

City of South St. Paul Economic Development Authority Agenda

Monday, May 9, 2016

6:30 p.m.



1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

A. Approval of Agenda

Action – Motion to Approve

Action – Motion to Approve as Amended

4. CONSENT AGENDA:

All items listed on the Consent Agenda are items, which are considered to be routine by the Economic Development Authority and will be approved by one motion. There will be no separate discussion of these items unless a Commissioner or citizen so requests, in which event the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

A. EDA Minutes of April 4, 2016

B. Approval of Closeout Agreement between the South Saint Paul Housing & Redevelopment Authority/City of South Saint Paul and U.S. Environmental Protection Agency

C. Approval to Call for a Public Hearing to Sell 339 – 5th Avenue South

5. PUBLIC HEARINGS:

6. GENERAL BUSINESS:

A. Approve Amendment No. 4 to Purchase Agreement with Interstate Partners

B. Approve Agreement with Ryan Schroeder for Professional Services

C. Project Manager Report (no attachment)

7. ADJOURNMENT:

Respectfully Submitted,

Stephen P. King, EDA Executive Director

**MINUTES OF THE ECONOMIC DEVELOPMENT AUTHORITY
CITY OF SOUTH ST. PAUL
DAKOTA COUNTY, MINNESOTA**

**Regular Meeting
April 4, 2016
City of South St. Paul, Council Chambers**

1. CALL TO ORDER

Chair Beth Baumann called the meeting to order at 7:52 p.m.

2. ROLL CALL

Members Present: Chair Baumann and Commissioners Flatley, Hansen, Niederkorn, Podgorski, Rothecker, Seaberg

Members Absent: None

Staff Present: EDA Executive Director, Stephen King, Christy Wilcox, Secretary City Attorney, Kori Land, Branna Lindell, Housing Division Manager

3. AGENDA

Motion/Second: Commissioner Rothecker moved and Commissioner Niederkorn seconded the approval of the agenda.

Motion carried 7 ayes/0 nays

4. CONSENT AGENDA

Motion/Second: Commissioner Flatley and Commissioner Seaberg seconded the approval of the consent agenda.

A. EDA Minutes of March 7, 2016

Motion carried 7 ayes/0 nays

5. PUBLIC HEARINGS

There were no public hearings.

6. GENERAL BUSINESS

- A. Motion/Seconded: Commissioner Rothecker moved and Commissioner Podgorski seconded the motion to approve the bid and award the contract to RAM Construction Services of MN., LLC for Exterior Sealant Project at Nan McKay Highrise.

Motion carried 7 ayes/0 nays

- B. Motion/Seconded: Commissioner Seaberg moved and Commissioner Hansen seconded the motion to approve the interest write-off of \$13,250.00 and principal write-off of \$5,000.00 on an HRA Rehab Loan for the property located at 149 11th Avenue North.

Motion carried 7 ayes/0 nays

- C. Discussion with CDA regarding lots on Thompson Avenue. Steve King updated the Commission that a meeting was held with the Housing and Planning Division as well as the CDA on March 31st to discuss the development of the 15th and Thompson Avenue lots. A Request for Proposal will be issued in May to develop the six lots for single family homes. The intention is to identify one developer to develop the lots.

- D. Discuss New Meeting Time for EDA Board. Discussion was held regarding changing the time for future meetings. After discussion it was consensus of the Commission to change the meeting day and time.

Motion/Seconded: Commission Seaberg moved and Commissioner Niederkorn seconded the motion to adopt a new meeting schedule effective in May that future meetings will be held on the 2nd and 4th Monday of the month beginning at 6:30 p.m.

Motion carried 7 ayes/0 nays

- E. Scheduling of Economic Development Advisory Commission Meeting. Discussion was held regarding the meeting date and time of the Economic Development Advisory Commission. Staff will be contacting the members of the Economic Development Advisory Commission to get a consensus of what day and time would work. Staff will update Commission when scheduled. The first meeting of the Advisory Board would be an organization type of meeting.

7. ADJOURNMENT

Motion/Second: Commissioner Hansen moved and Commissioner Podgorski seconded the motion to adjourn the meeting at 8:18 p.m.

Approved: _____

Christy Wilcox, Secretary



EDA Agenda Item Report

Date: May 9, 2016

EDA Executive Director: SPK

4-B

Agenda Item: Approval of Closeout Agreement with U.S. Environmental Protection Agency (U.S. EPA).

Action to be considered: Motion to approve the Closeout Agreement with U.S. EPA.

Overview: The HRA received a U.S. EPA Revolving Loan Fund grant of \$1,000,000 in September of 2013. One loan of \$484,491.23 was made to Interstate Partners for cleanup of the Bridgepoint Building No. 2 project site. No other loans have been made and the grant funding expires on July 31, 2016.

The U.S. EPA requires the attached Closeout Agreement be executed to begin the closeout process.

Funding Sources and other fiscal considerations: N/A

CLOSEOUT AGREEMENT
SOUTH SAINT PAUL HOUSING & REDEVELOPMENT
AUTHORITY/CITY OF SOUTH SAINT PAUL
RLF GRANT # BF00E00402

**AGREEMENT BETWEEN
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5 AND,
SOUTH SAINT PAUL HOUSING & REDEVELOPMENT AUTHORITY/CITY OF
SOUTH SAINT PAUL
CONCERNING CLOSEOUT OF ASSISTANCE AGREEMENT BF00E00402**

Because the cooperative agreement recipient (South St. Paul Housing & Redevelopment Authority [SSPHRA]) will be incapable of completing all of the administrative and substantive requirements of Assistance Agreement BF00E00402 (the Assistance Agreement) within the remaining term of the Agreement, the United States Environmental Protection Agency, Region 5 (U.S. EPA) and the South Saint Paul Housing & Redevelopment Authority (SSPHRA)/City of South Saint Paul, both wish to close out the Assistance Agreement. This Closeout Agreement between U.S. EPA and the SSPHRA/City of South Saint Paul sets forth the terms and conditions for closing out Assistance Agreement BF00E00402.

I. Background

1. September 13, 2010, U.S. EPA awarded a revolving loan fund (RLF) grant of \$1,000,000 under Section 104(k) of CERCLA to the SSPHRA through the Assistance Agreement. In support of the Assistance Agreement, the SSPHRA prepared a work plan for the use of these RLF funds and an application for an assistance agreement (SF-424).
2. On or about September 27, 2010, the SSPHRA accepted the Assistance Agreement.
3. The purpose of the Assistance Agreement was to award funding to the SSPHRA for the cleanup of contaminated brownfield properties. Monies in the Assistance Agreement were available as loans to eligible recipients for cleanup work at brownfield sites.
4. A "No Cost Amendment" was executed on December 17, 2014 at the grant recipient's request to extend the budget and project periods until July 31, 2016 to allow for additional time to market the remaining RLF funds.
5. On or about March 30, 2015, the SSPHRA's Project Manager, Renee Vought, left the SSPHRA and Branna Lindell, Director of the SSPHRA assumed responsibility for managing the RLF grant on behalf of the SSPHRA.
6. On or about January 1, 2016, the SSPHRA ceased to exist as a separate organization, and is now functioning as a part of the City of South Saint Paul.
7. On March 2, 2016, the SSPHRA/City of South Saint Paul notified U.S. EPA, Region 5, of its inability to expend the remaining RLF grant funding within the remaining term of the grant and asked for voluntary return of all unexpended RLF grant funds to the U.S. EPA.

8. This Closeout Agreement, documents, the terms and conditions that will govern how the SSPHRA/City of South Saint Paul will use revolved RLF loan funds as they are repaid to the SSPHRA/City of South Saint Paul. This agreement also identifies the new management structure (within the City of South Saint Paul) for the continued maintenance of revolved RLF loan funds.

II. Representations of the Program

1. As of the date of this Closeout Agreement, SSPHRA/City of South Saint Paul has expended \$484,491.23 of the \$1,000,000 in funds provided by the Assistance Agreement in one loan to one qualified borrower totaling \$419,381.11 and \$65,110.12 on eligible programmatic costs.
2. As of the date of this Closeout Agreement, the SSPHRA/City of South Saint Paul will return unexpended funds to the U.S. EPA, in the amount of \$515,508.77
3. As of the date of this Closeout Agreement, all cleanup work funded by this Assistance Agreement (or the portion of the cleanup being funded under this Assistance Agreement) under the one loan has been completed.
4. As of the date of this Closeout Agreement, no funds have been expended on other eligible costs.
5. As of the date of this Closeout Agreement, the only activities remaining under the Assistance Agreement are for the borrower to pay back the principal loan amount with interest (if any) to the SSPHRA/City of South Saint Paul as the lender, and for the SSPHRA/City of South Saint Paul to administer the loan and submit the reports and documentation outlined in Section III below.
6. As of the date of this Closeout Agreement, the SSPHRA/City of South Saint Paul expects the outstanding loan to be repaid by September 1, 2033.

III. Required Reports for the Assistance Agreement

The original project end date for the Assistance Agreement is July 31, 2016, however, this Closeout Agreement provides the documentation to enable an early closeout of the Assistance Agreement. Within 90 days of the U.S. EPA's execution of this Closeout Agreement, the City of South Saint Paul shall provide to U.S. EPA, the following documents:

1. The third, fourth, and final quarterly progress reports;
2. Financial Status Report (Standard Form 269);
3. Cleanup completion report which have been, or will be prepared and submitted to the Program, when applicable;
4. Invention Disclosure Report;
5. Property Inventory Report including a request for instructions regarding disposition of any property purchased with cooperative agreement funds;
6. A federally-owned property inventory report;
7. Property Profile/ACRES updates for all properties cleaned up with the monies of the Assistance Agreement. Property Profile reports will identify a cleanup completion date which can be the date of the cleanup completion report or an

- acknowledgement by the oversight consultant that the cleanup portion being funded by the grant funds is complete; and,
8. Final MBE/WBE Report (Standard Form 334).

IV. Recordkeeping Requirements and Other Supporting Documents

1. The SSPHRA/City of South Saint Paul shall maintain all financial and programmatic records, supporting documents, statistical records and other records which are required under the Assistance Agreement for a period of ten (10) years following submission of the final Financial Status Report (see, Section III, above).
2. If the SSPHRA/City of South St. Paul receives appropriate notice of any litigation, claim, negotiation, audit, cost recovery, or other action involving these records of which the SSPHRA/City of South Saint Paul and the notice is received before the expiration of the ten-year period noted in Paragraph 1, the SSPHRA/City of South Saint Paul shall retain these records until completion of the action and resolution of all issues which arise from it, or until the end of the ten-year period, whichever is later.
3. Before destroying any of these records, the SSPHRA/City of South Saint Paul shall obtain written permission from the U.S. EPA.

V. Program Income

The SSPHRA/City of South Saint Paul will place the principal repayments and any interest received (Post-closeout Program Income) for the loans made under the Assistance Agreement into a unique account so that these monies are available for a variety of brownfield activities. In general, as Post-closeout Program Income becomes available from loan repayments, it may be used to provide a loan or grant for the following activities: creating a brownfield inventory; characterization, assessment and planning related to a brownfield site; title work; hazardous material surveys; environmental insurance; hazardous material abatement, limited demolition; site stabilization (e.g. removal of containerized materials); geotechnical soil corrections; environmental cleanup, including long-term groundwater monitoring; and confirmatory sampling. Assessment and cleanup activities will be implemented in a manner consistent with the Minnesota Pollution Control Agency's Brownfield Program.

In satisfaction of Section 104(d) of CERCLA, the SSPHRA/City of South Saint Paul will use post-closeout Program Income under the following conditions: monies will only be used at sites that are brownfield sites as defined in CERCLA Section 101(39); and, the SSPHRA/City of South Saint Paul can only provide funds to entities that have a documented statutory defense to CERCLA Section 107 liability.

On the first anniversary date of this Closeout Agreement and annually thereafter for a total of three years, the SSPHRA/City of South Saint Paul shall provide a report to the U.S. EPA on the use of Post-closeout Program Income from loans made using the grant award through the Assistance Agreement. The SSPHRA/City of South Saint

Paul shall provide this report within 30 days of the anniversary date of this Closeout Agreement.

VI. Addresses

Within 90 days of this Closeout Agreement, Items 2, 4, 5, 6 and 8 under Section II above, will be submitted by the City of South Saint Paul to:

Karen Sykes
Resource Management Division (MC-10J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

Within 90 days of this Closeout Agreement, Items 1, 3, and 7 under Section III above, will be submitted by the City of South Saint Paul to:

Linda Mangrum
Superfund Division (SB-7J)
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

The point of contact for the U.S. EPA for all items in the Closeout Agreement shall be:

Linda Mangrum, Brownfields Project Manager
Superfund Division (SB-7J)
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507
Telephone: 312-353-2071
Fax: 312-385-5389
Email: Mangrum.Linda@epa.gov

The point of contact for the City of South Saint Paul for all items in this Closeout Agreement shall be:

Branna K. Lindell
Housing Division Director
City of South Saint Paul
125 Third Avenue North
South St. Paul, MN 55075
Telephone: 651-554-3272
Fax: 651-554-3271
Email: blindell@sspmn.org

VII. Termination of this Closeout Agreement

The City of South Saint Paul may request termination of this Closeout Agreement by certifying to U.S. EPA that it has complied with the requirements of this Closeout Agreement for three full calendar years following the effective date. U.S. EPA shall have 90 days to object to the termination of this agreement. If U.S. EPA does not object within that time period, then the agreement will terminate with no further action.

VIII. Enforcement of this Agreement

If the City of South Saint Paul does not comply with any of the terms of this Closeout Agreement, then EPA may take actions authorized under 40 C.F.R. Section 31.43.

IX. Modifications

This Closeout Agreement can only be modified in writing by agreement of both U.S. EPA and the City of South Saint Paul. Oral or unilateral modifications shall not be effective or binding.

X. Severability

If any provisions of this Closeout Agreement is invalidated by a court of law, the parties shall remain bound to comply with those provisions of the Closeout Agreement that have not been invalidated.

XI. Signatures

This Closeout Agreement becomes effective on the date of the signature of the U.S. EPA Award Official.

On behalf of the City of South Saint Paul:

Stephen P. King
Executive Director
South Saint Paul Economic Development
Authority
125 Third Avenue North
South St. Paul, MN 55075

Date: _____

On behalf of U.S. EPA

Bruce Sypniewski
Acting Division Director
Resources Management Division (M-9J)
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Date: _____



EDA Agenda Item Report

Date: May 9, 2016

EDA Executive Director: SPK

4-C

Agenda Item: Approval to Call for a Public Hearing to Sell the Rediscover SSP lot at 339 – 5th Avenue South.

Action to be considered: Motion to call for a public hearing on June 13, 2016 to sell 339 – 5th Avenue South to John Scott.

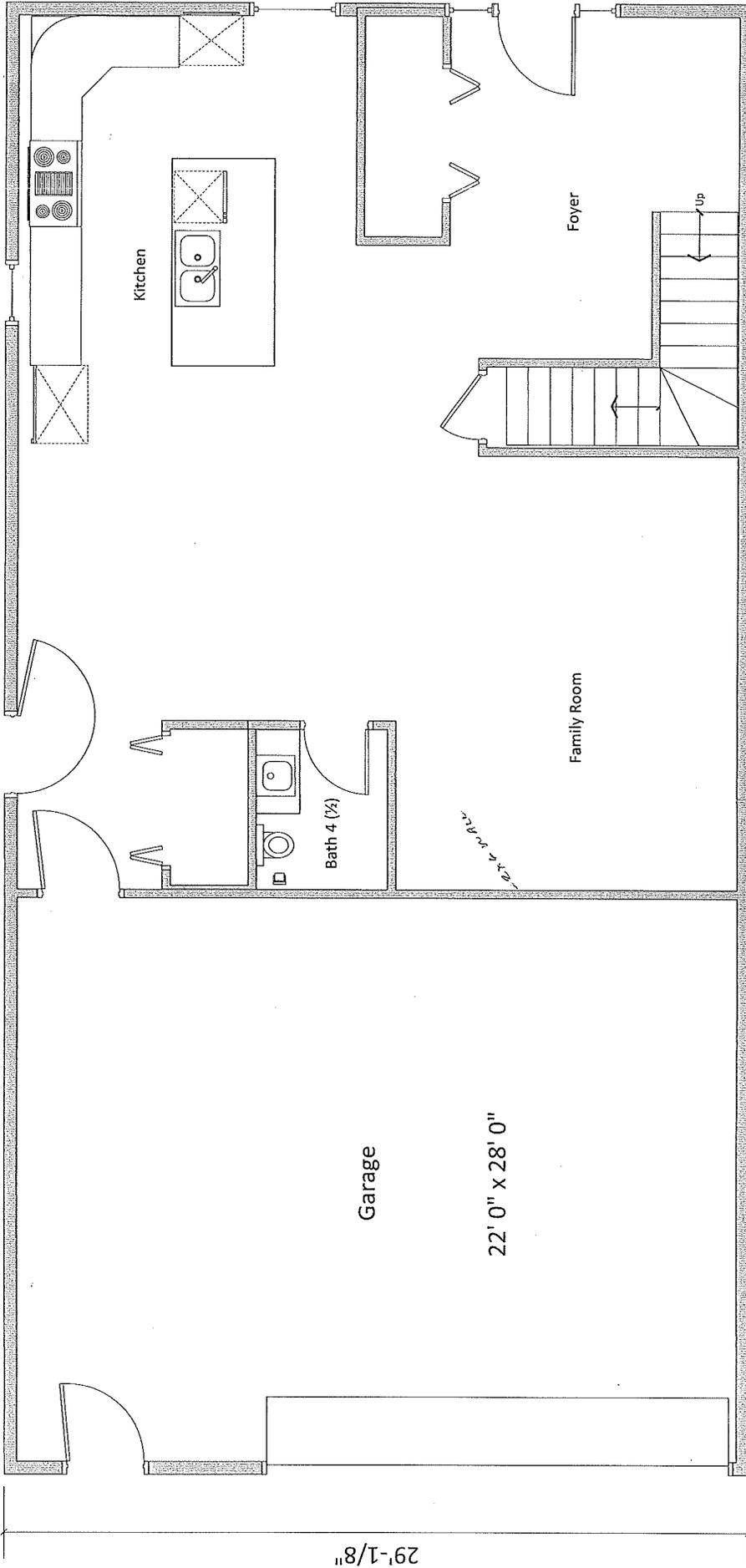
Overview: The property at 339 – 5th Avenue South was acquired by the HRA on May 22, 2014 and subsequently demolished August 22, 2014. On April 15, 2016, the EDA entered into a participation agreement with an Inver Grove Heights couple interested in building a home on the 40'x125' lot. Preliminary plans depict a 3- bedroom, 3½ bath home totaling approximately 3,000 s.f. (see attachment). The sales price is \$14,300.

Final house plans will be reviewed by the City Planner for conformance to Rediscover standards prior to the public hearing.

Funding Sources and other fiscal considerations: N/A

Scale: 1/48 : 1

5th Avenue South



29'-1/8"

56'-10 11/16"

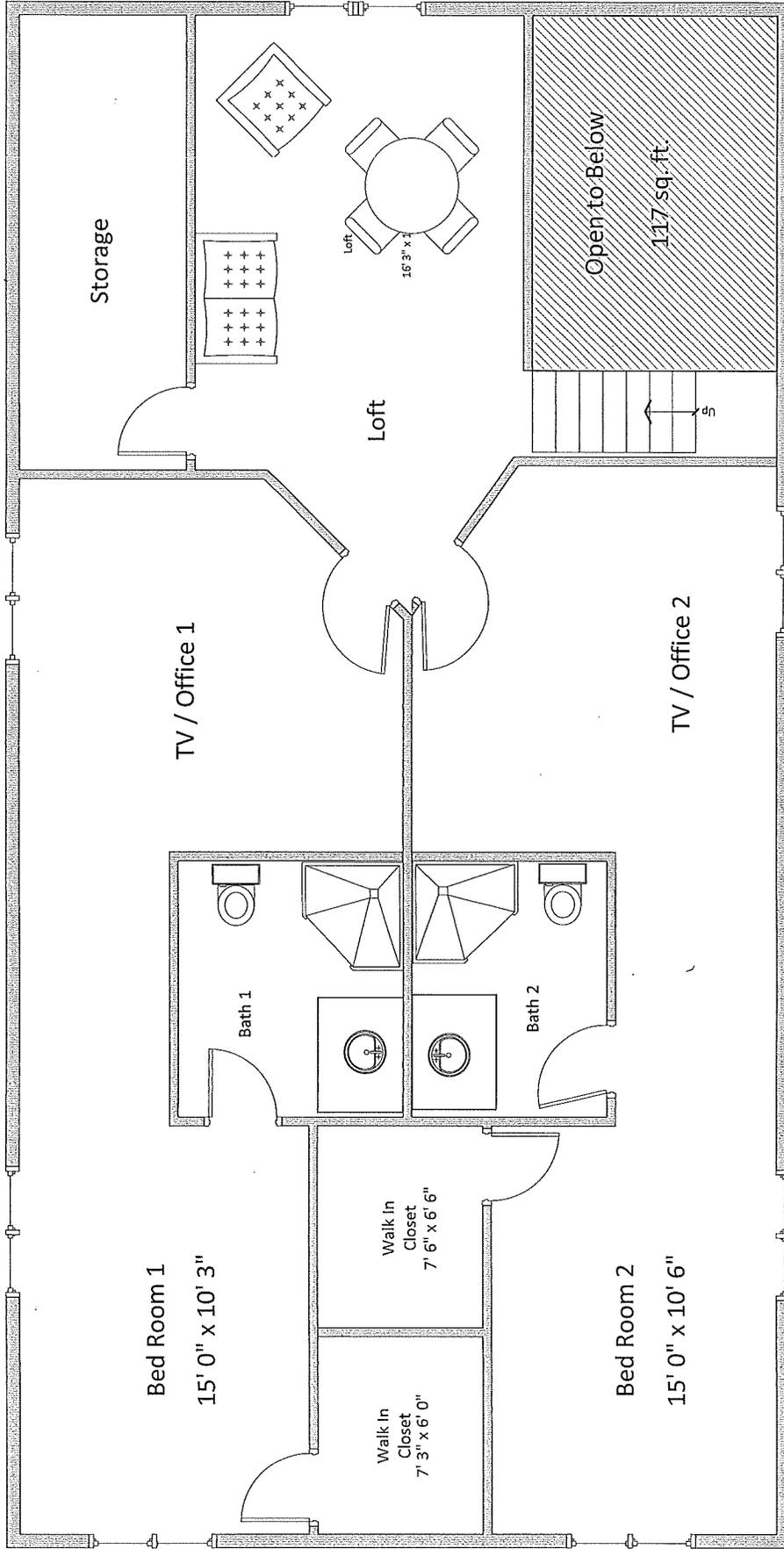
Main Floor

Dimension	Inches	Square Inches	Square Feet
56' 10 11/16"	682.6875	237660.6	1650.421
29' 1/8"	348.125		

125	5000
40	
	33.01%*



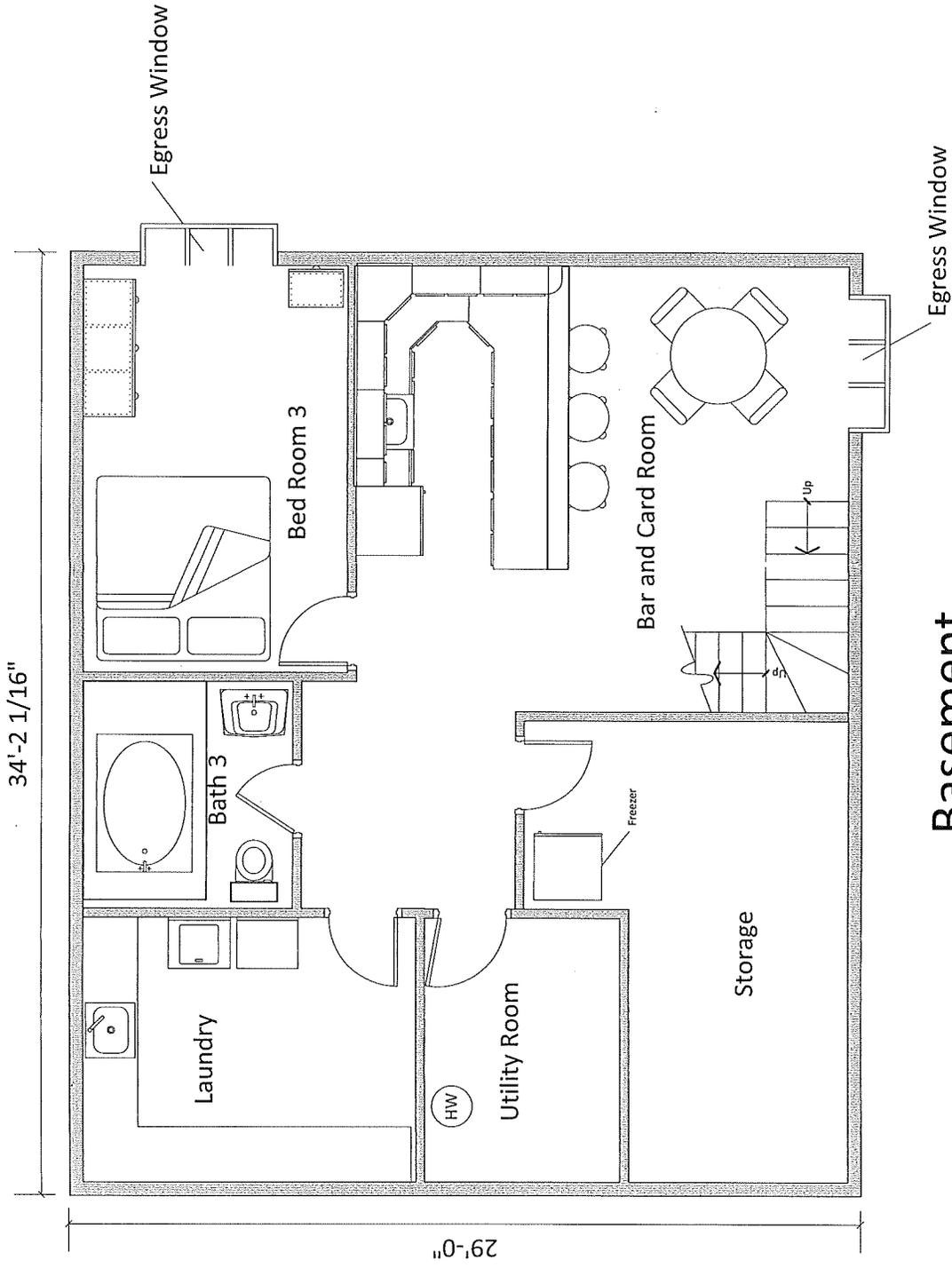
Scale: 1/48 : 1



2nd Floor



Scale: 1/48 : 1



Basement



EDA Agenda Item Report

Date: May 9, 2016

EDA Executive Director: SPK

6-A

Agenda Item: Approve Amendment No. 4 to Purchase Agreement with Interstate Partners

Action to be considered: Motion to approve Amendment No. 4 to Purchase Agreement with Interstate Partners.

Overview:

On February 16, 2016, the EDA approved Amendment No. 3 to the Purchase Agreement for the Dakota Premium site with Interstate Partners extending the due diligence period to June 6, 2016, and the closing date to August 1, 2016.

Greg Miller of Interstate needs more time to evaluate the soil correction issue and how to finance the estimated \$1,000,000 cost. The CDA awarded a RIG grant in the amount of \$193,445 City of South St. Paul for this project. Other funding sources will be researched as well.

Mr. Miller is requesting an extension of the due diligence period until September 30, 2016 and a closing date extension until November 30, 2016.

Funding Sources and other fiscal considerations: N/A

FOURTH AMENDMENT TO PURCHASE AGREEMENT

This Fourth Amendment to Purchase Agreement is entered into as of this ___ day of May, 2016 by and between the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“Assignee” or “Seller”), and Interstate Partners II LLC, a Minnesota limited liability company (“Buyer”).

RECITALS

A. Buyer and the Housing and Redevelopment Authority in and for the City of South St. Paul, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“Assignor”) entered into that certain Purchase Agreement dated March 24, 2015 (the “Purchase Agreement”) for the Property as legally described in the Purchase Agreement.

B. Buyer and Assignor entered into that certain First Amendment to Purchase Agreement dated November 10, 2015 (the “First Amendment”) for the Property as legally described in the Purchase Agreement.

C. Buyer and Assignor entered into that certain Second Amendment to Purchase Agreement dated December 22, 2015 (the “Second Amendment”) for the Property as legally described in the Purchase Agreement.

D. Pursuant to Section 16 of the Purchase Agreement, Assignor assigned its rights under the Purchase Agreement to the Assignee/Seller and Buyer consented in writing to the same.

E. Buyer, Assignor and Assignee/Seller entered into that certain Third Amendment to Purchase Agreement dated February 16, 2016 (the “Third Amendment”) for the Property as legally described in the Purchase Agreement.

F. Seller and Buyer desire to amend the Purchase Agreement, the First Amendment, the Second Amendment and the Third Amendment as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Section 4.12.1 of the Purchase Agreement is amended in its entirety to read as follows:
 - 4.12.1 Seller shall allow Buyer and Buyer’s agents access to the Property without charge (but subject to Buyer’s indemnification obligations contained herein) and at all reasonable times upon at least two business days’ advance written notice by Buyer to Seller for the purpose of Buyer’s investigation and testing the same until **September 30, 2016** (the “**Inspection Period**”). Buyer, at Buyer’s expense, may enter upon the Property to conduct such tests and make such examinations, including soil, boring and environmental tests, as Buyer deems necessary. In the event the results of tests or examinations conducted by Buyer or Buyer’s

representative(s) do not verify that there is no accumulation in or about the Property or adjacent groundwater of petroleum, PCBs or any hazardous waste or toxic pollutant, contaminant or other substance regulated by any state or federal statute including Solid Waste Disposal Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601), the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6901) or the Toxic Substance Control Act (15 U.S.C. Sec. 2604) or by any other statute, rule, regulation or order of any governmental agency having jurisdiction over the control of such substances or wastes, or other substances of public health concern, or if Seller acknowledges that the Property is contaminated by any such waste or substances, Buyer may in its sole discretion, terminate this Agreement.

2. Section 6 of the Purchase Agreement is amended in its entirety to read as follows:

6. Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on or before **November 30, 2016** (the "**Closing Date**"), or such earlier date as mutually agreed to in writing by the parties hereto. The Closing will take place via escrow facilitated by the Title Company, or as otherwise mutually agreed to by the parties hereto. Seller agrees to deliver possession of the Property to Buyer on the Closing Date.

3. Except as set forth herein, the Purchase Agreement remains unmodified and in full force and effect. Sections 1 and 2 hereof replace Sections 4 and 5 of the Third Amendment in their entirety.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to Purchase Agreement as of the day and year first above written.

ASSIGNEE / SELLER:

**South St. Paul Economic Development
Authority**

By: _____

Name: _____

Its: President

By: _____

Name: _____

Its: Executive Director

[Signature page to Fourth Amendment to Purchase Agreement]

BUYER:

Interstate Partners II LLC, a Minnesota limited liability company

By: _____

Name: _____

Its: _____



EDA Agenda Item Report

Date May 9, 2016

EDA Executive Director: SPK

6-B

Agenda Item: Approve Agreement with Ryan R. Schroeder for professional services

Action to be considered: Motion to approve agreement

Overview:

To provide for enhanced economic development and code enforcement programs, the City Council authorized a reorganization that included the transfer of certain Housing programs from the Housing Redevelopment Authority (HRA) to the Dakota County CDA, the establishment of an Economic Development Authority (EDA) and staffing reassignments that resulted in the creation of a Community Development Department. The Community Development Department includes four divisions: Economic Development, Housing Programs, Planning/Zoning/Land Use, and Licensing/Code Enforcement.

The Economic Development Authority (EDA) Board of Directors has discussed staffing considerations associated with establishment and operation of the new Economic Development Division. The application deadline for the new Economic Development Manager position will close on Friday, May 9th 2016. Staff also recommended the retention of contracted project manager services for at least the transitional period covering the start-up period of the new Division. This independent contractor would be an experienced and successful economic development professional who could immediately jump into project work. The individual also can serve as a mentor to the new Economic Development Manager. As the City's Economic Development program matures, the Project Manager role would likely change and perhaps even disappear as the Economic Development manager acquired experience and expertise.

Staff have recommended Ryan R. Schroeder, the retired former City Administrator for the City of Cottage Grove, for this role. The EDA Board has met with Mr. Schroeder on two occasions and at a Worksession on May 2nd, it reviewed and supported a proposed agreement for the engagement of Mr. Schroeder, who accepts these terms and conditions. *Attached is the professional services agreement prepared by City Attorney Kori Land.*

Funding Sources and other fiscal considerations: The 2016 EDA tax levy should cover the 2016 cost of this agreement and the 2016 cost of the new Economic Development Manager.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is entered into as of the 9th day of May, 2016 (the “Effective Date”), by and between the South St. Paul Economic Development Authority, 125 – 3rd Avenue North, South St. Paul, Minnesota 55075, (“EDA”) and Ryan R. Schroeder, 838 Laurel Avenue, St. Paul, Minnesota 55104 (“Consultant”).

WHEREAS, the EDA has accepted the proposal of the Consultant for certain professional Services; and

WHEREAS, Consultant desires to perform the Services for the EDA under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual consideration contained herein, it is hereby agreed as follows:

1. SERVICES.

- a. EDA agrees to engage Consultant as an independent contractor for the purpose of performing certain professional Services (“Services”), detailed on the Term Sheet attached to this Agreement and hereby incorporated in this Agreement (the “Term Sheet”).
- b. Consultant covenants and agrees to provide Services to the satisfaction of the EDA in a timely fashion, as set forth in the Term Sheet, subject to Section 7 of this Agreement.

2. PAYMENT.

- a. EDA agrees to pay and Consultant agrees to receive and accept payment for Services as set forth in the Term Sheet.
- b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due the Consultant shall require prior written approval by the authorized representative of the EDA or by the City Council. The EDA will not pay additional compensation for Services that do not have prior written authorization.
- c. Consultant shall submit itemized bills for Services provided to EDA on a monthly basis. Bills submitted shall be paid in the same manner as other claims made to EDA.

3. TERM. The term of this Agreement is provided in the Term Sheet. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the same terms and conditions as herein stated.
4. TERMINATION.
 - a. Termination by Either Party. This Agreement may be terminated by either party upon 30 days' written notice delivered to the other party to the addresses listed in Section 13 of this Agreement. Upon termination under this provision, if there is no default by the Consultant, Consultant shall be paid for Services rendered and reimbursable expenses until the effective date of termination.
 - b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
5. SUBCONTRACTORS. Consultant shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of the EDA, unless specifically provided for in the Term Sheet. The Consultant shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Consultant's receipt of payment by the EDA for undisputed services provided by the subcontractor.
6. STANDARD OF CARE. In performing its Services, Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the Services are provided. No warranty, express or implied, is made or intended by Consultant's undertaking herein or its performance of Services.
7. DELAY IN PERFORMANCE. Neither EDA nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either EDA or Consultant under this Agreement. If such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.

8. EDA'S REPRESENTATIVE. The EDA has designated Steve King to act as the EDA's representative with respect to the Services to be performed under this Agreement. Steve King shall have complete authority to transmit instructions, receive information, interpret, and define the EDA's policy and decisions with respect to the Services covered by this Agreement.
9. CONSULTANT AND STAFFING. The Consultant has designated himself, Ryan R. Schroeder, to be the primary contact for the EDA in the performance of the Services. He shall be assisted by other staff members as necessary to facilitate the completion of the Services in accordance with the terms established herein. Consultant may not remove or replace these designated staff without the approval of the EDA.
10. INDEMNIFICATION.
 - a. Consultant and EDA each agree to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and EDA, they shall be borne by each party in proportion to its own negligence.
 - b. Consultant shall indemnify EDA against legal liability for damages arising out of claims by Consultant's employees. EDA shall indemnify Consultant against legal liability for damages arising out of claims by EDA's employees.
11. INSURANCE. During the performance of the Services under this Agreement, Consultant shall maintain the following insurance:
 - a. Professional Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence.
 - b. Workers' Compensation Insurance in accordance with statutory requirements.
 - c. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

Consultant shall furnish the EDA with certificates of insurance, which shall include a provision that such insurance shall not be canceled without written notice to the EDA. The EDA shall be named as an additional insured on the General Liability Insurance policy and the Professional Liability Insurance policy.

12. OWNERSHIP OF DOCUMENTS. Professional documents, drawings, and specifications prepared by the Consultant as part of the Services shall become the property of the EDA when Consultant has been compensated for all Services rendered, provided, however, that Consultant shall have the unrestricted right to their use. Consultant shall retain its rights

in its standard drawing details, specifications, databases, computer software, and other proprietary property. Rights to proprietary intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of the Consultant.

13. NOTICES. Notices shall be communicated to the following addresses:

If to EDA: South St. Paul EDA
125 – 3rd Ave. N.
South St. Paul, MN 55075
Attention:

Or e-mailed: sking@southstpaul.org

If to Consultant: Ryan R. Schroeder
838 Laurel Avenue
St. Paul, MN 55104

Or emailed: schroederprop@gmail.com

14. INDEPENDENT CONTRACTOR STATUS. All services provided by Consultant, his agents and employees pursuant to this Agreement shall be provided as employees of Consultant or as independent contractors of Consultant and not as employees of the EDA for any purpose.

15. GENERAL PROVISIONS.

- a. Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- b. Waiver. A waiver by either EDA or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.
- c. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any action must be venued in Dakota County District Court.
- d. Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- e. Data Practices Compliance. All data collected by the EDA pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

- f. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: Stephen P. King
Steve King, Executive Director

ATTEST:

By: _____
Beth Baumann, President

Date: _____

CONSULTANT

By: _____
Ryan R. Schroeder

Date: _____

TERM SHEET

- 1) Term: The term of this Agreement shall commence on the Effective Date and will automatically continue unless and until terminated by either party by thirty (30) days' written notice to the other party.
- 2) Scope of Services: During the term of this Agreement, the Consultant will perform the following services, among others as directed by the EDA.
 - a) Facilitate the overall efforts as outlined in the annual work plan which is developed and approved by the EDA.
 - b) Work within the confines of the EDA and project budgets annually.
 - c) Attend project meetings, staff meetings, Economic Development Advisory Board meetings or other meetings as requested.
 - d) Present project updates and recommendations to the South St. Paul City Council and the EDA as requested or required.
- 3) Payment: For services rendered by the Consultant as described below, the City will pay the Consultant as follows:
 - a) The Consultant will be paid \$125.00 per hour, for the period of this Agreement. The Consultant submit monthly invoices tracking hours and services performed and shall be paid within 20 business days of the date of invoice.
 - b) During the term of this Agreement, the Consultant will not be entitled to employee benefits that are made available to full-time staff. (i.e. Medical, dental, life)
- 4) Confidentiality: In performing his duties, the Consultant may be provided confidential information about the City of South St. Paul or the EDA regarding its employees, strategies, and business. The Consultant agrees to keep such information confidential and only to utilize such information during the term of this Agreement in good-faith furtherance of the mission and/or completion of the duties described above.
- 5) Reporting: Reports will be provided to the City Manager, EDA, and South St. Paul City Council on activities and work accomplished as requested.