

CONSULTANT SERVICE CONTRACT

This Contract (the "Contract") is made this ____ day of _____, 20____, by and between the ECONOMIC DEVELOPMENT AUTHORITY, public body corporate and politic under the laws of the State of Minnesota (the "EDA"), 801 Washington Street, Northfield MN 55057, and Northfield Arts Guild, a 501c(3) nonprofit organization under the laws of the State of Minnesota, 401 Division St. Northfield, MN 55057 ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, EDA requires certain professional services in conjunction with understanding the feasibility of arts facilities in the Downtown (the "Project"); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by 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 (the "services").
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J 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 requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to EDA of any additional services prior to furnishing such additional services. EDA may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate for such additional services prior to EDA's authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by EDA are beyond the scope of services detailed in Exhibit 1, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT's effort required to perform its services under this Contract exceeds the estimate that formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify EDA of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to EDA as required by this Paragraph and EDA has

not terminated this Contract pursuant to Section IV, Paragraph B.

D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors 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 or services.

E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance amounts specified herein have been verified by EDA, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All such insurance coverage shall be maintained at all times while this Contract is in effect.

1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, subject to the requirements in this Paragraph F and including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater (coverages under umbrella or excess policies may be combined with primary policies to meet the below stated insurance coverage requirements):

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations

Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$2,000,000 per occurrence

2. Except as provided below, CONSULTANT's Workers' Compensation insurance must provide coverage for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance, or if CONSULTANT has no employees in the EDA, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If at any time while this Contract is in effect CONSULTANT ceases to be exempt from the requirement to maintain Workers' Compensation coverage, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide EDA with a certificate of insurance documenting such coverage.

3. CONSULTANT's Commercial General Liability ("CGL") and business automobile liability insurance coverages shall insure CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto," which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or as otherwise required by law. EDA shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) (for purposes of clarity, EDA shall not be an additional insured on CONSULTANT's professional liability policy if such insurance is required in this Contract) 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.

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the

Contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per claim; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$75,000 without the written approval of EDA. If CONSULTANT desires authority from EDA to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that EDA can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the services/work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to EDA by CONSULTANT and are attached hereto and incorporated herein by reference as Exhibit 2.
6. Any insurance limits in excess of the minimum limits specified herein above shall be available to EDA in the event of claims.
7. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least Thirty (30) days' advance written notice to EDA, or Ten (10) days' prior written notice to EDA for nonpayment of premium.
8. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to EDA with respect to any claim arising out of CONSULTANT's performance under this Contract.
9. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached in Exhibit 2. Any program of self-insurance shall be subject to EDA approval, which shall not be unreasonably withheld, conditioned or delayed.
10. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
11. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.

12. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per “occurrence” basis (“claims made” and “modified occurrence” forms are not acceptable) and shall apply on a “per project” basis.
13. CONSULTANT shall obtain insurance policies from insurance companies having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by EDA.
14. 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 – EDA’S RESPONSIBILITIES

- A. EDA shall promptly compensate CONSULTANT as services are performed to the satisfaction of the EDA’s Community Development Director, in accordance with Section III of this Contract.
- B. EDA shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1 in its custody to CONSULTANT for its use, at CONSULTANT’s request.
- C. EDA will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT’s performance of the services detailed in Exhibit 1.
- D. Scott Wopata, EDA’s Community Development Director, shall serve as the liaison person to act as EDA 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 EDA’s policies with respect to the Project and CONSULTANT’s services. Such person shall be the primary contact person between EDA and CONSULTANT with respect to the services performed by CONSULTANT under this Contract. EDA reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** 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. **Suspension for Nonpayment.** Except for a good faith dispute, if EDA fails to make any payment due CONSULTANT for services performed to the satisfaction of the EDA’s Community Development Director and expenses within Thirty (30) days after the date of

CONSULTANT's invoice, CONSULTANT may, after giving Seven (7) days written notice to EDA, and without waiving any claim or right against EDA and without incurring liability to EDA, suspend services and withhold Project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services rendered to the date of suspension along with applicable expenses and charges related to the services rendered by CONSULTANT to EDA to the date of suspension.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, December 2027, or as otherwise provided in this Contract, whichever occurs first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Thirty (30) days written notice. In the event of termination, EDA 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 to the satisfaction of the EDA's Community Development Director, computed in accordance with Section III of this Contract. Termination shall not act to discharge any liability incurred by either PARTY during the term of this Contract. Such liability shall continue until discharged by law, this Contract, adjudication, or another subsequent agreement between the PARTIES discharging, settling, waiving, and/or releasing such liability.
- 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 pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of this 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, attorneys and consultant fees reasonably incurred by EDA in enforcing this Contract.
- D. **Suspension of Services / Work.** If any services/work performed by CONSULTANT are abandoned or suspended in whole or in part by EDA, CONSULTANT shall be paid for any services/work performed to the satisfaction of the EDA's Community Development Director prior to CONSULTANT's receipt of written notice from 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 in Exhibit 1 completed by CONSULTANT to the satisfaction of the EDA's Community Development Director, as determined by EDA.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless EDA, and its respective officials, directors, employees, and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's subcontractors, agents, employees, members, vendors, or delegates with respect to this Contract, the Project, or the services. CONSULTANT shall defend EDA against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to EDA, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend EDA, but shall reimburse defense costs to EDA to the same extent of CONSULTANT's indemnity obligation herein. 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, conditioned, or delayed. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of EDA. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and EDA under the indemnity provisions set forth above, CONSULTANT will at all times during the term of this Contract keep in force policies of insurances required in Section I of this Contract. Nothing in this Contract shall be construed to waive any immunities, defenses, or limitations to which EDA is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. EDA shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees, members, and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of EDA or its agents, employees, contractors or subcontractors with respect to EDA's performance of its obligations under this Contract. EDA shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at EDA's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. 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 CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against EDA or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for EDA's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services by CONSULTANT 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 hereof; 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 hereby.

- 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.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

EDA:

Scott Wopata
Community Development Director
801 Washington St. Northfield MN 55057
507-645-3005
Scott.wopata@northfieldmn.gov

CONSULTANT:

Michael Johnson
Executive Director, Northfield Arts Guild
401 Division St. Northfield, MN 55057
507.645.8877
michael@northfieldartsguild.org

- D. **Dispute Resolution.** EDA and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by EDA are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data, which is specifically identified as a Project deliverable by this Contract, or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to EDA shall be on an "as is" basis strictly for the convenience of EDA without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or

software.

- F. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of EDA for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of EDA, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of 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 under this Contract, 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/work required by this Contract, withholding their taxes, and paying all other employment tax obligations on their behalf.
- G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by EDA to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on EDA's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, EDA will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.
- H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of EDA. CONSULTANT shall be responsible for the performance of all subcontractors. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from EDA for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **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 EDA and CONSULTANT.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that EDA, 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.

- L. **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, pandemic, 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.
- M. **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.
- N. **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.
- O. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under services/work authorized by this Contract (“Materials”) shall become the property of EDA upon completion of the services/work. EDA may use the information for the Project for which they were prepared. Such use by EDA 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) EDA understands that the Materials have been prepared for a specific project and are not intended to be reused for other purposes. If EDA reuses the Materials for any other purpose, EDA 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 (“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 data privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those services, work, and 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 otherwise available from EDA, except as required by the terms of this Contract.

- R. **Cybersecurity Incident Reporting.** CONSULTANT acknowledges that CONSULTANT by virtue of this Contract is subject to the requirements of Minn. Stat. § 16E.36 for reporting cybersecurity incidents impacting EDA.
- S. **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.
- T. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to EDA, to federal and state agencies and state personnel involved in the payment of EDA obligations. These identification numbers may be used in the enforcement of federal and state laws, which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other EDA liabilities.
- U. **Patented Devices, Materials and Processes.** If this Contract requires, or 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. If no such agreement is made 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 by CONSULTANT, and shall indemnify and defend EDA for any costs, liability, expenses and attorney's fees that result from any such infringement.
- V. **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 EDA's interest in EDA 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.

- W. **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.
- X. **Entire Contract.** These terms and conditions constitute the entire agreement between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- Y. **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.
- Z. **Survivability.** All covenants, indemnities, guarantees, releases, liability, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of EDA and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- AA. **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:

Michael Johnson

By: _____

(Signature)

Date: _____

Title: Executive Director of the Northfield Art’s Guild

Print Name: _____

EDA OF THE CITY OF NORTHFIELD:

By: _____

Randy Yoder, Its Chair

Date: _____

By: _____

Enoch Blazis, Its Treasurer

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services/work:

The intention of the EDA is to receive a market and feasibility study of arts facilities in and around Northfield's downtown (as defined by the C-1 district). While the report may include non-downtown locations and stakeholders, the downtown area should be centered in any considerations.

1. **Market / feasibility analysis** as part of the scoping work, focused on arts facilities in the community.
 - This should answer these questions:
 - How frequently arts facilities are used by community groups, and for what purposes;
 - The availability of art-making spaces within schools, colleges, and other entities;
 - Any other information that helps assess supply, demand, scale, and feasibility of an arts facility.
 - This should engage these stakeholders:
 - Carleton and St Olaf
 - Northfield Public Schools
 - The Grand ownership
 - Canon Valley Art Makers
 - Other stakeholders, as determined by you and your team
2. **Access to project materials:** The City/EDA would have the ability to access and make reports and materials generated through this work publicly accessible, with the understanding that some engagement materials may need to be anonymized at your discretion.
3. **Progress reports** timed approximately every 6 months until December 2027 or project competition, whichever comes first
4. **EDA presentation(s)** timing to be determined collaboratively by you and EDA staff

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, EDA will compensate CONSULTANT in accordance with the schedule of fees below for the time spent in performance of services/work under this Contract, provided that under no circumstances shall CONSULTANT's total charges to EDA, including expenses, exceed \$25,000 ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the Community Development Director before they are incurred by EDA.

Schedule of Fees

Subject to the limitations set forth in this Exhibit, EDA will pay CONSULTANT a flat fee of \$25,000 ("Contract price") for CONSULTANT's services, including expenses, under this Contract.

EDA will make periodic payment to CONSULTANT based upon the following schedule of payments for services/work completed by CONSULTANT to the satisfaction of the Community Development Director, as determined by EDA:

1. Project Start \$12,500.00
2. Project Completion \$12,500.00

CONSULTANT must submit an invoice and a W9 to EDA for each payment.