

Exhibit A

RESOLUTION 20D-42

**RESOLUTION AUTHORIZING A GRANT AGREEMENT
WITH THE NORTHEAST ENTREPRENEUR FUND, INC.
TO IMPLEMENT A COVID-19 EMERGENCY
LOAN PROGRAM IN THE AMOUNT OF \$125,000.**

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into an agreement with the Northeast Entrepreneur Fund, Inc. substantially in conformance with the attached Exhibit A to implement a COVID-19 Emergency Loan Program in the amount of \$125,000, payable from fund 860.

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

ATTEST:

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with the Northeast Entrepreneur Fund to implement a COVID-19 emergency loan program in response to the pandemic, the emergency declarations and the results thereof in the amount of \$125,000 to provide assistance to Duluth businesses. This program will be operated in conjunction with DEDA's Small Business Emergency Loan Program in the amount of \$443,000. The program will provide assistance to Duluth business owners who are facing significant challenges due to the COVID-19 peacetime emergency declaration.

As part of this agreement, Northeast Entrepreneur Fund is committing to obtain and loan to borrowers similarly situated to those for whom this program is intended an additional fund of at least \$1,000,000. The funds covered by this agreement will be loaned in accordance with the Northeast Entrepreneur Fund's standard operating procedures and practices.

**COVID-19 GRANT AGREEMENT
BY AND BETWEEN**

**NORTHEAST 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), hereinafter referred to as “DEDA”, and the NORTHEAST ENTREPRENEUR FUND, INC., a private, non-profit corporation under the laws of the State of Minnesota, hereinafter referred to as Grantee.

WHEREAS, DEDA and Grantee share the primary mission is to encourage economic development in the city of Duluth, through the stimulation of development and of the creation of new jobs in the city; and

WHEREAS, the advent of the COVID-19 pandemic, the resulting emergency orders by the President of the United States and the Governor of Minnesota has resulting in economic dislocation which in turn is producing severe economic hardship to businesses in the City of Duluth and giving rise to the need for emergency loans as hereinafter described to ameliorate the impacts of this crisis; and

WHEREAS, Grantee is seeking sources of funds which can be loaned to Duluth businesses affected by the aforesaid emergency which can be used to leverage other funding sources that can be used for that purpose; and

WHEREAS, DEDA is willing grant up to \$125,000 to Grantee under the terms and conditions hereinafter set forth to allow Grantee to make such loans to qualifying businesses in the city;

I. ~~Now~~, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

DEDA hereby agrees to grant to Grantee the amount of One Hundred

Twenty-five Thousand Dollars (\$125,000) subject to the terms and conditions hereinafter set forth. Grant proceeds shall be used by Grantee only in conformance with said terms and conditions.

2. Use of Grant Proceeds

All grant proceeds shall be used to extend loans, hereinafter referred to as the “Loans, to small businesses, as defined in the Program Guidelines, attached hereto and made a part hereof as Exhibit A, hereinafter referred to as “Borrowers, having their main base of operations and their employment within the corporate limits of the City of Duluth in need of financial assistance to address the impacts of the COVID-19 pandemic on their economic viability. All such loans shall be made in conformance with said Guidelines; provided, however, that in the event that the terms or conditions of the Guidelines shall conflict with the terms or conditions set forth in this Agreement, the terms and conditions of this agreement shall be deemed to be controlling.

3. Loan Documentation

Prior to extending any Loan to any Borrower, Grantee shall give written notice to DEDA’s Executive Director, hereinafter referred to as 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 amount and the source of the matching grant amount referenced in Section I 4 below and the intended use of the Loan.

4. Matching Requirement

Grantee agrees and commits that no later than the end of the term of this Agreement, Grantee shall have provided evidence to DEDA’s Executive Director establishing that Grantee has secured from sources other than DEDA and the City of Duluth at least \$1,000,000 for the purpose of making loans to Borrowers qualifying therefore under the terms and conditions of this Agreement and shall have loaned such

funds in conformance with this Agreement and the Guidelines.

II. Grant Proceeds Disbursement to Grantee

1. Time for Disbursement

Upon the signing of this Agreement, Grantee shall be entitled to invoice DEDA for the Grant amount provided for hereunder.

2. Source of Grant Funds

All funds granted to Grantee pursuant to this Agreement shall be payable from DEDA Fund 860.

3. Conditions of Disbursement

Grantee shall have provided to the Executive Director its Program Guidelines attached as Exhibit A, prior to be entitled to disbursement of the Grant funds hereunder.

III. General Terms and Conditions

1. Amendments

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

2. Assignment

Grantee 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. All reports, data, information, documentation and material given to or prepared by Grantee pursuant to this Agreement will be confidential and will not be released by Grantee without prior authorization from the DEDA.

b. Grantee agrees that all work created by Grantee for the DEDA is a

“work made for hire” and that the DEDA shall own all right, title, and interest in and to the work, including the entire copyright in the work (“DEDA Property”). Grantee further agrees that to the extent the work is not a “work made for hire” Grantee will assign to DEDA ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Grantee agrees to execute, at no cost to DEDA, all documents necessary for DEDA to perfect its ownership of the entire copyright in the work. Grantee represents and warrants that the work created or prepared by Grantee will be original and will not infringe upon the rights of any third party, and Grantee further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- c. Records shall be maintained by Grantee 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.
- d. Grantee 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.
- f. Grantee shall be responsible for furnishing to the DEDA records, data and information as the DEDA may require pertaining to matters covered by this Agreement.
- g. Grantee 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 Grantee 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. Grantee Representation and Warranties

Grantee represents and warrants that:

- a. Grantee and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Grantee 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.
- c. Grantee has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Grantee will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. 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 Grantee 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 Grantee contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Grantee's knowledge threatened against the Grantee affecting its ability to carry out the terms of this Agreement or to carry out the terms and

conditions of any other matter materially affecting the ability of the Grantee to perform its obligations hereunder.

- f. The Grantee 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 performance shall be completed by December 31, 2021, 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 Grantee to fulfill said obligations under this Agreement.

In the event of termination due to breach by Grantee, the DEDA shall retain all other remedies available to it, and the DEDA shall be relieved from payment of any fees in respect of the services of Grantee which gave rise to such breach.

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 Grantee 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. Grantee 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 Grantee's employees while so engaged, and any and all claims whatsoever on behalf of Grantee'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, Grantee'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 Grantee from liability or judgments arising out of intentional or negligent acts or omissions of Grantee 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. Grantee 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, Grantee shall defend, indemnify and hold DEDA and its 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 Grantee'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 Grantee's employees or contractors, or d) the use of any materials supplied by the Grantee 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

Grantee 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 of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Grantee may provide Owners-Contractors Protective policy, naming himself and DEDA of Duluth. **Upon execution of this Agreement**, Grantee shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Grantee 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. The DEDA of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Grantee'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 Grantee 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. Grantee 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 Grantee pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Grantee of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

2. Grantee 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 Grantee or its business; or Grantee 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 Grantee 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 Grantee's properties or fails to have dismissed or vacated within sixty (60) days after the

appointment without the consent or acquiescence of Grantee of any trustee, receiver or liquidator of any material part of Grantee'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 Grantee:

1. Seek and be entitled to monetary damages from Grantee for any damages, including consequential damages incurred by DEDA as a result of Grantee's default.
2. Cease making payments of Grant funds.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Grantee's violation of the terms and conditions of this Agreement or to compel Grantee'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

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

11. Civil Rights Assurances

Grantee, 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

Grantee 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.

14. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation,

acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

15. 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.

16. 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. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. 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.

EXHIBIT A
PROGRAM GUIDELINES