

NORTHFIELD COMMUNITY RESOURCE CENTER MANAGEMENT SERVICES AGREEMENT

This Agreement (“Agreement”) is made this ____ day of _____, 2014, by and between the CITY OF NORTHFIELD, a Minnesota Municipal Corporation, 801 Washington Ave, Northfield, MN 55057, (“CITY”), and NCRC CORP., a Minnesota nonprofit corporation, 1651 Jefferson Parkway, Northfield, MN 55057, (“NCRC”), (collectively the “PARTIES”).

WHEREAS, CITY owns and operates the Northfield Community Resource Center (the “Facility”), located at 1651 Jefferson Parkway, Northfield, MN 55057, which contains meeting rooms and permanent offices that CITY leases to various community-based organizations serving the Northfield community;

WHEREAS, NCRC is a nonprofit corporation whose members are community organizations with permanent offices located in the Facility;

WHEREAS, CITY requires management services in conjunction with the ongoing maintenance and operation of the Facility;

WHEREAS, NCRC agrees to assume responsibility for all management services required by CITY in conjunction with the ongoing maintenance and operation of the Facility pursuant to the terms and conditions set forth below; and

WHEREAS, CITY and NCRC acknowledge herein that NCRC intends to satisfy its obligations to provide the management services required by CITY by subcontracting with a qualified facilities management company acceptable to CITY.

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

ARTICLE ONE NCRC’S SERVICES AND RESPONSIBILITIES

- 1.1 Provision of Services. During the term and any renewal term of this Agreement, NCRC shall be responsible for providing the services set forth in this Article 1.
- 1.2 Grant to NCRC. CITY grants to NCRC the right to manage, market, promote, operate and maintain the Facility, consistent with CITY’s lease agreements with CITY’s tenants (hereinafter, “Tenants”) in the Facility, which lease agreements are listed on Appendix A hereto, (hereinafter the “Tenant Leases”); subject, however, to CITY’S right to terminate this Agreement as provided herein. NCRC shall provide these services in a timely manner, in accordance with industry standards and norms, and in accordance with the budget submitted to the CITY pursuant to Article 3. NCRC is not authorized to incur

debt on the Facility secured by any interest in the Facility or which the City would be otherwise required to assume in the event of termination of this Agreement.

1.3 Assumption of Duties and Responsibilities Under Existing Leases. By entering into this Agreement, NCRC agrees to assume CITY's duties, obligations and responsibilities under the Tenant Leases, during the term of this Agreement and any extensions thereof, and to enforce and abide by the terms and conditions of the Tenant Leases. NCRC shall have the authority to enter into amendments or renewals of such leases as CITY's agent, subject to the approval of the same by CITY, acting through its City Council, which approval shall not be unreasonably withheld. Upon termination of this Agreement, the landlord's rights, duties, obligations and responsibilities under the Tenant Leases shall revert to CITY and CITY shall reassume the same.

1.4 NCRC Management Responsibilities/Subcontract. Beginning on the Commencement Date, and continuing through the term of this Agreement, NCRC shall assume management responsibilities as set forth below, which responsibilities it shall fulfill under the subcontract with a qualified management company, a true copy of which is attached hereto as Appendix B, or, in the event of termination of such subcontract, under a substitute subcontract with a qualified management company. Any such substitute subcontract shall be subject to approval by the City Council in its sole discretion. The subcontract attached as Appendix B or any substitute subcontract that may be approved by the City Council, as the case may be, is referred to herein as the "Subcontract." Unless otherwise specifically provided in this Agreement, each duty or responsibility of NCRC under this Agreement shall be performed by a qualified management company under the then-effective Subcontract to the same extent as if the subcontractor was a party to this Agreement. The Subcontract attached hereto as Appendix B is hereby approved. NCRC shall manage the Facility in its reasonable discretion pursuant to the terms of this Agreement, but shall be obligated to inform CITY of unbudgeted single transactions or circumstances of which it has knowledge having or which may have a material effect on the Facility or the operation of the Facility. Such notice by NCRC to CITY shall be in writing and provided to CITY within 30 days of NCRC's determination that a material issue or circumstance exists that requires disclosure to CITY. For purposes of this Agreement, an issue having a "material effect on the Facility or the operation of the Facility" includes matters which will have a cost impact of \$15,000 or more.

1.4.1 Marketing and Promotion. NCRC shall manage and direct all marketing and sales activities, which shall be undertaken so as to maximize the use of the.

1.4.2 New Rentals. NCRC shall be responsible for marketing the Facility to prospective new tenants and shall have the authority to enter into new lease agreements for office space in the Facility acting as CITY's agent. The template lease form for new lessee's, should the form materially change from the most current form now in use at the Facility, shall be subject to review by CITY administration. NCRC further agrees that it will abide by the terms and conditions of any such new lease agreements, and its performance under this Agreement will not cause CITY to be in default of any of the terms and conditions of such lease agreements. Upon

termination of this Agreement, CITY shall assume the landlord's rights, duties, obligations and responsibilities under any new lease agreements entered into by NCRC pursuant to this Section.

- 1.4.3 Scheduling. NCRC shall develop and maintain all schedules for meetings and other community events held in non-leased space, common areas or short-term rental space at the Facility. Notwithstanding the foregoing, Tenants of the Facility are solely responsible for their respective leased spaces in accordance with their respective leases. NCRC shall use a facility event rental agreement acceptable in form to CITY. The Parties understand and agree that NCRC shall be empowered to negotiate short term facility rental agreements as CITY'S agent and shall establish standard rental rates for Facility rental.
- 1.4.4 Operations Plan. NCRC, in implementing the Subcontract, shall prepare an annual operations plan, which shall be submitted to CITY administration for approval each year for the following fiscal year. NCRC and CITY will cooperate and will work together to ensure that the operations plan meets the reasonable requirements and expectations of CITY for the operation, maintenance and management of the Facility.
- 1.4.5 Facility Maintenance. NCRC will be responsible for the performance of all facilities maintenance work, including the Facility and its landscaping, heating and cooling systems, and grounds.
- 1.4.6 Utilities. All utilities (including telecommunications services) serving the Facility shall be in NCRC's name, acting as CITY's agent. Any utilities presently in CITY's name shall be transferred to NCRC within 60 days of the Commencement Date of this Agreement. NCRC shall be responsible for paying all such utilities charges (including telecommunications services) serving the Facility during the term of this Agreement or any extension thereof.
- 1.4.7 Custodial and Cleaning Services. NCRC shall provide all routine cleaning and janitorial services at the Facility, whether performed by NCRC or a custodial or cleaning service engaged by NCRC.
- 1.4.8 Pest Control. NCRC shall be responsible for all necessary pest control services, whether performed by NCRC or a pest control service engaged by NCRC.
- 1.4.9 Snow Removal. NCRC shall be responsible for all snow and ice removal services on the pathways, sidewalks, and parking lots owned by the CITY on the grounds of the Facility, whether performed by NCRC or a snow removal company service engaged by NCRC.
- 1.4.10 Grounds. NCRC shall be responsible for all lawn mowing and maintenance of the grounds surrounding the Facility, whether performed by NCRC or a lawn service engaged by NCRC.

- 1.4.11 Trash Removal. NCRC shall be responsible for removal of all trash from the Facility and agrees that it shall not permit any employee or agent of NCRC or any Tenant or Facility user to place refuse outside the Facility, except in designated trash containers. A recycling program shall also be implemented at the Facility.
- 1.4.12 Operational Services. NCRC shall be responsible for all services required to host meetings or other community events at the Facility. NCRC shall hire and manage all required and necessary management staff and other personnel required for the operation of the Facility.
- 1.4.13 Licenses and Permits. NCRC shall obtain and maintain all licenses and permits necessary for management and operation of the Facility, subject to the local procedures for the granting of such licenses and permits.
- 1.4.14 Revenues and Payment of Operating Expenses. NCRC shall be responsible for the collection of all revenues and payment of all operating expenses for the Facility, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by NCRC or any other person or entity operating on NCRC'S behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, less applicable sales taxes.
- 1.4.15 Staffing. NCRC shall be responsible for supervision and direction of all NCRC personnel staffing at the Facility, including the Subcontract and any other subcontractors. All such Facility staff, other than subcontractors, will be in the employment of NCRC. All expenses associated with the employment of staff will be considered operating expenses of the Facility.
- 1.4.16 Use of CITY Equipment. NCRC is authorized to use equipment at the Facility in performance of its obligations hereunder. Prior to the Commencement Date, CITY and NCRC will conduct an inventory of Facility equipment to be used by NCRC during this Agreement, and a list of such equipment shall be appended to this Agreement as Appendix C. CITY is not obligated to repair or replace any of the equipment used by NCRC at the Facility.
- 1.5 Insurance. NCRC shall comply, at its own expense, or require that the Subcontract or any successor subcontract comply with the following insurance requirements:
- 1.5.1 Required Insurance. NCRC agrees that NCRC or the subcontractor under the Subcontract and other subcontractors, at NCRC's or subcontractors' expense, maintain the following insurance policies in the listed amounts:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit

	\$500,000 disease each employee
Comprehensive General Liability	\$1,500,000 property damage and bodily injury per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense
Comprehensive Automobile Liability	\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$2,000,000

All policies listed above shall be written on an “occurrence” form (“claims made” and “modified occurrence” forms are not acceptable) and shall apply on a “per project” basis.

With the exception of the Worker’s Compensation policies, all policies listed above shall insure the defense and indemnity obligations assumed by NCRC under this Agreement, and shall name CITY as an additional insured under the policy.

All policies listed above shall contain a provision that coverages afforded thereunder shall not be canceled or non-renewed, nor shall coverage limits be reduced by endorsement, without thirty (30) days prior written notice to CITY.

- 1.5.2 Certificates of Insurance. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, shall be provided to CITY by NCRC prior to the Commencement Date of this Agreement and will be appended hereto as Appendix D.
- 1.5.3 Effect of Failure to Provide Insurance. If NCRC fails to provide the specified insurance or to require the specified insurance from subcontractors, as applicable, then NCRC will defend, indemnify and hold harmless CITY and CITY’s officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney’s fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission

(including breach of contract) of NCRC, its subcontractors, agents, employees or delegates. NCRC agrees that this indemnity shall be construed and applied in favor of indemnification. NCRC also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require NCRC to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from NCRC's insurance company.

NCRC will take the action required by CITY within fifteen (15) days of receiving notice from CITY.

Notwithstanding the foregoing, the City reserves the right to terminate this Agreement pursuant to Section 2.4 in the event that insurance requirements are not maintained or required as provided herein during the term of this Agreement.

- 1.5.4 Standard of Care. Services provided by NCRC or its subcontractors under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the facilities management profession or industry. NCRC shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by NCRC'S breach of this standard of care. NCRC shall put forth reasonable efforts to complete its duties in a timely manner. NCRC 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 Agreement. NCRC shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- 1.6 Powers Reserved to CITY - Improvements. CITY shall have the right of prior approval in connection with capital expenditures to repair, renovate, remodel or otherwise improve or alter the structure of the Facility or the grounds on which it is located. All improvements to the Facility shall be the property of CITY.
- 1.7 Relationship of Parties. NCRC is an independent contractor of CITY and shall not be deemed to be an employee, joint venturer, or partner of CITY. The authority of NCRC shall be limited to those matters which are specifically addressed in this Agreement.

- 1.8 Relationship with CITY. NCRC shall provide all of its Management Services in a manner which shall ensure full compliance with all CITY requirements as stated in this Agreement, City Code and applicable law.
- 1.9 Security.
- 1.9.1 Community Action Center of Northfield, a Minnesota nonprofit corporation, ("CAC"); Three Rivers Community Action, Inc., a Minnesota nonprofit corporation, ("Three Rivers"); and Northfield Senior Citizens, Inc., a Minnesota nonprofit corporation ("Seniors"); (collectively the "Limited Guarantors") agree to be signatories hereto for the exclusive purpose of securing the faithful performance of this Agreement by NCRC. The Limited Guarantors hereby agree to pay up to \$30,000 (\$10,000 each) to CITY in the event of any unpaid liability of NCRC, including but not limited to as a result of an uncured default hereunder or lien. The Limited Guarantors liability is strictly limited to \$10,000 each. The Limited Guarantors agree to make payment to CITY within 30 days of a written demand by CITY. CITY shall have the right to seek payment from the Guarantors for a period of one year following the effective date of termination of this Agreement
- 1.9.2 NCRC shall pay all laborers employed and all subcontractors furnishing material or services to NCRC in the performance of this Agreement. If NCRC fails to pay any claims and demands for labor, materials or services, CITY may, in its sole discretion, apply the monies due to NCRC toward paying and satisfying such claims and demands. CITY has the right to apply monies due to NCRC towards paying any accrued indebtedness or any claim which may hereafter come due against NCRC.

ARTICLE TWO COMMENCEMENT DATE, TERM AND TERMINATION

- 2.1 Initial Term. This Agreement shall commence on May 1, 2014 (the "Commencement Date") and expire on December 31, 2016, unless terminated earlier as set forth herein.
- 2.2 Termination. Notwithstanding anything in this Agreement to the contrary, CITY or NCRC shall each have the right, in its sole discretion, without penalty or cause, to terminate this Agreement effective as of December 31, 2015, by giving not less than one hundred twenty (120) days prior written notice of such termination to NCRC.
- 2.3 Extensions. Subject to Sections 2.2 and 2.4, CITY and NCRC may extend the term hereof on the same terms and conditions for additional one-year periods (each a "Renewal Term") commencing immediately after the initial term or any Renewal Term, as applicable. A party wishing to extend the term of this Agreement shall give not less than one hundred twenty (120) days prior written notice of such extension to the other party. The term shall be extended as provided herein if the party receiving notice, prior to the expiration date, responds in writing within 30 days to the party giving notice of its acceptance the term extension. Failure of a party receiving timely notice to timely

respond in writing following receipt of such notice shall not extend the term of this Agreement.

- 2.4 Default, Right to Cure, Termination. It shall be an event of default ("Event of Default") hereunder if either party hereto: (i) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or (ii) fails to perform or comply with any other obligation of such party hereunder within thirty (30) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within ten (10) days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice. In the event of NCRC's uncured default, NCRC shall be liable to CITY for any and all costs, disbursements, attorney and NCRC fees reasonably incurred by CITY in enforcing this Agreement.
- 2.5 Effect of Termination. Upon the effective date of termination of this Agreement, CITY shall assume all rights, obligations, duties and responsibilities of NCRC with respect to the management and operation of the Facility, including all funds held by NCRC under Article 3 shall be returned to CITY and deposited in a dedicated CITY fund.
- In the event that this Agreement is terminated for any reason, the Subcontract shall terminate commensurate with the effective date of termination of this Agreement, unless CITY agrees in writing to the assignment of the Subcontract to CITY. It is expressly understood that the City is not liable for any payments or obligations made by NCRC pursuant to the Subcontract.
- 2.6 Facility Ownership. During the term hereof, all incidents of ownership in the Facility shall remain with CITY. NCRC shall gain no property interest in the Facility or the real property upon which the Facility is located by virtue of this Agreement.
- 2.7 Sale of Facility. CITY and NCRC shall begin discussions regarding the sale of the Facility by CITY to NCRC on or before July 1, 2015.

ARTICLE THREE CONSIDERATION

- 3.1 Consideration. In consideration for the services to be performed by NCRC (or its agents or subcontractors) under this Agreement, CITY shall compensate NCRC \$18,000 per year, payable in advance on the dates specified in Section 3.4. The consideration as provided in this Section 3.1 and as otherwise provided in this Agreement constitutes the exclusive compensation for NCRC's services under this Agreement.

- 3.2 Facility Revenues. During the term of this Agreement, NCRC shall be entitled to collect and retain all rents payable under the Tenant Leases as provided for in Section 1.3, all rents payable under leases with new tenants negotiated by NCRC under Section 1.4.2, all payments from short term rentals under Section 1.4.3, payments by the City to Northfield Senior Citizens, Inc. (the “Seniors”) under Section 3.3, and all payments from any other source related to the Facility. All such revenues shall be available for use by NCRC in performing its services under this Agreement. Payments or rent credits to Community Action Center of Northfield (“CAC”) and Three Rivers Community Action, Inc. (“Three Rivers”) under Section 3.3 shall be collected by NCRC and either applied toward rent due from those entities or paid over to those entities, as those entities may agree by separate contract with NCRC from time to time and as provided in the respective leases. All revenues shall be accurately reflected and accounted for in the budgeting process and in financial statement provided to CITY as provided herein.
- 3.3 City’s Obligations to Tenants. CITY shall make all payments to tenants called for by the Tenant Leases. All rent credit payments as contained in those certain Tenant Leases shall remain in effect only as provided in the respective Tenant Lease.
- 3.4 Disposition of Rents Paid to CITY Prior to Commencement Date and Thereafter. CITY shall pay over to NCRC on the Commencement Date the amounts of rent already collected by CITY from Facility tenants for the month containing the Commencement Date and any amounts received thereafter during the term of this Agreement, inclusive of the CITY’s share of the Seniors’ rent.
- 3.5 Payments by CITY. For 2014, CITY shall make payments on May 1 and July 1 of the amounts required under Sections 3.1 through 3.4 of this Agreement. For 2015 and any subsequent years during the term of this Agreement, such payments shall be made on each January 1 and July 1, or on the next succeeding business day. All such payments made by CITY to NCRC shall be deposited to the account of NCRC and used to pay expenses of Facility operations.
- 3.6 Reserves.
- 3.6.1 *The Reserves.* CITY and the Seniors have created a fund in the amount of \$80,207 (as of March 31, 2014) out of excess Facility revenues (the “Existing Reserve Fund”). The fund consists of (i) a reserve initiated and funded by the Seniors for the exterior maintenance of the Facility’s wellness center in the amount of \$12,268, (ii) a reserve initiated and funded jointly by CITY and the Seniors for the wellness center in the amount of \$39,739, and (iii) a reserve initiated in 2008 to fund general capital replacements for the whole Facility in the amount of \$28,200.
- 3.6.2 NCRC shall create an additional reserve fund (the “Additional Reserve Fund”) into which it shall deposit any excess of Facility revenues over Facility operating expenses on an annual or more frequent basis. Any funds in the Additional Reserve Fund shall be considered the property of CITY and returned to CITY

upon expiration or termination of this Agreement for any reason, unless otherwise agreed upon in writing by CITY and NCRC.

- 3.6.3 *Access to the Reserves, Advance Notice to and Approval by CITY.* Before incurring any unbudgeted liability of \$10,000 or more calling for use of any part of the Existing or Additional Reserve Funds, NCRC will give not less than 30 days' notice to CITY, and CITY shall within that period either approve, modify or deny such liability, it being understood that approval shall not be unreasonably withheld. However, in the event that an emergency exists, as determined by NCRC, NCRC shall give CITY the maximum practicable notice and may commence incurring the related obligation before receiving approval of CITY. Emergency is defined as an unforeseen extraordinary event or natural disaster outside NCRC's control.
- 3.7 CITY's Payments. Notwithstanding any provision contained herein, CITY's total obligations in connection with the Facility for 2014, 2015 and 2016 shall not exceed \$184,000 per year, which sum shall *include* all payments required under Sections 3.1, 3.2, 3.3, 3.4 and 3.5 and obligations owed to Johnson Controls, but shall *exclude* any payments from the Existing Reserve Fund under Section 3.6.
- 3.8 Operating Budget. Each year during the initial term or any Renewal Term, NCRC shall submit to CITY, on or before August 1, a proposed annual operating budget ("Annual Operating Budget") for the ensuing year, listing all projected revenues and operating expenses by category, with such detail as CITY may reasonably require. The proposed Annual Operating Budget shall reflect all revenues projected to be received with respect to the Facility, specifically including all revenues to be collected and retained by NCRC pursuant to this Agreement. If CITY objects in writing to the proposed Annual Operating Budget or any part thereof, NCRC shall respond promptly to each such objection and work with CITY to resolve any differences in a manner reasonably acceptable to both parties. A final Annual Operating Budget will be submitted by NCRC to CITY prior to August 1 each year for CITY council approval. NCRC and CITY may revise the financial arrangement contained in this Agreement at any time by mutual written agreement. NCRC shall assume responsibility for the management and operation of the Facility as provided in Article 1, and shall not incur expenses in excess of the Annual Operating Budget, and in any event shall not be entitled to reimbursement of expenses incurred in excess of the Annual Operating Budget except as the Annual Operating Budget may be revised.
- 3.9 Capital Plan. No later than July 01, 2015, NCRC shall prepare and deliver to CITY a ten-year capital plan for the Facility (the "Plan"). The Plan shall set out in detail all the dates and amounts of projected capital expenditures deemed necessary in order to maintain the Facility in good and tenantable condition. The Plan may also, at the option of NCRC, set out in detail the dates and amounts of any capital expenditures intended to upgrade the Facility. The Plan may be amended from time to time to reflect changes of circumstance, and any amended Plan prepared by NCRC shall be promptly delivered to CITY. The Plan, as amended from time to time, shall be deemed a planning document. CITY's

acceptance of the original Plan or any amendment of the Plan shall not be deemed to be approval thereof or any portion thereof.

- 3.10 Financial Statements. NCRC shall deliver to CITY, as soon as available after the end of each calendar month and within ninety (90) days after the end of each calendar year, a true and correct operating statement of the Facility for the preceding calendar month or calendar year, as the case may be, together with any reasonable supporting documentation reasonably requested by CITY.
- 3.11 Audit. CITY may audit the financial statements delivered by NCRC to CITY pursuant to this Agreement. As determined by CITY in its reasonable discretion, and upon written notice to NCRC of such determination, NCRC will retain a reputable auditing firm, acceptable to CITY, to conduct an audit of NCRC's financial statements at NCRC's expense. NCRC shall make and file an audit report with CITY within 90 days of the date of the CITY's notice. The audit report shall include the following information:
- (a) The financial condition of the NCRC and the Facility;
 - (b) The status of all projects related to the Facility;
 - (c) The status of all leases related to the Facility; and
 - (d) Such other matters relating to the Facility's revenues and operating expenses, which may affect the interests of CITY, and such other information as CITY may require.

At close of the 2015 fiscal year, NCRC shall conduct an audit as provided in this section.

- 3.12 Previously Incurred Capital Costs. CITY shall remain liable for payment of all principal and interest on indebtedness incurred prior to the Commencement Date with respect to the Facility, including specifically any general obligation bonds issued in connection with the acquisition and construction of the Facility, except that any obligations owed to Johnson Controls will be the responsibility of NCRC.

ARTICLE FOUR INDEMNIFICATION

- 4.1 Indemnification of CITY. NCRC shall indemnify, protect, save, hold harmless and insure CITY, and its respective officers, 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 NCRC or its agents, employees, contractors or subcontractors with respect to NCRC's performance of its obligations under this Agreement. NCRC shall defend CITY against the foregoing, or litigation in connection with the foregoing, at NCRC's expense, with counsel reasonably acceptable to CITY. 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 or resulting from the negligence or willful misconduct of CITY.

All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

- 4.2 Indemnification of NCRC. CITY shall indemnify protect, save, hold harmless and insure NCRC, 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 CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Agreement. CITY shall defend NCRC against the foregoing, or litigation in connection with the foregoing, at CITY's expense, with counsel reasonably acceptable to NCRC. NCRC, 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 NCRC. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.
- 4.3 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against CITY or NCRC. NCRC's services under this Agreement are being performed solely for CITY's benefit, and no other entity shall have any claim against NCRC because of this Agreement or the performance or nonperformance of services provided hereunder.

ARTICLE FIVE GENERAL TERMS AND CONDITIONS

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

CITY:

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

NCRC:
Lynne Pederson, President
NCRC Corp.
1651 Jefferson Pkwy.
Northfield, MN 55057

- 5.4 Dispute Resolution. CITY and NCRC agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. NCRC and CITY agree to require an equivalent dispute resolution process governing all contractors, subcontractors, subconsultants, suppliers, consultants, and fabricators concerned with the Project.
- 5.5 Independent Contractor Status. NCRC, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Agreement shall be construed so as to find NCRC to be an employee of CITY, and NCRC shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.
- NCRC acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due NCRC, and that it is NCRC's sole obligation to comply with the applicable provisions of all Federal and State tax laws.
- NCRC shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein.
- NCRC is responsible for hiring sufficient workers to perform the services/duties required by this Agreement, withholding their taxes and paying all other employment tax obligations on their behalf.
- 5.6 Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party.
- 5.7 Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the CITY and NCRC.
- 5.8 Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, NCRC agrees that 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 NCRC and involve transactions relating to this Agreement.

NCRC agrees to maintain these records for a period of six years from the date of termination of this Agreement.

- 5.9 Force Majeure. The PARTIES shall each be excused from performance under this Agreement 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 Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.
- 5.10 Compliance with Laws. NCRC shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which NCRC is responsible.
- 5.11 Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- 5.12 Interest by City Officials. No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 5.13 Governing Law. This Agreement 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 Agreement without regard to its choice of law or conflict of laws principles.
- 5.14 Data Practices. The PARTIES acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- 5.15 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 Agreement 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 Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- 5.16 Data Disclosure. Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, NCRC consents to disclosure of its social security number, federal employer tax identification

number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring NCRC to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.

- 5.17 Patented Devices, Materials and Processes. If this Agreement requires, or the NCRC desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, NCRC 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, NCRC 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 Agreement, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- 5.18 Mechanic's Liens. NCRC hereby covenants and agrees that NCRC will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in the 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, NCRC shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that NCRC may contest any such lien provided NCRC first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- 5.19 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- 5.20 Entire Agreement. 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 Agreement.
- 5.21 Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- 5.22 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or PARTIES, and any undischarged obligations of CITY and NCRC arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

5.23 Execution. This Agreement 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 Agreement, 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.

[Remainder of page intentionally left blank]

ARTICLE SIX

SIGNATURES

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

NCRC CORP.:

By: _____

(Signature)

Date:_____

Title: _____

Print Name: _____

By: _____

(Signature)

Date:_____

Title: _____

Print Name: _____

CITY OF NORTHFIELD:

By: _____

Dana Graham, Its Mayor

Date:_____

By: _____

Deb Little, Its City Clerk

Date: _____

LIMITED GUARANTORS:

COMMUNITY ACTION CENTER OF NORTHFIELD

By:
(Signature)

Title:

Print Name:

Date:

By:
(Signature)
Title:
Print Name:

Date:

THREE RIVERS COMMUNITY ACTION, INC.

By:
(Signature)
Title:
Print Name:

Date:

By:
(Signature)
Title:
Print Name:

Date:

NORTHFIELD SENIOR CITIZENS, INC.

By:
(Signature)
Title:
Print Name:

Date:

By:
(Signature)
Title:
Print Name:

Date:

APPENDIX A
LIST OF TENANT LEASES

[Insert list of leases in effect as of January 1, 2014]

APPENDIX B
SUBCONTRACT

APPENDIX C
CITY EQUIPMENT INVENTORY

[Insert list of City equipment at Facility that NCRC may use]

APPENDIX D
CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]