Service Contract

This Contract ("Contract"), made this 1st day of March 2022 by and between the City of Shakopee and the Economic Development Authority ("CITY") and the Shakopee Chamber of Commerce, a nonprofit corporation organized under the laws of the State of Minnesota ("CHAMBER").

WHEREAS, the CITY requires certain professional services to assist the CITY in completing its economic development initiatives in the CITY's Downtown Business District (the "Project"); and

WHEREAS, the CHAMBER agrees to furnish the various professional services required by the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I - CHAMBER SERVICES AND RESPONSIBILITIES

A. Scope of Services. CHAMBER agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.

1. The CHAMBER agrees to maintain, at its expense, statutory worker's compensation coverage.

2. The CHAMBER agrees to maintain, at its expense, general liability insurance coverage insuring CHAMBER against claims for bodily injury, death or property damage arising out of its general business activities (including automobile use). The CITY shall be an additional named insured on the Consultant's CGL insurance policy. The liability insurance policy shall provide coverage for each occurrence in the minimum amount of $1,000,000.00.

3. True, accurate and current certificates of insurance, showing evidence of the required insurance coverage, are hereby provided to the CITY and are attached hereto as Exhibit

4. The Shakopee Area Chamber of Commerce will provide events as noted in exhibit and will be the member of the Main Street program.

5. The Shakopee Area Chamber of Commerce will provide the CITY with complete and total use of its billboard on CH101 for the entire year.

SECTION II-THE CITY'S RESPONSIBILITIES

A. The CITY shall compensate the CHAMBER for services rendered to CITY as part of the Project $25,000 in two payments of $12,500 each, one in January 2023 and one in August 2023 and an additional payment of $7,800 in January for the use of the billboard.

B. The CITY understands that the CHAMBER will seek an extension of this Contract for 2024 at the same amount as stated above, which will be subject to CITY approval. The CITY understands that without approval of the program by the CITY, the program will cease to operate.

C. The CITY requests that any future requests for extension of this Contract for 2023 or beyond be made to CITY by June 15, 2023 to be reviewed for recommendation for inclusion into the CITY annual EDA budget. Requests should be directed in writing to the Director, Planning and Development Department; City Hall, 485 Gorman Street, Shakopee, Minnesota, 55379.

SECTION Ill - TERMS AND CONDITIONS

A. Term. This Contract shall commence January 1, 2023 and be in effect until December 31, 2023.

B. Default. If CHAMBER fails to perform any of the provisions of this Contract or so fails to administer the services detailed in Exhibit 1, attached hereto, in such a manner as to endanger the performance of the Contract, this shall constitute default. Unless CHAMBER's default is excused by the CITY, the CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to the CITY under this Contract or law.

C. Liability. The CITY shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time by the provisions of this Contract and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct or unlawful acts or omissions. The only duties and responsibilities of the CITY shall be the duties and obligations specifically set forth in this Contract.

D. Indemnification. CHAMBER shall indemnify, hold harmless and defend the CITY from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of any duties and obligations under this Contract, except for those losses, claims, liabilities and expenses resulting solely and directly from the CITY'S own gross negligence, willful misconduct, or unlawful act or omission. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

CITY shall indemnify, hold harmless and defend the CHAMBER from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of any duties and obligations under this Contract, except for those losses, claims,

liabilities and expenses resulting solely and directly from the CHAMBER'S own gross negligence, willful misconduct, or unlawful act or omission. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

E. Contingencies. This Contract is expressly contingent upon the CITY approving a budget allocating the funds specified herein for the purpose stated herein. In the event, for any reason, funds are not included in the approved CITY budget and available for expenditure for this Contract, then this Contract shall be null and void without any obligation by the CITY or CHAMBER.

F. Termination. Either party may terminate this agreement upon providing 90 days written notice to the other party. Due to the fixed costs of starting and managing this program, regardless of the timing of termination by either party, any payments made to the CHAMBER by the CITY will not be refunded.

G. Voluntary and Knowing Action. The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents thereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

H. Authorized Signatories. The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

I. Notices. The PARTIES' representatives for notification for all purposes are:

CITY:

Bill Reynolds, City Administrator
485 Gorman Street
Shakopee, MN 55379
(952) 233-9311
breynolds@shakopeemn.gov

Michael Kerski, Director, Planning & Development
mkerski@shakopeemn.gov

CHAMBER:

Tim Zunker, President
1801 East County Road 101
Shakopee, MN 55379
(952) 445-1660
tzunker@shakopee.org

Any notice provided for or permitted under this Contract, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed

facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this paragraph. Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof.

J. Independent Contractor Status. CHAMBER at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the CITY or EDA for any purpose. The CITY acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CHAMBER, and that it is CHAMBER's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CHAMBER shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CHAMBER 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.

H. Subcontracting. CHAMBER shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of the CITY. CHAMBER shall be responsible for the performance of all subcontractors and/or sub-consultants.

I. Assignment. This Contract may not be assigned by either Party without the written consent of the other Party.

J. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the CITY and CHAMBER.

K. Records-Availability and Retention. Pursuant to Minn. Stat.§ 16C.05, subd. 5, CHAMBER agrees that the CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CHAMBER and involve transactions relating to this Contract. CHAMBER agrees to maintain these records for a period of six years from the date of termination of this Contract.

L. Force Majeure. The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the party affected by force majeure shall give written notice with explanation to the other party immediately.

M. Compliance with Laws. CHAMBER shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CHAMBER is responsible.

N. Covenant against Contingent Fee. CHAMBER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CHAMBER 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, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

O. Covenant against Vendor Interest. CHAMBER warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CHAMBER association with the CITY.

P. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.

Q. Interest by EDA or City Officials. No elected official, officer, or employee of the CITY or EDA shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

R. Governing Law. This Contract shall be deemed to have been made and accepted in Scott County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.

S. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Contract shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the CITY and CHAMBER.

T. Data Practices. The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

U. No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.

V. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.

W. Entire Contract. These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.

X. Headings and Captions. Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.

Y. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or PARTIES, and any undischarged obligations of the CITY and

CHAMBER arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

SECTION VII - SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the _____day of December, 2022.

Chamber of Commerce as provider of Services:

By: _____ Date: _____

President, Chamber of Commerce

City of Shakopee

By: _____ Date: _____

William Mars, Mayor

By: _____ Date: _____

Bill Reynolds, City Administrator

By: _____ Date: _____

Jody Brennan, EDA President

EXHIBIT 1 SCOPE OF SERVICES

Subject to the terms of this Contract, CHAMBER shall perform the following services as its contractual obligation to the CITY:

1. CHAMBER will put on the following events in downtown Shakopee under the Main Street umbrella and list the City of Shakopee as a sponsor:

   A. Rhythm on the Rails, a five to six-night concert series
   B. Fall holiday event
   C. Holiday Fest (December)

2. CHAMBER will provide the CITY with sole and exclusive use of the CHAMBER's billboard located on CH101 to promote the CITY Economic Development, Programs and Events.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance to be attached hereto]