

CONSULTANT SERVICE CONTRACT

This Contract, made this 26th day of October, 2017, by and between the NORTHFIELD ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of the State of Minnesota (the "EDA") 801 Washington Street, Northfield, MN 55057, and the NORTHFIELD ENTERPRISE CENTER, a nonprofit corporation organized under the laws of the State of Minnesota, P.O. Box 665, Northfield, MN 55057 ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, the EDA requires professional services to assist the EDA in completing its economic development initiatives for the City of Northfield (the "Project"); and

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

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 give written notice to the EDA of any additional services prior to furnishing such additional services, and shall reach agreement with the EDA on any additional compensation that will be required for such additional services prior to furnishing such additional services. The EDA 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 EDA'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. **Reporting.**
 - 1. CONSULTANT shall maintain complete and accurate records of time and expense involved in the performance of services identified in the Scope of

Services. All books, records, documents, and accounting procedures and practices of the CONSULTANT and its subcontractor(s), if any, relative to this Contract are subject to examination by the City or its designee except for proprietary and confidential information relating to the consultation of NEC clients which shall not be subject to examination by the EDA.

2. CONSULTANT shall prepare and submit to the City on a quarterly basis a detailed expense report documenting the full financial status of the NEC, including all programs. CONSULTANT shall make a report to the City on a quarterly basis detailing its progress in performing the Scope of Services, including its actions taken in furtherance thereof and its accomplishments.
3. CONSULTANT and the EDA Economic Development Coordinator shall cooperatively develop a satisfaction survey for clients that will be independently processed to the Economic Development Coordinator in order to provide accountability and required collection of data as it relates to performance measures of the CONSULTANT. The CONSULTANT and Economic Development Coordinator shall cooperatively create the format, process and reporting guidelines.
4. CONSULTANT shall provide all agendas, board packets, handouts and reports from meetings of CONSULTANT's board of directors to the Economic Development Coordinator.
5. CONSULTANT shall allow attendance at all board meetings a designee of the EDA, Economic Development Coordinator, or the City of Northfield Community Development Director

E. Insurance.

1. CONSULTANT agrees to maintain, at CONSULTANT's expense, statutory worker's compensation coverage.
2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, commercial general liability (CGL) insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT's general business activities (including automobile use), including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater.
 - i. The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000.
 - ii. The liability insurance policy shall name the City of Northfield and the EDA as additional insureds for the services provided under this Contract

and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.

- iii. The liability insurance policy shall provide a minimum aggregate limit of \$2,000,000.
3. 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.
4. Notwithstanding the foregoing, the EDA reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – THE EDA'S RESPONSIBILITIES

- A. The EDA shall promptly compensate CONSULTANT as services are performed to the satisfaction of the EDA Staff Liaison, 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 detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. Nate Carlson, the EDA's Staff Liaison, 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 3, Compensation, 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 EDA Staff Liaison as detailed in Exhibit 3, CONSULTANT, without waiving any claim or right against the EDA and without incurring liability whatsoever to the EDA, may 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 until such time as the Project is completed, but in no event later than December 31, 2019.
- B. **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 EDA, EDA may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to EDA under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to EDA for any and all costs, disbursements, attorney and consultant fees reasonably incurred by EDA in enforcing this Contract.
- 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 EDA Staff Liaison 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 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the EDA Staff Liaison as determined by the EDA.
- D. **Executive Director Position Vacancy.** In the event of vacancy of the Executive Director position, the CONSULTANT shall within five days of the effective date of the vacancy, or sooner if possible, provide notice in accordance with Section VI.C. to the EDA of said vacancy. The EDA, following receipt of such notice, shall have 30 days thereafter to evaluate the services of the CONSULTANT and the continuation of the Contract through its term. The EDA may terminate this Contract during the 30 day period, in its sole judgment and discretion, compensating CONSULTANT for those services rendered through the date of termination. Notice of termination shall be in writing and shall be effective if made at any time during the 30 day evaluation period. During the 30 day evaluation period, the EDA may also propose amendments to the scope of services in accordance with Section I.B. of this Contract.

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 the negligence or willful misconduct of the EDA. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and the EDA under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which EDA is entitled under Minn. Stat. Chapter 466 or otherwise.

- 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. **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 EDA:

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

CONSULTANT:

Chris Whillock
Executive Director
510 Washington Street

Northfield, MN 55057
Phone: (507) 786-9065
Email: director@northfieldenterprise.com

- 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 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. 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.** The CONSULTANT is free to enter into subcontracts for services provided under this Contract for the completion of any/all tasks identified in the Scope of Services without the express written consent of the EDA, provided that any such subcontractor shall be required by the CONSULTANT to comply with all of the terms hereof which may reasonably apply. As required by Minn. Stat. § 471.425, CONSULTANT shall pay subcontractors for undisputed services within ten (10) days of the CONSULTANT'S receipt of payment from the EDA. The CONSULTANT shall pay interest of 1.5 percent per month or part of a month to the subcontractor if payment is late and shall pay a minimum monthly interest penalty payment of \$10 for unpaid balance of \$100 or more.
- F. **Assignment.** This Contract may not be assigned by either Party without the written consent of the other Party.
- G. **Modifications/Amendment.** Either party may request a modification or amendment to this Contract by presenting a written request to the other Party explaining the change requested and the reason(s) for such request. The Party to whom the request is addressed shall then consider and respond to such request within 60 days after receiving the request, but nothing herein shall require any Party to agree to a proposed modification or amendment, and nothing herein shall authorize a proposed change or amendment to take effect without the consent of the non-requesting Party. 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.
- H. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that the EDA, the City of Northfield, 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 EDA.
- 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 EDA or City Officials.** No elected official, officer, or employee of the EDA or the City of Northfield 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") may be used for EDA purposes unless disclosure of the information is proprietary or trademarked.

- 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.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the EDA would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the EDA, except as required by the terms of this Contract.
- 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 EDA. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless EDA 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 EDA 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 EDA'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 EDA'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 EDA, 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 EDA 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 ENTERPRISE CENTER

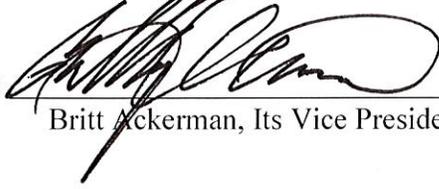
By: 
(Signature)
Title: NEC Director
Print Name: Chris Whillock

Date: 10/26/17

NORTHFIELD ECONOMIC DEVELOPMENT AUTHORITY:

By: 
Todd Bornhauser, Its President

Date: 10/26/2017

By: 
Britt Ackerman, Its Vice President

Date: 10.26.2017

EXHIBIT 1

SCOPE OF SERVICES

The Northfield Enterprise Center shall perform the following services as its contractual obligation to the Northfield Economic Development Authority. **These services are driven from elements in the Comprehensive Economic Development Plan, including:**

- Creating entrepreneurial and innovative start-up opportunities
- Supporting small business development

SERVICES PROVIDED

The NEC shall:

A. Counsel and Coach Entrepreneurs and Start-ups

Counsel and Coach Northfield Entrepreneurs in the following areas:

- Business plan development
- Business growth strategies
- General problem solving
- Financial cash-flow analysis
- Navigating regulatory processes
- Connecting to local community resources
- Goal setting and milestones through accountability measures

B. Provide Local Business Education and Support

Help in the growth, expansion and retention of Northfield businesses:

- Provide general business counseling and coaching services as outlined in “A” above.
- Continue to pursue cultural competency in services provided
- Collaborate with local economic development partners to conduct a series of small business training sessions
 - Facilitate integration of St. Olaf and Carleton Colleges students in local business development through creating connections for academic internships, community work study programs, and mentoring
- Positively engage with the EDA, NDDC, and Northfield Chamber of Commerce to promote the city, its programs, and its network of resources to help build a stronger business community.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, the EDA will pay CONSULTANT a flat fee of \$100,000 (“Contract price”) for CONSULTANT’s services, including expenses, under this Contract.

The EDA will make periodic payment to CONSULTANT in the following manner:

1. \$ 25,000.00 upon the signing of this Professional Service Agreement by all PARTIES, but after January 1, 2018.
2. \$ 25,000.00 upon completion of its mid-year report to the EDA in June 2018.
3. \$ 25,000.00 upon completion of its 2018 year-end report to the EDA, but after January 1, 2019.
4. \$ 25,000.00 upon completion of its mid-year report to the EDA in June 2019.