

## CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into as of the 14<sup>th</sup> day of **December 2023** by and between the Grand Rapids Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota, hereafter referred to as the “GREDA”, and Economic Development Services, Inc., hereinafter referred to as “Consultant”.

WITNESSETH:

WHEREAS, the GREDA requires professional planning services in connection with the development of the updated Downtown Plan; and

WHEREAS, the Consultant has the Qualifications and can provide the professional services needed for creating a downtown organization to implement the Grand Rapids Downtown Plan.

NOW THEREFORE, in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the GREDA and the Consultant as follows:

### 1. **Scope of Services**

It shall be the general intent of the Scope of Services for the Consultant to work with the Community Development Department to establish an advisory committee of downtown stakeholders including businesses, property owners and anchor institutions to implement the Grand Rapids Downtown Plan as defined in: their Draft Scope of Services dated August 2, 2023, which is attached as Exhibit "A", and Additional Material dated October 24, 2023, which is attached as Exhibit "A-1".

### 2. **Rate of Compensation**

Compensation to the Consultant in full for work listed in Exhibits "A" shall not exceed a total cost of \$62,553 without written approval of the GREDA. The Consultant shall be reimbursed on a monthly basis at rates listed in Exhibit "A". Direct non-salary reimbursable expenses shall be billed at actual cost and the current per mile rate, established by the IRS.

Invoices will be submitted monthly for work performed.

### 3. **Condition of Payment**

All services provided by the Consultant pursuant to this Contract shall be performed to the satisfaction of the GREDA, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

- (a) GREDA will make undisputed payments no later than thirty-five (35) days after receiving Consultant's invoices for Services performed. If GREDA objects to any portion of an invoice, GREDA shall notify Consultant within five (5) business days of invoice date. In the event of a disputed billing, only the disputed portion will be withheld from payment, and GREDA shall pay the undisputed portion.

(b) If GREDA fails to make payments to Consultant in accordance with this Agreement, and said payments are not otherwise disputed by GREDA, then Consultant may suspend its Services under this Agreement. If Consultant elects to suspend services, it shall give ten (10) days' written notice to GREDA before doing so. Consultant shall have no liability to GREDA for delay or damage caused by such suspension of Services. Before resuming Services, Consultant shall be paid all undisputed sums due prior to suspension and any undisputed expenses incurred in the interruption and resumption of the Consultant's Services.

#### **4. Time of Performance**

All work will be performed in a timely manner. The Consultant estimates completing all work described within Exhibits "A" and "A-1" within 7-9 months of the project start-up date.

#### **5. Ownership of Plans**

The originals of all plans, drawings and other documents prepared by the Consultant under this Contract shall be the property of the GREDA. Upon completion of the work described under Exhibits "A" and "A-1", the consultant shall submit to the Director of Community the plans, documents, meetings, and tours in the quantities described within said exhibits and the Draft Scope of Services dated August 2, 2023. All work product prepared and furnished by Consultant is intended only to be applicable to this Project and GREDA's use of this information for other projects shall be at GREDA's sole risk and expense.

#### **6. Termination of the Contract**

Either party may cancel this Contract (or any part thereof), at any time by giving written notice to the other party at least fifteen (15) calendar days prior to the effective date of the termination. The Consultant shall be paid for the work performed prior to the effective date of termination based upon the payment terms of this Contract. Such payment shall not exceed the maximum amount provided for by the terms of this Contract. Notice to the GREDA shall be mailed or delivered to Rob Mattei, GREDA Executive Director/Director of Community Development, City of Grand Rapids, 420 North Pokegama Avenue, Grand Rapids, Minnesota 55744. Notice to the Consultant shall be delivered to Janna R. King, Economic Development Services, Inc., 1769 Lexington Avenue North #339, Roseville, MN 55113.

#### **7. Independent Contractor**

It is agreed that nothing contained in this Contract is intended or should be construed as creating the relationship of co-partner, joint ventures, or an association with the GREDA and Consultant. Consultant is an independent contractor and neither it, its: employees, agents, subcontractors, or representatives shall be considered employees, agents, or representatives of the GREDA or the City of Grand Rapids. Except as otherwise provided herein, the Consultant shall maintain, in all respects, its present control over the means and personnel by which this Contract is performed. From any amounts due Consultant, there shall be no

deductions for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Consultant.

**8. Choice of Law**

The laws of the State of Minnesota shall govern all questions as to the execution, nature, obligation, instruction, validity, and performance of this Contract.

**9. Additional Services**

If a substantial change is made in the scope, complexity or character of the work contemplated under this Contract, or if it becomes necessary for the Consultant to make substantial revisions to documentation completed or in progress and which has been approved by the GREDA, such work will be deemed "extra work". For "extra work", the Consultant will be compensated as mutually agreed upon by the parties to this Contract. Such "extra work" costs will not be charged against the maximum fee set forth above. Time extensions may be granted by GREDA to the Consultant for completion of this project if the GREDA feels that the "extra work" warrants the extension. An amendment to this Contract will be executed by both parties, Consultant and GREDA, for any work deemed "extra work".

**10. Accuracy of Work**

Consultant will perform all professional Services in a manner consistent with the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions at the same time and general location (the "Standard of Care"). The Consultant shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from negligent errors and omissions on the part of the Consultant without additional compensation. Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Consultants Services.

Consultant shall perform its Services in accordance with the generally accepted industry standards in compliance with those laws, codes, regulations, or ordinances which are applicable to the Services being performed and which are published and in effect as of the date the Services commence.

All items of work to be performed by the Consultant shall be done in accordance with the requirements and recommendations of, and subject to the approval of, the GREDA to the extent compliance is not inconsistent with Consultant's professional practice requirements.

**11. Subletting, Assignment, or Transfer**

Except as noted in Exhibit A and A-1, no portion of the work under the Contract shall be sublet, sold, transferred, assigned, or otherwise disposed of except with the prior written consent of the GREDA.

**12. Indemnity**

To the fullest extent permitted by law, the Consultant shall hold harmless, indemnify, and defend the GREDA, its council members, officers and employees against liability, claims, loss, damages or cost and expense to the extent caused by from professional errors and omissions and/or negligent acts and omissions of Consultant in the performance of this Contract.

Should Consultant be required to provide legal defense costs pursuant to the requirements set forth in this Article, any such reasonable legal defense costs shall accrue to Consultant in a prorated proportion in accordance with Consultant's percentage of fault as determined by any applicable trier-of-fact or as agreed to and incorporated into any settlement agreements. Consultant will not be responsible for or be required to indemnify or defend any consequential, indirect, or punitive damage claims.

Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which GREDA is otherwise entitled by state statute to which statutory tort limits apply.

**13. Insurance**

Consultant shall not commence work under this Contract until it has obtained at its own cost and expenses all insurance required herein. All insurance coverage is subject to approval of GREDA and shall be maintained by Consultant until final completion of the work. Consultant shall at all times during the term of the Contract have and keep in force:

**A. Comprehensive General Liability**

- 1. Bodily Injury: \$1,500,000 per occurrence  
\$1,000,000 products & completed operations
- 2. Property Damage: \$1,500,000 per occurrence
- 3. Personal Injury  
Liability Limit: \$1,500,000 per occurrence
- 4. Blanketed Contractual Liability  
  
Bodily Injury: \$1,500,000 per occurrence  
Property Damage: \$1,500,000 per occurrence

**B. Comprehensive Automobile Liability (Owned, Non-owned, Hired)**

Combined Single Limit for bodily injury and property damage \$2,000,000

**C. Professional Liability**

Professional liability insurance in a policy form acceptable to GREDA of \$1,500,000 each claim, \$2,000,000 annual aggregate.

Policy shall provide coverage for damages for legal liability arising out of the performance of professional services, in the insured's capacity as Consultant, if such legal liability is caused by any negligent act, error, or omission of the insured or any person or organization for whom the insured is legally liable.

D. Workers' Compensation

Consultant shall obtain and maintain for the duration of this Contract, statutory workers' compensation insurance and employer's liability insurance as required under the laws of the State of Minnesota.

1. State: Minnesota – Statutory
2. Employer's Liability

E. Umbrella

Insurance certificates evidencing that the above insurance is in force with companies acceptable shall be submitted for examination and approval prior to the execution of the Contract, after which they shall be filed with GREDA. The insurance certificates shall specifically provide that a certificate shall not be canceled except upon thirty (30) days prior written notice. Neither GREDA's failure to require or insist upon certificates or other evidence of insurance showing a variance from the specified coverage changes Consultant's responsibility to comply with the insurance specifications.

Consultant shall require all subcontractors, and any other subcontractors to which the Parties agree in writing are subcontractors to Consultant, to carry and maintain insurance against the risks set forth above, in the amounts and under terms as determined to be appropriate by Consultant to fulfill its obligations of this Agreement.

GREDA may withhold payment for failure of Consultant to furnish certificates of insurance as required above.

**\*Please note that it is acceptable by the City Attorney to use the insurance requirements in Exhibits B, B-1, B-2.**

14. **Settlement of Claims**

In any case where the Consultant deems that extra compensation is due for services, materials or damages not expressly required by the Contract or not ordered in writing by the GREDA as extra work, the Consultant shall notify the GREDA in writing before it begins any such work on which he bases the claim. If such notification is not previously given or the

claim in not separately and strictly accounted for, and approved by the GREDA in writing before the Consultant commences said work, the Consultant hereby waives and releases forever any claim or costs for such extra compensation. However, such notice or accounting shall not in any way be construed as proving the validity of any claim by Consultant.

The GREDA shall decide all claims, questions, and disputes of whatever nature, which are referred to it relative to the prosecution and fulfillment of this Contract; and its decision upon all claims, questions, and disputes shall be final and conclusive upon the parties thereto administratively. Nothing in this Contract shall be construed as making final the decision of the GREDA on a question of law.

**15. Successors and Assigns**

The GREDA and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Contract. Neither GREDA nor Consultant shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other.

**16. Equal Employment and Nondiscrimination and Affirmative Action**

In connection with the work under this Contract, Consultant agrees to comply with the applicable provisions of state and federal equal employment opportunity and non-discrimination statutes and regulations.

**17. Severability**

In the event any provision of this Contract shall be held invalid and unenforceable, the Remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Contract to fail its purpose. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

**18. Entire Contract**

It is understood and agreed that the entire Contract of the parties is contained herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous contracts presently in effect between GREDA and Consultant relating to the subject matter hereof.

**19. Relationship with Others**

The Consultant shall cooperate fully with the GREDA, other consultants on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the GREDA. This shall include attendance at meetings, discussions, and hearings

as may be requested by the GREDA, furnishing data as may be requested from time to time by the GREDA to effect such cooperation and compliance with all directives issued by the GREDA.

**20. Covenant Against Contingent Fees**

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the 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 working solely for the Consultant and fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the GREDA shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

**21. Laws**

The Consultant shall keep himself fully informed of all existing and current regulations of the city, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work or affecting the materials supplied to or by them. The Consultant shall always observe and comply with all ordinances, laws, and regulations and shall protect and indemnify the GREDA as provided in Article 12 of this Contract.

**22. Professional Responsibility**

Consultant will perform all professional Services in a manner consistent with the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions at the same time and general location (the "Standard of Care"). Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Consultant's Services.

**23. Force Majeure**

An event of "Force Majeure" occurs when an event beyond the control of the Party claiming Force Majeure prevents such party from fulfilling its obligations. An event of Force Majeure includes, without limitation, acts of God (including floods, hurricanes, and other adverse weather), war, riot, civil disorder, acts of terrorism, disease, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or inability to provide a safe working environment for employees.

In the event of Force Majeure, the obligations of Consultant to perform the Services shall be suspended for the duration of the event of Force Majeure. In such event, Consultant shall be equitably compensated for time expended and expenses incurred during the event of Force Majeure and the schedule shall be extended by a like number of days as the event of Force Majeure. If services are suspended for thirty (30) days or more, Consultant may, in its sole

discretion, upon 5 days prior written notice, terminate this Agreement or the affected Work Order, or both. In the case of such termination, in addition to the compensation and time extension set forth above, Consultant shall be compensated for all reasonable termination expenses.

**24. Documents**

Provided that Consultant has been paid for the Services, GREDA shall have the right to use the documents, maps, photographs, drawings, and specifications resulting from Consultant efforts on the project. Reuse of any such materials by GREDA on any extension of this project or any project without the written authorization of Consultant shall be at GREDA's sole risk. Consultant shall have the right to retain copies of all such materials.

**25. No Third-Party Rights**

This agreement shall not create any rights or benefits for parties other than GREDA and Consultant. No third party shall have the right to rely on Consultant opinions rendered in connection with the Services without the written consent of Consultant and the third party's agreement to be bound to the same conditions and limitations as GREDA.

**26. Consequential Damages**

Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

**27. Authorized Agent of the GREDA**

The GREDA shall appoint an authorized agent for the purpose of administration of this Contract. Consultant is notified of the authorized agent of GREDA is as follows:

Robert A. Mattei  
GREDA Executive Director  
420 N. Pokegama Avenue  
Grand Rapids, MN 55744

**28. Modification of Contract**

Any alterations, variations, modifications, or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, signed by the President and the Executive Director of the GREDA and by Consultant and attached to the original of this Contract.

GREDA and Consultant have executed this agreement by the authorized signatures below.



DATE: \_\_\_\_\_

GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY, MINNESOTA

BY: \_\_\_\_\_

Sholom Blake, President

ATTEST: \_\_\_\_\_

Robert A. Mattei, Executive Director

DATE: \_\_\_\_\_

CONSULTANT:

ECONOMIC DEVELOPMENT SERVICES, INC.

BY: \_\_\_\_\_

Janna R. King, President

Its \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Form  
City Attorney

BY: \_\_\_\_\_

Chad B. Sterle