evidencing the required insurance coverage to the City's Human Resources Director/Risk Manager at least 30 days prior to beginning of the Project.

Acceptance of a certificate of insurance that does not comply with the requirements of this lease agreement will not operate as a waiver of CONSULTANT's or any other party's obligations hereunder. CONSULTANT shall specifically ensure that its liability insurance covers claims related to the activities that are part of the Project.

**SECTION II – THE EDA'S RESPONSIBILITIES**

- A. The EDA shall promptly compensate CONSULTANT as services and functions are performed to the satisfaction of the EDA's representative, in accordance with Section III of this Contract.
- B. The EDA shall provide access to any and all previously acquired information relevant to the scope of services and functions detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. Economic Development Coordinator, Nate Carlson, shall serve as the liaison person to act as the EDA'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 EDA's policies with respect to the Project and CONSULTANT's services.

Such person shall be the primary contact person between the EDA and CONSULTANT

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

### **SECTION III – CONSIDERATION**

- A. **Fees.** The EDA will compensate CONSULTANT, as detailed in Exhibit 1, Scope of Services and Functions and Fee Schedule, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If the EDA fails to make any payment due CONSULTANT for services performed to the satisfaction of the Economic Development Coordinator as detailed in Exhibit 1, CONSULTANT may, without waiving any claim or right against the EDA and without incurring liability whatsoever to the EDA, 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 be in effect commencing January 1, 2019 and terminating December 31, 2020.
- B. **Default.** If CONSULTANT fails to perform any of the provisions of this Contract or so fails to administer the services detailed in Exhibit 1, attached hereto, in such a manner as to endanger the performance of the Contract, this shall constitute default. Unless CONSULTANT's default is excused by the EDA, the EDA may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to the EDA under this Contract or law.
- C. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by the EDA, CONSULTANT shall be paid for any services performed to the satisfaction of the Economic Development Coordinator prior to CONSULTANT's receipt of written notice from the EDA of such abandonment or suspension, but in no event shall the total of EDA'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 1, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Economic Development Coordinator as determined by the EDA.

### **SECTION V – INDEMNIFICATION**

- A. CONSULTANT shall indemnify, protect, save, hold harmless and insure the EDA, 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 EDA against the

foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to the EDA. The EDA, 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 or resulting from the negligence or willful misconduct of the EDA. 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 EDA or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for the EDA'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. **Notices.** The PARTIES' representatives for notification for all purposes are:

### THE EDA:

Nate Carlson, Economic Development Coordinator  
801 Washington Street  
Northfield, MN 55057  
Phone: (507) 645-3069  
Email: nate.carlson@ci.northfield.mn.us

### CONSULTANT:

Riverwalk Market Fair  
c/o Michael Sparby  
PO Box 725  
Northfield, MN 55057  
Phone: 320-760-1260  
Email: msparby@auri.org

C. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the EDA for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of the EDA, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of the EDA, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

The EDA 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.

- D. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written acknowledgement of the EDA. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants.
- E. **Assignment.** This Contract may not be assigned by either Party without the written consent of the other Party.
- F. **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 EDA and CONSULTANT.
- G. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that the EDA, the EDA's Economic Development Authority, 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.
- H. **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.
- I. **Interest by EDA or City Officials.** No elected official, officer, or employee of the EDA or its Economic Development Authority 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.

- J. **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.
- K. **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.*

*[Remainder of page left intentionally blank.]*

## **SECTION VII –SIGNATURES**

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

### **CONSULTANT: RIVERWALK MARKET FAIR**

By: \_\_\_\_\_  
(Signature)

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

Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

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

Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

### **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORTHFIELD**

By: \_\_\_\_\_  
Britt Ackerman, Its President

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

By: \_\_\_\_\_  
Andrew Ehrmann, Its Vice President

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

## **EXHIBIT 1**

### **SERVICES, FUNCTIONS AND SCHEDULE OF FEES**

CONSULTANT agrees to perform the following services and functions and the EDA agrees to compensate CONSULTANT, through its fiscal agent, Northfield Arts Guild, in the amounts listed below:

**Total 2019 fees ..... up to \$7,000.**  
**Total 2020 fees ..... up to \$7,000.**

Fees shall be paid by EDA to CONSULTANT on or before June 1 of each year. In order to receive payment up to the amount specified herein for each year of this Contract, CONSULTANT shall provide the services listed below and shall additionally provide to EDA an itemized list of funds collected by CONSULTANT through CONSULTANT's fundraising efforts. The amount paid by EDA under this Contract shall be based on a one-to-one match such that for every dollar in fees to be paid by EDA to CONSULTANT, CONSULTANT must have collected matching funds through CONSULTANT's fundraising efforts.

### **SERVICES AND REPORTING**

CONSULTANT shall promote economic development and tourism in the City of Northfield (City) by creating a regional market destination, program and venue to showcase:

1. local entrepreneurial visual artists;
2. local small growers and producers;
3. local food artisans;
4. local accomplished musicians; and
5. the riverwalk and historic downtown and local businesses.

CONSULTANT and EDA shall hold a joint work session in early 2019 to discuss goals and mission of CONSULTANT and the EDA's future involvement.

CONSULTANT agrees to present a mid-year report in August of each year and an end-of-year report in January of each following year to the EDA. Reports should contain:

1. Existing year budget, including a Revenue/Expense report;
2. Update on collaborations with other organizations for business planning, survey work, and additional financial assistance;
3. Update on sustainability plans; and
4. Update on reports of revenue from organizations other than the EDA.

**EXHIBIT 2**

**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**

*[Certificates of Insurance attached hereto]*