

Exhibit A

RESOLUTION 20D-41

**RESOLUTION RESCINDING RESOLUTION 20D-24 AND AUTHORIZING
AN AGREEMENT WITH THE NORTHEAST ENTREPRENEUR FUND, INC.
TO IMPLEMENT THE DULUTH SMALL BUSINESS
EMERGENCY FUND IN THE AMOUNT OF \$443,000**

RESOLVED by the Duluth Economic Development Authority (DEDA) that Resolution 20D-24 which authorized the Executive Director to enter into an agreement with the Northeast Entrepreneur Fund, Inc. (the "Entrepreneur Fund") to implement DEDA's Small Business Emergency Loan Program in the amount of \$90,000 is hereby rescinded.

FURTHER RESOLVED, that the that the proper DEDA officials are hereby authorized to execute an agreement with the Entrepreneur Fund substantially in the form the attached as Exhibit A to implement the Duluth Small Business Emergency Fund in the amount of \$443,000, payable from Fund 860.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

Executive Director

STATEMENT OF PURPOSE: At its April 3, 2020, special board meeting, DEDA authorized the Executive Director to enter into an Agreement with the Entrepreneur Fund to implement DEDA's Small Business Emergency Loan Program in the amount of \$90,000. Since that time, the program guidelines have been refined, the name of the program has been revised to "Duluth Small Business Emergency Fund" and the total dollar amount has been increased. Due to the changes in the program, Resolution 20D-24 authorizing the \$90,000 Agreement is rescinded.

This Resolution authorizes an Agreement with the Entrepreneur Fund in the amount of \$443,000 which will provide assistance to business owners who are facing significant

challenges due to the COVID-19 peacetime emergency declaration. The funding will consist of \$43,000 in the form of a grant and \$400,000 in the form of a “non-recourse loan” to the Entrepreneur Fund, some of which will be repaid to DEDA at 0% interest. Of the grant fund amount, \$40,000 will be used for loan origination, loan closing and loan servicing, and \$3,000 will be used for the Duluth Small Business Emergency Fund landing page and marketing. The remainder of the funds will provide small business loans to borrowers in the City of Duluth.

The interest rate on the loans will be 0.5% and the term will be up to 5 years. The minimum loan is \$2,000 and the maximum is \$20,000. The borrower must demonstrate that the need for the loan is primarily based on the impact of the COVID-19 emergency and that the amount of the loan is necessary to maintain financial viability. Up to 25% of a loan may be forgiven if the business returns to operation in the community at substantially the same levels within two years following loan disbursement and operates for 12 months at that level.

The Northeast Entrepreneur Fund will remit to DEDA amounts it receives from borrowers’ repayments. Any losses of capital loaned to borrowers or forgiveness of borrower’s repayment obligations under any loan will not be required to be paid back by the Entrepreneur Fund to DEDA. Exhibit B outlines a potential budget for the program.

Under a separate agreement, DEDA’s Executive Director will be entering into an agreement with Northland Foundation in the amount of \$30,000 regarding its Northeast Minnesota Small Business Development Center (SBDC) to provide essential business consulting services to businesses located in Duluth as they assist business with navigating applications for Federal, State, and business loan applications. This consulting assistance will also be available as businesses begin to restart operations. This consulting will be jointly coordinated with Entrepreneur Fund to maximize efficiency and benefit of assisting businesses in Duluth.

**AGREEMENT
BY AND BETWEEN**

ENTREPRENEUR FUND, INC.

AND

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, effective as of _____, 2020 (the “Effective Date”), by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469 (1989) (“DEDA”), and the NORTHEAST ENTREPRENEUR FUND, INC (DBA: ENTREPRENEUR FUND)., a private, non-profit corporation under the laws of the State of Minnesota (“Service Provider”).

WHEREAS, DEDA desires to provide funding in the amount of \$443,000 to Service Provider to implement the Duluth Small Business Emergency Fund (the Program”) under the terms and conditions hereinafter set forth to allow Service Provider to make loans to qualifying businesses in the City; and

WHEREAS, Service Provider is able and willing to provide said service.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Program Funding and Other Terms

1. Generally

DEDA hereby agrees to provide funding to Service Provider in the amount of Four Hundred Forty-Three Thousand Dollars (\$443,000), payable upon invoice from DEDA Fund 860, subject to the terms and conditions hereinafter set forth. The funding shall consist of \$43,000 in the form of a grant and \$400,000 in the form of a “non-recourse loan”

to Service Provider, some of which will be repaid to DEDA as set forth below at 0% interest. Of the \$43,000 grant fund amount, \$40,000 will be used for loan origination, loan closing and loan servicing, and \$3,000 will be used for Duluth Small Business Emergency Fund landing page as described in Paragraph I 3 below and marketing. The \$400,000 non-recourse loan funds provided hereunder shall be used by Service Provider to provide small business loans (the “Loans”) to Borrowers (defined below) in the City of Duluth as described in Paragraph I 2 below in accordance with this Agreement including the Program Guidelines attached hereto as Exhibit A and incorporated herein. In the event of a conflict between Exhibit A and this Agreement, this Agreement shall be controlling.

2. Use of Proceeds

Proceeds shall be used to extend Loans to the businesses defined in the Program Guidelines (hereinafter referred to as “Borrowers”) having their employees work primarily within the corporate limits of the City of Duluth. All such Loans shall be made in conformance with said Program Guidelines.

3. Landing Web Page

Service Provider shall establish a landing web page on the Service Provider’s website that describes the Duluth Small Business Emergency Fund and will allow the City of Duluth and / or DEDA staff to review and provide comments and suggestions for marketing and branding for the Duluth Small Business Emergency Fund as a major contributor and founder.

4. Loan Documentation

Prior to extending any Loan to any Borrower, Service Provider shall

give written notice to DEDA's Executive Director (the "Executive Director") of its intent to make said Loan to said Borrower. Said notice shall include the name and address of the Borrower, the names and addresses of the principals having an interest in the Borrower, the nature and character of the business of the Borrower, the intended use of the Loan, the proposed term of the Loan, not to exceed five (5) years, and the justification for the term proposed for said Loan.

5. Loan Repayment

Service Provider agrees to remit to DEDA amounts it receives from Borrowers' repayments on the \$400,000, at 0% interest, as well as any portion of the \$400,000 which Service Provider was not able to extend as Loans to Borrowers. The parties agree that any and all losses of capital loaned to Borrowers or forgiveness of Borrower's repayment obligations under any Loan shall not be required to be paid back by Service Provider to the DEDA. Such remittance will be provided along with the regular quarterly and biannual reports set forth below beginning with the first quarterly report three years after the Effective Date.

6. Reporting

Service Provider will provide regular reports on the Loans to the Executive Director which will include a description of businesses supported by the program, an accounting of the Loans made during the time period, the percentage of any Loan to be forgiven (not to exceed 25%) during said reporting period along with the justification for the percentage of forgiveness to be granted, the source and amount of money collected and distributed by the program, the program's assets and liabilities, and an explanation of administrative expenses.

Service Provider will provide quarterly reports for years 1 through 3 and biannual reports for the remainder of the term of the Agreement.

7. Additional Donations to the Fund

DEDA fully supports Service Provider and others in soliciting additional corporate and foundation donors to contribute financial resources to the Duluth Small Business Emergency Fund.

II. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the DEDA and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Executive Director.

3. Data and Confidentiality, Records and Inspection

a. Service Provider must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DEDA under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Service Provider under this Agreement. Service Provider agrees to hold DEDA, its officers, and employees harmless from any claims resulting from Service Provider's failure to comply with this law. The civil remedies of Minnesota Statutes Section

13.08 apply to the release of the data referred to in this clause by Service Provider. If Service Provider receives a request to release the data referred to in this clause, Service Provider must immediately notify DEDA and consult with DEDA as to how Service Provider should respond to the request. Service Provider's response to the request must comply with applicable law.

- b. Records shall be maintained by Service Provider in accordance with requirements prescribed by the DEDA and Generally Accepted Accounting Principles and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- c. Service Provider will ensure that all costs shall be supported by properly executed invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d. Service Provider shall be responsible for furnishing to the DEDA records, data and information as the DEDA may require pertaining to matters covered by this Agreement.
- e. Service Provider shall ensure that at any time during normal business hours and as often as the DEDA may deem necessary, there shall be made available to the DEDA for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the DEDA to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel,

conditions of employment, and other data relating to all matters covered by this Agreement.

4. Service Provider Representation and Warranties

Service Provider represents and warrants that:

- a. Service Provider and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the DEDA and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- b. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Service Provider is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Service Provider contrary to the terms of any instrument or agreement.
- c. There is no litigation pending or to the best of the Service Provider's knowledge threatened against the Service Provider affecting its ability to carry out the terms of this Agreement or its ability to carry out the terms and conditions of any other matter materially affecting the ability of the Service Provider to perform its obligations hereunder.
- d. The Service Provider will not, without the prior written consent of the DEDA, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms,

conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and shall continue for a period of five years after the final Duluth Small Business Emergency Fund Loan has been extended to a Borrower, unless terminated earlier as provided for herein, except that any of the terms and conditions of this Agreement that, by their nature extend beyond the aforesaid date, shall continue to be force and effect as long as necessary for Service Provider to fulfill said obligations under this Agreement.

DEDA may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination of the Agreement without cause, Service Provider may retain a termination fee in the amount of \$3,000 plus 10% of the total amount of Loans originated. In the event of termination, all property and finished or unfinished documents and other writings prepared by Service Provider under this Agreement shall become the property of the DEDA and Service Provider shall promptly deliver the same to the DEDA. In the event the Agreement is terminated within six months of the Effective Date, Service Provider shall be remit to DEDA any DEDA monies not loaned to Businesses as of the date of termination of this Agreement. In the event of termination due to breach by Service Provider, the DEDA shall retain all other remedies available to it.

6. Independent Contractor

a. It is agreed that nothing herein contained is intended or should be

construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Service Provider as an agent, representative or employee of the DEDA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Service Provider and its employees shall not be considered employees of the DEDA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider's employees arising out of employment shall in no way be the responsibility of DEDA. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, DEDA shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Service Provider expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the

official immunity doctrine.

7. Indemnity

To the extent allowed by law, Service Provider shall defend, indemnify and hold DEDA, the City of Duluth and their employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Service Provider's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with Service Provider's employees or contractors, or d) the use of any materials supplied by the Service Provider to the DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Service Provider shall obtain and maintain for the term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the DEDA of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. DEDA and the City of Duluth shall be named as Additional Insured by endorsement under the Public Liability and Automobile Liability, or as an alternate, Service Provider may

provide Owners-Contractors Protective policy, naming itself, DEDA and the City of Duluth. Upon execution of this Agreement, Service Provider shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.

- b. Service Provider shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- c. A certificate showing continued maintenance of such insurance shall be on file with the DEDA during the term of this Agreement.
- d. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.

9. Defaults and Remedies

a. General Events of Default

The following shall be deemed to be general events of default by Service Provider under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- 1. Service Provider shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Service Provider pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Service Provider of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to

cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

2. Service Provider makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Service Provider or its business; or Service Provider files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Service Provider files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Service Provider's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Service Provider of any trustee, receiver or liquidator of any material part of Service Provider's properties.

b. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Service Provider:

1. Seek and be entitled to monetary damages from Service Provider for any damages incurred by DEDA as a result of Service Provider's default.

2. Recover any unexpended DEDA funds.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Service Provider's violation of the terms and conditions of this Agreement or to compel Service Provider's performance of its obligations hereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

10. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

DEDA: Duluth Economic Development Authority
411 W First Street
City Hall Room 418
Duluth MN 55802
Attn: Executive Director

Service Provider: Entrepreneur Fund, Inc.
202 West Superior Street, Suite 311
Duluth, MN 55802
Attn: Shawn Wellnitz

11. Civil Rights Assurances

Service Provider, as part of the consideration under this Agreement, does hereby covenant and agree that:

a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Laws, Rules and Regulations

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

14. Severability

In the event any provision herein shall be deemed invalid or

unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

**DULUTH ECONOMIC
DEVELOPMENT AUTHORITY**

By:

By:

President

Secretary

**NORTHEAST ENTREPRENEUR
FUND, INC., a Minnesota Non-
profit Corporation**

By:

Shawn Wellnitz
Its: President/CEO

EXHIBIT A

DULUTH SMALL BUSINESS EMERGENCY FUND

PROGRAM GUIDELINES

Effective immediately, DEDA authorizes the Northeast Entrepreneur Fund, Inc.. (“EF”) to develop and implement a partially forgivable loan program to small businesses through establishment of the Duluth Small Business Emergency Fund, regardless of such business’s organizational form (i.e., independent contractor, sole proprietorship, limited liability company, etc.).

Any business receiving a loan through the DEDA contribution to the Duluth Small Business Emergency Fund must demonstrate that it was directly and adversely affected by the COVID19 peacetime emergency declaration pursuant to Minnesota Governor Walz’s Emergency Executive Order 20-01 and subsequent Executive Orders. Under the Duluth Small Business Emergency Fund, small businesses are required to have claimed all applicable private insurance and utilized all other sources of applicable assistance available from other private Federal and State sources. Under the Duluth Small Business Emergency Fund, the EF will be authorized to issue emergency loans under the following conditions and terms:

- 1.) The business’s employees must primarily work within the City of Duluth.
- 2.) Establish a focused priority outreach and recruitment of small businesses that are owned by minority, women, veteran, and other disadvantaged populations.
- 3.) The interest rate will be 0.5% percent for a term of up to 5 years.
- 4.) No principal and interest payments will be required for the first 6 months.
- 5.) The minimum loan is \$2,000 and the maximum is \$20,000.
- 6.) The borrower must demonstrate that the need for the loan is primarily the impact of the COVID-19 emergency and that the amount of the loan is necessary to maintain financial viability and be accompanied by documentation supporting that determination.
- 7.) All loans will be secured by a blanket UCC and/or personal guarantee.
- 8.) The business must have operated long enough to demonstrate financial viability.
- 9.) The loan must not be used to refinance debt that existed at the time of the COVID-19 peacetime emergency declaration.
- 10.) Borrowers may receive grants from other private, state, or federal sources. However, borrower must disclose and document all other sources of financial support subsidies and demonstrate that all requested program funds are essential for survival and / or restarting of operations related to item #6 above.
- 11.) The term of the loans shall be up to 5 years. DEDA anticipates that all loans will be dispersed as soon as practical but not later than October 1, 2020 unless such timeframe is mutually extended by the Executive Director and Service Provider.
- 12.) Loan applications received during the COVID-19 peacetime emergency declaration will be eligible to be approved under these conditions.
- 13.) Up to 25% of a loan may be forgiven if the business returns to operating in the

community at substantially the same levels within two years following loan disbursement and operates for 12 months at that level. The Service Provider will establish the return to operation benchmarks with each Borrower prior to awarding the loan.

- 14.) Loans cannot be provided to businesses that:
 - a. Derive income from passive investments without operational ties to operating businesses
 - b. Primarily generate income from gambling activities
 - c. Generates any part of its income from adult-oriented activities
 - d. Have no current or historical financial statements
- 15.) Non-profits are ineligible except for those who operate social enterprise businesses. The use of loan proceeds can be for the social enterprise only.