

## JOINT POWERS AGREEMENT

### Open to Business Program

THIS JOINT POWERS AGREEMENT (this “**Agreement**”), is made as of January 1, 2018, by and between the DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY (the “**CDA**”), a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “**State**”), and each of the CITY OF BURNSVILLE, CITY OF LAKEVILLE, CITY OF MENDOTA HEIGHTS, INVER GROVE HEIGHTS ECONOMIC DEVELOPMENT AUTHORITY, APPLE VALLEY ECONOMIC DEVELOPMENT AUTHORITY, EAGAN ECONOMIC DEVELOPMENT AUTHORITY, HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY, ROSEMOUNT PORT AUTHORITY, FARMINGTON ECONOMIC DEVELOPMENT AUTHORITY, SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY, AND WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY, MINNESOTA (each individually a “**Local Government Entity**” and together the “**Local Government Entities**”), each a political subdivision of the State.

#### RECITALS:

A. In order to pursue common goals of fostering economic development, the CDA and the Local Government Entity Cities desire to engage the Metropolitan Consortium of Community Developers, a Minnesota non-profit corporation (“**MCCD**”) to undertake the “Open To Business Program” (the “**Program**”) within Dakota County (the “**County**”).

B. Pursuant to the Program, MCCD will provide technical assistance and access to capital to small business and potential entrepreneurs in the County.

C. The CDA and the Local Government Entities propose to jointly exercise their common economic development powers to undertake the Program.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the CDA and each of the Local Government Entities, each party does hereby represent, covenant and agree with the others as follows:

Section 1. **Representations.** Each of the Local Government Entities and the CDA makes the following representations as to itself as the basis for the undertaking on its part herein contained:

(a) It is a political subdivision of the State of Minnesota with the power to enter into this Agreement and carry out its obligations hereunder.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which it is now a party or by which it is bound, or constitutes an event of default under any of the foregoing.

Section 2. **Powers to be Exercised.** The powers to be jointly exercised pursuant to this Agreement are the powers of the CDA and the Local Government Entities under Minnesota Statutes, Chapter 469, to undertake activities to promote economic development within their respective jurisdictions.

Section 3. **Method for Exercising Common Powers; Funds.** The CDA, on its own behalf and on behalf of the Local Government Entities, will initially enter into an agreement with MCCD in substantially the form attached hereto as Exhibit A (the “**Agreement**”) to engage MCCD to operate the Program within Dakota County. The CDA and each of the Local Government Entities will make payments to MCCD as described in Exhibit A of the Agreement.

The CDA may from time to time execute and deliver documents amending, modifying or extending the Agreement as it deems necessary or convenient, provided, that no such document will adversely affect services provided to, or amounts payable by, any Local Government Entity without the prior written consent of such Local Government Entity.

Section 4. **Limited Liability.** Neither the CDA nor the any of the Local Government Entities shall be liable for the acts or omissions of the other in connection with the activities to be undertaken pursuant to this Agreement. To the extent permitted by law, (a) the CDA hereby indemnifies the Local Government Entities for costs associated with claims made against the Local Government Entities directly relating to actions taken by the CDA, and (b) each Local Government Entity hereby indemnifies the CDA for costs associated with claims made against the CDA directly relating to actions taken by such Local Government Entity. Nothing herein shall be deemed a waiver by the indemnifying party of the limits on liability set forth in Minnesota Statutes, Chapter 466; and the indemnifying party shall not be required to pay, on behalf of the indemnified party, any amounts in excess of the limits on liability set forth in Minnesota Statutes, Section 466.04, less any amounts the indemnifying party is required to pay on behalf of itself, its officers, agents and employees for claims arising out of the same occurrence.

Section 5. **Conflict of Interests; Representatives Not Individually Liable.** The CDA and each of the Local Government Entities, to the best of its knowledge, represents and agrees that no member, official or employee of their respective bodies shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the CDA or any Local Government Entity shall be personally liable with respect to any default or breach by any of them or for any amount which may become due to the other party or successor or on any obligations under the terms of this Agreement.

Section 6. **Term; Distribution of Property.** The term of this Agreement shall commence on January 1, 2018 and shall automatically renew January 1, 2019 and January 1, 2020, ending December 31, 2020. Local Government Entities may, at their sole discretion and without cause, cancel any remaining years covered under this agreement by providing written notice to the other Parties at least 30 days prior to renewal. Each Party to this agreement agrees that a Party that opts out of the contract under these terms shall be subject to no penalty, and held harmless for future liability or obligation related to the terms of this agreement. The remaining Parties will continue on with the agreement unless it is determined to no longer be viable for the remaining Parties.

There is no property which will be acquired by the CDA or any Local Government Entity pursuant to the Program which would need to be distributed at the end of the term hereof.

Section 7. **Notices and Demands.** A notice, demand or other communication under this Agreement by any party to another shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally to the person and at the addresses identified on each signature page hereto, or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the CDA and the Local Government Entities have caused this Agreement to be duly executed in their respective names and behalf as of the date first above written, with actual execution on the dates set forth below.

DAKOTA COUNTY COMMUNITY  
DEVELOPMENT AGENCY

Dated: December 13, 2017

By: \_\_\_\_\_  
Its Executive Director

Notice Address:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55123  
Attn: Lisa Alfson, Director of Community and Economic Development

HASTINGS ECONOMIC DEVELOPMENT AND  
REDEVELOPMENT AUTHORITY

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
John Hinzman  
Its Executive Director

Notice Address:

101 East 4<sup>th</sup> Street  
Hastings, Minnesota 55033  
Attn: Executive Director

Exhibit A

Contract for Services for the Open To Business Program

**Contract for Services  
for the  
Open to Business Program**

**THIS AGREEMENT** is dated December 13, 2017, and is between the **Dakota County Community Development Agency** (“CDA”) and **Metropolitan Consortium of Community Developers**, a Minnesota nonprofit corporation (“MCCD”).

**WHEREAS**, the CDA, on behalf of itself and the eleven political subdivisions of the State of Minnesota listed on Exhibit A hereto (the “**Local Government Entities**”), which each have powers with respect to a city with a population over 10,000 (collectively the “**Municipalities**”), wishes to engage MCCD to render services under a model known as “**Open to Business**,” an initiative providing small business technical assistance services to existing businesses and residents and other parties interested in opening a business within Dakota County (the “**County**”) (the “**Initiative**”); and

**WHEREAS**, MCCD has successfully provided the services required to administer and carry out the Initiative in Dakota County since 2013; and

**WHEREAS**, pursuant to CDA Resolution No. 17-5945, adopted on December 12, 2017 (the “**Resolution**”), the CDA is authorized to enter into this agreement with MCCD for the Initiative; and

**WHEREAS**, pursuant to the Resolution and certain joint powers agreements to be entered into between the CDA and the Local Government Entities (the “**Joint Powers Agreements**”), the CDA will act as fiscal agent for the Local Government Entities in connection with this Agreement; and

**WHEREAS**, the CDA will pay from its own funds 50% of the fee charged by MCCD for the Initiative in the Municipalities and 100% of the fee charged by MCCD for the Initiative in the small cities and townships within the County with populations of less than 10,000 people (“**Small Cities and Townships**”), as further described herein and in Exhibit A; and

**WHEREAS**, pursuant to the Joint Powers Agreements, the Local Government Entities will be required to pay a Participation Fee to the CDA in accordance with the schedule in Exhibit A, representing the remaining 50% of the fee charged by MCCD for the Initiative in the Municipalities.

**Now therefore**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

## **TIME OF PERFORMANCE**

The service to be provided by M CCD shall commence on January 1, 2018 and unless canceled by either party, shall automatically renew January 1, 2019 and January 1, 2020. Either party may, at their sole discretion and without cause, cancel any remaining years covered under this agreement by providing written notice to the other party at least 30 days prior to renewal. Each Party agrees that a Party that opts out of the contract under these terms shall be subject to no penalty, and held harmless for future liability or obligation related to the terms of this agreement. All services, documents, and information to be furnished or performed by M CCD in order to carry out the Initiative shall be furnished or performed as promptly as possible, and with the fullest due diligence.

## **COMPENSATION**

Subject to reduction as provided below, the CDA will compensate M CCD for its services hereunder an amount equal to One Hundred Fifty Thousand Dollars (\$150,000) annually ("Contract Amount") to operate the **Initiative** for the 2018, 2019, and 2020 calendar years. The CDA will pay such amount in two equal installments, the first no earlier than January 30 and the second no earlier than June 30, upon receipt of invoices from M CCD. Subject to the limits above, payments will be due within 15 days of receipt of the respective invoices. The portion of the Contract Amount payable from Participation Fees will be payable by the CDA only from and to the extent such Participation Fees are paid by the respective Local Government Entities.

Unless the agreement is cancel by either party, CDA agrees to compensate M CCD the above Contract Amount, and deliver payment on as detailed above in each subsequent calendar year the contract is renewed.

In the event a Local Government Entity does not pay to the CDA its Participation Fee in amounts and by the deadline described in Exhibit A, the CDA will notify M CCD, and M CCD will immediately cease the Initiative in that Municipality. Upon such termination, the Contract Amount will be reduced by an amount equal to the Participation Fee which such Local Government Entity did not pay and the amount the CDA would have paid as a matching payment.

## **SCOPE OF SERVICES**

M CCD will provide technical assistance to existing businesses, residents and those parties interested in starting a business in any of the Municipalities and Small Cities and Townships as further described on Exhibit B and Exhibit C attached hereto, which sets forth the Dakota Open to Business Program Scope of Services.



## REPORTING

MCCD will submit quarterly reports to the CDA in form and substance acceptable to the CDA. Reports will provide information in the aggregate for the County and will include a subreport for each Municipality and each of the Small Cities and Townships. Reports will include the following information:

- Number of inquiries
- Hours of technical assistance provided
- Type of assistance provided
- Type of business
- Annual sales revenue
- Number of businesses opened
- Number of business expanded/stabilized
- Number and amounts of financing packages
- Demographic information on entrepreneurs
- Business address or resident address
- Number and wage of FTEs created
- Number and wage of FTEs retained

The required reporting schedule is as follows:

1<sup>st</sup> quarter January – March, report due April 30<sup>th</sup>

2<sup>nd</sup> quarter April – June, report due July 31<sup>st</sup>

3<sup>rd</sup> quarter July – September, report due October 31<sup>st</sup>

4<sup>th</sup> quarter October – December, report due January 31<sup>st</sup> of following year

In addition to the foregoing, MCCD will provide additional reports as reasonably requested by the CDA.

## PERSONNEL

MCCD represents that it has, or will employ or contract for, at its own expense, all personnel required to perform the services necessary to carry out the Initiative. Such personnel will not be employees of, or have any contractual relationship with, the County, the CDA or any of the Local Government Entities. No tenure or any other rights or benefits, including worker's compensation, unemployment insurance, medical care,

sick leave, vacation pay, severance pay, or any other benefits available to the County's, the CDA's or any of the Local Government Entities' employees shall accrue to MCCD or employees of MCCD performing services under this agreement. The MCCD is an independent contractor.

All of the services required to carry out the Initiative will be performed by MCCD and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such work.

#### **USE OF CDA OFFICE SPACE**

The CDA will make available a cubicle space for MCCD personnel at the CDA office building for use by MCCD in carrying out the Initiative. MCCD personnel will have access to the CDA's meeting rooms, wireless internet service, copy machines and printers. MCCD personnel shall comply with all CDA office rules and policies regarding the use of CDA office space, equipment and internet access. If the CDA, in its sole discretion, determines that MCCD Personnel have failed to comply with CDA office rules and policies, MCCD Personnel will be required to vacate the CDA office and the CDA will cease to provide MCCD office space to carry out the Initiative.

#### **INTEREST OF MEMBERS OF THE CDA AND OTHERS**

No officer, member, or employee of the CDA and no member of its governing body, and no other public official or governing body of any locality in which the Initiative is situated or being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Initiative, will participate in the decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested or has any personal or pecuniary interest, direct or indirect, in this Agreement.

#### **ASSIGNABILITY**

MCCD will not assign any interest in this Agreement, and will not transfer any interest in the same without the prior written approval of the CDA.

#### **COMPLIANCE WITH LOCAL LAWS**

MCCD agrees to comply with all federal laws, statutes and applicable regulations of the State of Minnesota and the ordinances of the Local Government Entities.

**INSURANCE**

MCCD agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following insurance coverages:

	<u>Limits</u>
1. Commercial General Liability on an occurrence basis with contractual liability coverage:	
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,500,000
Each Occurrence—Combined Bodily Injury and Property Damage	1,500,000
2. Workers’ Compensation and Employer’s Liability:	
Workers’ Compensation	Statutory
In the event that MCCD should hire employees or subcontract this work, MCCD shall obtain the required insurance.	
Employer’s Liability. Bodily injury by:	
Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

**INDEMNIFICATION**

MCCD agrees to defend, indemnify, and hold harmless the County, the CDA, the Local Government Entities, and each of their respective officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney’s fees, resulting directly or indirectly from any act or omission of MCCD, its subcontractors, anyone directly or indirectly employed by MCCD or any of its subcontractors, and/or anyone for whose acts and/or omissions MCCD may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of MCCD to perform any obligation under this Agreement.

**NOTICES**

A notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by mail, postage prepaid, return receipt requested, or delivered personally; and

(a) In the case of MCCD, is addressed or delivered personally to:

Lee Hall, Associate Director  
Metropolitan Consortium of Community Developers  
3137 Chicago Avenue South  
Minneapolis, MN 55407

(b) In the case of the CDA is addressed or delivered personally to:

Lisa Alfson, Director of Community and Economic Development  
Dakota County Community Development Agency  
1228 Town Centre Dr.  
Eagan, MN 55123

or at such other address with respect to any party as that party may designate in writing and forward to the other as provide in the Section.

#### **MODIFICATION**

This Agreement may not be modified, changed, or amended in any manner whatsoever without the prior written approval of all the parties hereto.

#### **NON-DISCRIMINATION**

In connection with its activities under this Agreement, MCCD will not violate any Federal or State laws against discrimination.

#### **DEFAULT AND CANCELLATION**


Failure of the MCCD to perform any of its obligations under this Agreement to the satisfaction of the CDA will constitute a default hereunder.

Unless MCCD's default is cured within 15 days following notice by the CDA, the CDA may (i) cancel this Agreement in its entirety by 5 additional days' written notice to MCCD, or (ii) withhold payment from MCCD as long as such default continues.

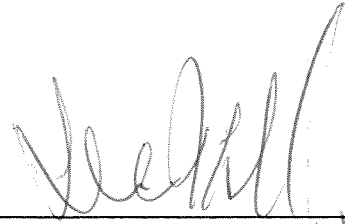
#### **MINNESOTA LAWS GOVERN**

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

**DAKOTA COUNTY COMMUNITY  
DEVELOPMENT AGENCY**

By:   
Executive Director  
Date: December 13, 2017

**MCCD**

By:   
Printed Name: Lee Hall  
Printed Title: Associate Director  
Date: Dec 13, 2017

**Exhibit A**  
**Local Government Entity Participation 2018, 2019 & 2020**  
**Fee Schedule**

<b>Municipality</b>	<b>Local Government Entity</b>	<b>Total Fee</b>	<b>CDA Share of Fee</b>	<b>Local Government Entity Participation</b>
Eagan	Eagan Economic Development Authority	\$16,559	\$8,299	\$8,300
Burnsville	City of Burnsville	\$16,559	\$8,299	\$8,300
Lakeville	City of Lakeville	\$16,559	\$8,299	\$8,300
Apple Valley	Apple Valley Economic Development Authority	\$16,559	\$8,299	\$8,300
Inver Grove Heights	Inver Grove Heights Economic Development Authority	\$13,868	\$6,934	\$6,934
Hastings	Hastings Economic Development and Redevelopment Authority	\$11,026	\$5,513	\$5,513
Rosemount	Rosemount Port Authority	\$11,026	\$5,513	\$5,513
Farmington	Farmington Economic Development Authority	\$11,026	\$5,513	\$5,513
South St. Paul	South St. Paul Housing and Redevelopment Authority	\$11,026	\$5,513	\$5,513
West St. Paul	West St. Paul Economic Development Authority	\$11,026	\$5,513	\$5,513
Mendota Heights	City of Mendota Heights	\$5,510	\$2,755	\$2,755
Small Cities and Townships	n/a	\$9,096	\$9,096	\$0
<b>Total</b>		<b>\$150,000</b>	<b>\$79,546</b>	<b>\$70,454</b>

## **Exhibit B**

### **Dakota Open to Business Program Scope of Services**

#### **Open to Business (“OTB”) Technical Assistance Services**

MCCD will provide intensive one-on-one technical assistance to Municipalities’ and Small Cities’ and Townships’ businesses, residents and aspiring entrepreneurs intending to establish, purchase, or improve a business in Municipalities and Small Cities and Townships within Dakota County (the “**County**”). MCCD will dedicate one full time staff person based in the County to provide the Technical Assistance Services (“Dakota OTB Staff”). In addition, MCCD will make available the expertise of all MCCD technical and support staff in the delivery of services to Dakota Open to Business Program. Technical assistance includes, but is not limited to, the following:

- Business plan development
- Feasibility analysis
- Marketing
- Cash flow and other financial projection development
- Operational analysis
- City and State licensing and regulatory assistance
- Loan packaging, and other assistance in obtaining financing
- Help in obtaining competent legal advice

MCCD Dakota OTB Staff will be available to meet clients at the CDA office building, various Municipality city halls or at the client’s place of business. MCCD Dakota OTB Staff will provide technical assistance on a walk-in basis monthly in each Municipality, if requested. MCCD will also hold two-hour “Test Drive Your Business Idea” sessions once a month in various Municipality locations.

#### **Open to Business Access to Capital**

Access to capital will be provided to qualifying businesses through MCCD’s Emerging Small Business Loan Program (see **Exhibit C** Small Business Loan Program Guidelines below). MCCD also provides it’s financing in partnership with other community lenders, banks or Local Government Entities interested in making capital available to residents and/or businesses in their community.

## EXHIBIT C

### Small Business Loan Program Guidelines

#### Loan Amounts:

- Up to \$25,000 for start-up businesses
- Larger financing packages for established businesses
- Designed to leverage other financing programs as well as private financing provided by the commercial banking community.

#### Eligible Projects:

- Borrowers must be a “for-profit” business.
- Business must be complimentary to existing business community.
- Borrowers must have equity injection as determined by fund management.

#### Allowable Use of Proceeds:

- Loan proceeds can be used for working capital, inventory, building and equipment and general business operations.

#### Interest Rates:

- Loan interest rate is dependent on use, term and other factors, not to exceed 10%.

#### Loan Term Length:

- Loan repayment terms will generally range from three to five years, but may be substantially longer for major asset financing such as commercial property.

#### Fees and Charges:

- Borrowers are responsible for paying all customary legal and other loan closing costs.