



CONSENT

Item #5

M2014-012

**Date of City Council Meeting:** January 21, 2014

**To:** Mayor and City Council  
City Administrator

**From:** Deb Little, City Clerk

**Subject:** Approve Consultant Service Contract for The Link Center

**Action Requested:**

The City Council is being asked to approve the Consultant Service Contract with Growing Up Healthy and Healthy Community Initiative for the Link Center.

**Summary Report:**

On October 15, 2013, the City Council approved Motion M2013-105 "directing staff to develop a three year contract for service for The Link Center for \$22,100/year from the Communications Fund." The attached Consult Service Contract was created and reviewed by the Growing Up Healthy, Healthy Community Initiative (HCI) and the City Attorney.

**Alternative Options:**

The Council could amend the contract or choose to not approve the contract.

**Financial Information:**

The City will pay an annual fee of \$22,100 for services in equal installments on February 1, July 1, and October 1. The City will also provide office space at the Northfield Community Resource Center (NCRC) totaling approximately 200 square feet.

**Timelines:**

Delay of contract approval would delay the first payment.

**Attachments:**

1. Consultant Service Contract

## CONSULTANT SERVICE CONTRACT

This Contract, made this 21<sup>st</sup> day of January, 2014, by and between the CITY OF NORTHFIELD, a Minnesota municipal corporation (the "CITY") 801 Washington Street, Northfield, MN 55057, and GROWING UP HEALTHY, a Multi-Agency Grant-Funded Coalition, 1651 Jefferson Parkway, Northfield, MN 55057 ("CONSULTANT") and NORTHFIELD HEALTHY COMMUNITY INITIATIVE, the fiscal agent for CONSULTANT, (collectively the "Parties").

WHEREAS, CONSULTANT is a grant-funded initiative, which has established the LINK Center program to jointly provide certain services to the City and the other entities and organizations making up CONSULTANT, including addressing the needs of new residents coming to Northfield; and

WHEREAS, CONSULTANT is comprised of the entities and organizations attached hereto as Exhibit 1; and

WHEREAS, CONSULTANT is funded partially through grant funding that may have a limited duration; and

WHEREAS, the Northfield Healthy Community Initiative has agreed to serve as fiscal agent for CONSULTANT in order for CONSULTANT to provide the services needed by the City and the other entities and organizations comprising CONSULTANT; and

WHEREAS, the CITY requires professional services to assist the CITY in providing certain services and programming assistance to new populations in the community that can be provided cost-effectively and efficiently through a contract with CONSULTANT; and

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

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

### SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 2, 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 2, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 2, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional

compensation consistent with Section III of this Contract. CONSULTANT shall give written notice to the CITY of any additional services prior to furnishing such additional services. The CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate in writing, prior to the CITY's authorization of the changed scope of services.

- C. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or trade.

D. **Insurance.**

1. CONSULTANT agrees to maintain, at CONSULTANT's expense, statutory worker's compensation coverage.
2. CONSULTANT agrees to maintain, at CONSULTANT's expense, general liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT's general business activities (including automobile use).
  - i. The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$2,000,000.
  - ii. The liability insurance policy shall name the City of Northfield as additional insured.
  - iii. The liability insurance policy shall provide a minimum aggregate limit of \$4,000,000.
3. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to the CITY by CONSULTANT and are attached hereto as Exhibit 3.

## **SECTION II – THE CITY'S RESPONSIBILITIES**

- A. The CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the City Administrator, in accordance with Section III of this Contract.
- B. The CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 2, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. Tim Madigan, City Administrator, shall serve as the liaison person to act as the CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions,

receive information, interpret and define the CITY's policies with respect to the Project and CONSULTANT's services.

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

### SECTION III – CONSIDERATION

- A. **Fees.** The CITY will compensate CONSULTANT as detailed in Exhibit 4, Schedule of Fees, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If the CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY ADMINISTRATOR as detailed in Exhibit 4, CONSULTANT, without waiving any claim or right against the CITY and without incurring liability whatsoever to the CITY, 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, 2016. This Agreement is subject to annual review and approval by the parties. Any party to this Agreement may also terminate this Agreement upon sixty (60) days written notice to the other parties hereto. This Agreement may additionally be terminated by any of the parties hereto in the event of the loss of continued external grant funding needed to support the services provided through the Program. In the event of early termination as provided herein, remaining funds as provided by the City for the Program shall be returned by the Fiscal Agent to the City.
- B. **Default.** If CONSULTANT fails to perform any of the provisions of this Contract or so fails to administer the services detailed in Exhibit 2, attached hereto, in such a manner as to endanger the performance of the Contract, this shall constitute default. Unless CONSULTANT's default is excused by the CITY, the CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to the CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorney and consultant fees reasonably incurred by CITY in enforcing this Contract.
- C. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by the CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the City Administrator prior to CONSULTANT's receipt of written notice from the CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by

either the Contract price or the maximum price set forth in Exhibit 4, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the City Administrator as determined by the CITY.

- D. **Termination for the City's convenience.** The City reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the CONSULTANT shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the CONSULTANT shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the CONSULTANT can demonstrate to the satisfaction of the City, have resulted from the termination. The CONTRACTOR shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, hold harmless and insure the CITY, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages which may arise out of or be caused by CONSULTANT or its agents, employees, contractors, subcontractors, or sub-consultants with respect to CONSULTANT's performance of its obligations under this Contract. CONSULTANT shall defend the CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to the CITY. The CITY, at its expense, shall have the right to participate in the defense of any Claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by the negligence or willful misconduct of the CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- B. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against the CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for the CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

## SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents thereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

C. **Notices.** The PARTIES' representatives for notification for all purposes are:

**THE CITY:**

Tim Madigan

City Administrator

801 Washington Street

Northfield, MN 55057

Phone: (507) 645-3009

Email: tim.madigan@ci.northfield.mn.us

**CONSULTANT:**

Zach Pruitt

Executive Director for fiscal agent

1651 Jefferson Parkway

Northfield MN 55057

Phone: 507-664-3524

Email: zpruitt@carleton.edu

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

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

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

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

E. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance

of any services contemplated under this Contract without the prior written approval of the CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants.

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

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

- I. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the party affected by force majeure shall give written notice with explanation to the other party immediately.
- J. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- K. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- L. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by

any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with the CITY.

- M. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- N. **Interest by EDA or City Officials.** No elected official, officer, or employee of the CITY or its Economic Development Authority shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- O. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- P. **Governing Law.** This Contract shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- Q. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- R. **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- S. **Patented Devices, Materials and Processes.** If this Contract requires, or the CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for



infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.

- T. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- U. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- V. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- W. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- X. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any Party or PARTIES, and any undischarged obligations of the CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- Y. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

*Remainder of page intentionally left blank.*

## SECTION VII - SIGNATURES

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

### CONSULTANT: GROWING UP HEALTHY

By: Leah Eby  
(Signature)  
Title: Growing Up Healthy Coordinator  
Print Name: Leah Eby

Date: 1/15/14

By: Erin Mayberry  
(Signature)  
Title: Northfield Public Schools Community Services Director  
Print Name: Erin Mayberry

Date: 1/15/14

### FISCAL AGENT: NORTHFIELD HEALTHY COMMUNITY INITIATIVE

By: Zachary Pruitt  
(Signature)  
Title: Executive Director  
Print Name: Zachary Pruitt

Date: 1/15/14

By: Kris Estenson  
(Signature)  
Title: Board Co-Chair  
Print Name: Kris Estenson

Date: 1/15/14

### CITY OF NORTHFIELD:

By: Dana S. Graham  
Dana Graham, Its Mayor

Date: 1/21/14

By: Deb A. Little  
Deb Little, Its City Clerk

Date: 1/21/14

**EXHIBIT 1**

**LIST OF ENTITIES AND ORGANIZATIONS COMPRISING CONSULTANT**

Cannon River STEM School  
Child Care Resource and Referral, Inc.  
Community Action Center of Northfield  
Faribault McKinley Early Childhood Center  
Faribault Public Schools Community Education  
HealthFinders Collaborative  
HOPE Center  
Northfield Area United Way  
Northfield Early Childhood Initiative Coalition  
Northfield Healthy Community Initiative  
Northfield Public Schools Community Services  
Rice County Family Services Collaborative  
Rice County Public Health  
Rice County Social Services  
Rice County Statewide Health Improvement Program (SHIP)  
So How are the Children (SHAC)  
Three Rivers Community Action, Inc.  
United Way of Faribault

## **EXHIBIT 2**

### **SCOPE OF SERVICES**

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

1. The CONSULTANT's program and services will be self-sufficient with regard to funding for programming and its operations.
2. CONSULTANT will be responsible for providing programming and services to address the needs of new residents in Northfield.
3. CONSULTANT through the Fiscal Agent will maintain a financial accounting system.
4. CONSULTANT shall submit an annual operating budget to the City by June 30 for the upcoming fiscal year.
5. CONSULTANT shall be solely responsible for the security of its office space at NCRC for the Program, including inventory and for any loss, damage or destruction thereof.
6. CONSULTANT shall provide the following services:
  - a. Operate the Northfield LINK Center a minimum average of 25 hours per week throughout the year. Train LINK Center staff and volunteers to be able to connect Northfield community members (particularly newcomers to the community) with available local resources and opportunities.
  - b. Coordinate weekly Face-to-Face hours, publicizing and providing a place for City representatives and CONSULTANT partners to meet with Northfield community members.
  - c. Publicize the availability of the Northfield LINK Center within the Northfield community, focusing particularly on newcomers to the community and marginalized community members.
  - d. Produce and distribute a monthly Northfield LINK Center newsletter in English and Spanish, listing upcoming events and opportunities.
  - e. Track data on the use of the Northfield LINK Center, including number of visits to the Northfield LINK Center, the general nature of the visits, service hours, and partnerships.
  - f. Produce an annual report, highlighting Northfield LINK Center usage data; release the report by April 15 each year.

**EXHIBIT 3**

**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**

*[Certificates of Insurance attached hereto]*

## **EXHIBIT 4**

### **COMPENSATION**

Subject to the limitations set forth in this Exhibit, the CITY will pay CONSULTANT a flat fee of \$22,100/year ("Contract price") for CONSULTANT's services, including expenses, under this Contract.

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

1. Payable in equal installments on February 1, July 1, and October 1
2. The City will provide office space at the Northfield Community Resource Center (NCRC) totaling approximately 200 square feet in order for the CONSULTANT to provide services to the City as part of the Project.
  - a. CONSULTANT accepts such premises in an "as is" condition, except that any improvements desired by CONSULTANT for the Program shall be presented to and approved by the City prior to implementation.
  - b. The City, its employees, and its agents shall have the right to enter the premises at NCRC used by CONSULTANT for the Program at all reasonable times for the purpose of inspecting, cleaning, repairing, altering, or improving the premises.
3. There shall be no other payments to the CONSULTANT for services provided to the City in accordance with this Agreement.

The CITY's responsibility to make the payments described above shall be contingent upon CONSULTANT first demonstrating, to the CITY's satisfaction, progress in

1. Accomplishing its responsibilities listed in Exhibit 2; and
2. Providing written and verbal reports on such progress to the CITY, in a form satisfactory to the CITY, prior to the disbursements outlined above.