

AGREEMENT FOR PROFESSIONAL SERVICES
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
AND
EHLERS AND ASSOCIATES, INC.

THIS AGREEMENT entered into, as of the date of execution thereof by the parties, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and EHLERS AND ASSOCIATES, a corporation created and existing under the laws of the State of Minnesota, (“Consultant”), for the purpose of rendering services to DEDA.

WHEREAS, DEDA is responsible for the economic development and redevelopment effort in the City of Duluth, which undertaking requires substantial financial expertise and analysis, including but not limited to tax increment financing alternatives and impacts; and;

WHEREAS, DEDA is in need of expert consulting services to assist it evaluating the use of TIF for specific sites, the creation and management of TIF districts, and general support for evaluation of DEDA financial support to potential development projects that may not proceed without business subsidy; and

WHEREAS, Consultant has represented that it is qualified and willing to perform services set forth below.

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

I. Services to be Performed.

Consultant will provide services related to consulting services to assist it evaluating the use of TIF for specific sites, the creation and management of TIF districts, and general support for evaluation of DEDA financial support to potential development projects that may not proceed without business subsidy. Consultant agrees that it will provide its services at the direction of the Executive Director of DEDA (the “Director”).

II. Fees.

It is agreed between the parties that Consultant shall be paid at the rates and fees shown on the attached Exhibit A. In addition, Consultant shall be entitled to reimbursement for out-of-pocket expenses related to messenger and overnight services incurred at the direction of the Director in the performance of its services under this agreement. All other out-of-pocket expenses are included in Consultant's hourly rate or fee charge. Consultant's maximum fee for the term of this Agreement shall not exceed the sum of Seventy-five Thousand and No/100ths Dollars (\$75,000), which shall be payable from in Fund 860. All bills for services rendered shall be submitted no more frequently than monthly to Director and shall be accompanied by such documentation as the Director shall request.

III. Contract Period.

This Agreement shall commence upon the later of the date of the last required signature below and shall continue until terminated as provided herein.

IV. Termination of Services.

Either party may, by giving written notice to the other party specifying the effective date thereof, terminate this Agreement in whole or in part, with or without cause. In the event of termination, all property and finished or unfinished documents, materials, and other data prepared by Consultant under this Agreement shall be promptly delivered by Consultant to DEDA at the address provided in Section IX. Consultant shall be entitled to compensation for the performance of any unreimbursed services properly performed by it prior to the date of termination.

V. General Terms and Conditions.

1. Qualifications. Consultant represents that it is qualified and willing to perform the services set forth herein. All services to be provided by Consultant shall be provided by Jason Aarsvold or under his direction.
2. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon DEDA and Consultant only upon being reduced to writing and signed by a duly

authorized representative of each party.

3. Assignment. Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein, and further agrees that it will not assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Director. Consultant shall be responsible for the performance of all subcontractors.

4. Data and Confidentiality.

- a. DEDA agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant when reasonably practicable to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement is deemed to be confidential and shall not be released by Consultant without prior written authorization from the Director. It is further understood that Consultant shall not, unless otherwise authorized by the Director, disclose any information to the media or other third parties relating to any documents, discussions, or meetings which may arise during the performance of services under this Agreement. All requests for data or information from third parties shall be directed to the Director for response.
- c. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DEDA under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Consultant under this contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Consultant. If Consultant receives a request to release the data referred to in this clause, Consultant

must immediately notify DEDA and consult with DEDA as to how Consultant should respond to the request. Consultant's response to the request must comply with applicable law.

- d. All notes, reports, records and other documents, data and materials prepared under this Agreement shall become the property of DEDA when prepared, whether delivered to DEDA or not, and shall, together with any materials forwarded by DEDA, be delivered to DEDA at the address provided in Section IX upon request, or in any event, upon completion or termination of this Agreement.

- 5. Standard of Performance. Consultant agrees that all services to be provided to DEDA pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for the provisions of services of this type.
- 6. Civil Rights Covenant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 7. Records Auditing and Retention. Consultant's books, records, documents and accounting procedures and practices, and other evidence relevant to this Agreement are subject to the examination, duplication, transcription and audit by DEDA and either the Legislative Auditor or State Auditor, pursuant to Minn. Stat. Sec. 16C.05, subd. 5. Such evidence is also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. Consultant agrees to maintain such evidence for a period of six (6) years from the date payment was last made or longer if any audit in progress requires a longer retention period.

VI. Independent Contractor.

- a. At all times and for all purposes hereunder, Consultant shall be an independent contractor and is not an employee of DEDA or the City for any purpose. No statement contained in this Agreement shall be construed so as to find Consultant to be an employee of DEDA or the City and Consultant shall not be entitled to any of the rights, privileges, or benefits of employees of DEDA or the City, including, but not limited to, workers' compensation, health/death benefits, tenure rights, sick or vacation leave, disability or severance pay, unemployment insurance or P.E.R.A., or indemnification for third-party personal injury/property damage claims.
- b. Contractor 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.

VII. Indemnity.

Consultant agrees to defend, hold harmless, and indemnify DEDA and the City, and their officers, agents, and employees from and against all claims, causes of action, fees, liabilities, damages and expenses, including reasonable attorneys' fees, relating to or arising from the acts or omissions of Consultant, its employees, agents, or subcontractors under this Agreement.

VIII. Insurance.

- a. Consultant shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.
 - (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (2) Commercial General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations,

Completed Operations, Independent Contractors, and Contractual Liability.

- (3) Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of “claims made”, insurance, 60 days’ notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide DEDA with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to DEDA, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said “claims made” insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- (4) DEDA and the City shall be named as Additional Insureds under the Commercial General Liability and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself, DEDA and the City. Consultant shall also provide evidence of Statutory Minnesota Workers’ Compensation Insurance. Consultant to provide a certificate of insurance evidencing such coverage with 30 days’ notice of cancellation, non-renewal or material change provisions included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor’s interests and liabilities.
- (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to

DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA or the City.

- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Consultant, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Consultant, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Consultant is carrying the above described insurance in the specified amounts shall be furnished to DEDA prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement.

IX. Notices.

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to DEDA as follows:

Duluth Economic Development Authority
Attn: Executive Director
Duluth City Hall
Room 418
411 West First Street
Duluth, MN 55802;

and addressed to Consultant as follow:

Ehlers and Associates, Inc.
Attn: Jason Aarsvold
3060 Centre Pointe Drive
Roseville, MN 55113-1105,

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

X. Laws, Rules and Regulations.

Consultant 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.

XI. 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. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota. The parties to this Agreement waive any objection to the jurisdiction of those courts, whether based on convenience or otherwise.

XII. No Third Party Rights.

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

XIII. Waiver.

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

XIV. Severability.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

XV. Entire Agreement.

This Agreement, including Exhibit A, constitutes the entire Agreement between DEDA and Consultant and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

EHLERS AND ASSOCIATES, INC.

By: _____
Director

By: _____
Consultant Representative

Date: _____

Its: _____
Title of Representative

Date: _____