

2018 AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

THIS AGREEMENT is made and entered into by and between the City of Longmont, Colorado (City), a municipal corporation, and the Boulder Chamber of Commerce, a Colorado nonprofit corporation, d.b.a. Boulder Small Business Development Center (SBDC or Contractor), effective as of the 1st day of January, 2018.

WHEREAS SBDC focuses on three areas of support for the small business: training (short and long-term), counseling, and access to valuable resources. The SBDC helps small businesses analyze marketing and growth issues, set reasonable short and long-term goals, obtain financing, and prosper in competitive markets; and

WHEREAS the stimulation of economic growth is recognized to serve both the public interest and municipal purposes of the City by enhancing the tax base and creating employment opportunities; and

WHEREAS it is deemed advisable for the City to contract for the provision of SBDC Services including free one-on-one business counseling, practical business workshops, and connection to business resources – both tools and professionals.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

1. **SERVICES.** SBDC agrees to provide the business services, programs and regular reporting requirements as outlined in **Exhibit A: Scope of Services.**

2. **COMPENSATION.** SBDC agrees to provide the services described in **Exhibit A: Scope of Services.** The City will provide \$39,925.00 to compensate SBDC for the services to be provided under this Agreement. The City shall pay said \$39,925.00 in twelve equal monthly installments of \$3,327.08 each, to be made no later than the 10th of each month during the term of this Agreement.

3. **TERM.** This Agreement shall begin January 1, 2018 and end December 31, 2018. This Agreement may only be modified or extended by written agreement of the parties.

4. **NON-PROFIT STATUS.** SBDC, during the term hereof, agrees to remain a not-for-profit corporation dedicated to the rendition of the services described in this Agreement, and no part of the income or assets of SBDC shall be distributed to, or inure to the benefit of, any individual or for any other private purpose.

5. **STATUS OF CONTRACTOR.** SBDC shall perform all services under this Agreement as an independent contractor and not as an agent or employee of the City. It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or joint ventures between the parties hereto, or as construing SBDC, including its agents and employees, as an agent of the City. SBDC shall remain an independent and separate entity. SBDC shall not be supervised by

any employee or official of the City, nor will SBDC exercise supervision over any employee or official of the City. SBDC shall not represent that SBDC is an employee or agent of the City in any capacity. **SBDC is not entitled to City workers' compensation benefits and is obligated to pay federal and state income tax on money earned pursuant to this Agreement, if applicable.**

6. NO THIRD PARTY BENEFICIARIES. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or SBDC receiving services or benefits under this Agreement shall be only an incidental beneficiary.

7. VERIFICATION REGARDING ILLEGAL ALIENS. Contractor has confirmed the employment eligibility of all employees newly hired for employment to perform work under this Contract through participation in either the E-verify program administered jointly by the United States Department of Homeland Security and the Social Security Administration or the employment verification program of the Colorado Department of Labor & Employment.

8. UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

9. LIMITATION REGARDING ILLEGAL ALIENS. Contractor shall not use E-Verify program procedures to undertake pre-employment screening of job applicants while performing this Agreement.

DUTY TO TERMINATE A SUBCONTRACT; EXCEPTIONS. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall: (a) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if, within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate a subcontract if, during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

10. DUTY TO COMPLY WITH STATE INVESTIGATION. Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to Section 8-17.5-102(5), C.R.S.

11. DAMAGES FOR BREACH OF CONTRACT. In addition to any other legal or equitable remedy to which the City may be entitled for a breach of this Agreement, if the City terminates this Agreement, in whole or in part due to Contractor's breach of any provision of this Agreement, Contractor shall be liable for actual and consequential damages to the City.

12. **INSURANCE.** The Contractor is solely responsible for providing any insurance including liability, casualty, and workers' compensation for the Contractor's use. Contractor shall provide during the time of this Agreement a general liability policy with limits no less than \$1,000,000 per occurrence and a workers' compensation insurance policy covering all employees and complying with state law. Before the effective date of this Contract, the Contractor shall present to the City's Risk Manager a certificate showing it has in effect the required policies. Any variance to these insurance provisions must be approved in writing by the City's Risk Manager and will become incorporated as an addendum to this Agreement.

Contractor shall not cancel, materially change, or fail to renew insurance coverages. Contractor shall notify the City of Longmont, Risk Manager's Office, 350 Kimbark St., Longmont, CO 80501, of any material reduction or exhaustion of aggregate limits. In the event any policy is canceled or has a material reduction of aggregate limits before final payment by City to Contractor, Contractor shall immediately procure other insurance sufficient to maintain the insurance requirements of this Agreement. If any policy lapses or is canceled before final payment by the City to the Contractor and if the Contractor fails immediately to procure other insurance as specified, the City may deem such failure to be a breach of this Agreement.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from Contractor's operation under this Agreement.

13. **CERTIFICATE OF INSURANCE.** As evidence of the insurance coverages required by this Contract, prior to the effective date of this Agreement, Contractor shall furnish a certificate of insurance to:

City of Longmont
Attn: Doug Spight, Risk Manager's Office
350 Kimbark St.
Longmont, CO 80501

The liability certificate will name the City, its officers, agents, and employees as Additional Insureds. Insurance coverages required under this Contract shall be obtained from insurance companies authorized to do business in the State of Colorado. If the Contractor is self-insured under the laws of the State of Colorado, Contractor shall provide appropriate declarations of coverage.

14. **INDEMNITY.** The Contractor shall fully indemnify and hold the City harmless from all claims, actions, suits, liability, losses, costs, expenses, and/or damages of any kind whatsoever, which may occur to or be suffered by any person (including, but not limited to the Contractor, its agents, employees, contractors, tenants, invitees, licensees, successors or assigns) arising out of or in connection with its use and occupation of any City facilities and/or any activities undertaken pursuant this Agreement. Upon commencement of any such suit or action against the City, the Contractor shall provide prompt notice to the City, and shall defend the same at its own cost and expense. If a judgment shall be rendered against the City in such an

action or suit, Contractor shall fully satisfy the judgment within ninety (90) days after the same has been conclusively determined.

15. **GOVERNING LAW AND VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Colorado and any action arising out of this Contract shall be brought in the 20th Judicial District, Boulder County District Court.

16. **COMPLIANCE WITH ORDINANCES AND REGULATIONS.** The Contractor shall perform all obligations under this Agreement in strict compliance with all federal, state, and City laws, rules, statutes, charter provisions, ordinances, and regulations applicable to the performance of the Contractor's services under this Agreement, and specifically, shall not discriminate against any person on the basis of age, ancestry, color, creed, sex, race, religion, national origin, disability, sexual orientation, gender status, or as otherwise prohibited by law.

17. **TERMINATION.** This Agreement may be terminated at the sole discretion of the City for any violation by the Contractor of any of the terms and conditions of this Agreement, including the reduction or discontinuance of the services listed in **Exhibit A**.

18. **PROVISIONS CONSTRUED AS TO FAIR MEANING.** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question.

19. **HEADINGS FOR CONVENIENCE.** All headings, captions and titles are for convenience and reference only, and of no meaning in the interpretation or effect of this Agreement.

20. **FINANCIAL OBLIGATIONS OF CITY.** All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit or a payment guarantee by the City to the Contractor. If appropriated funds are not available, both parties shall be relieved of their obligations hereunder.

21. **WAIVER.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

22. **SEVERABILITY.** Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.

23. **AUTHORITY.** The parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law to authorize their respective signatories to sign this Agreement for them and to bind them to its terms.

Executed this _____ day of _____, 2017.

CITY OF LONGMONT

BOULDER SMALL BUSINESS
DEVELOPMENT CENTER

MAYOR

DIRECTOR

APPROVED AS TO CONTENT:

ASSISTANT CITY MANGER

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

CA File: 10458

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____ as the Mayor of the City of Longmont.

Witness my hand and official seal.

CITY CLERK

Notary Public, State of Colorado

My commission expires: _____.

State of _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me by _____ as _____ of the Boulder Chamber of Commerce, d.b.a. Boulder Small Business Development Center, on behalf of the corporation, this _____ day of _____, 2017.

Witness my hand and official Seal.

Notary Public

My Commission expires _____.

EXHIBIT A: SCOPE OF SERVICES

1. **SERVICES:** SBDC agrees to provide the following business services and programs on behalf of the City to established and emerging businesses that are located, or are considering locating, within the territorial limits of the City:
 - 1.1 **Presence in Longmont** - The SBDC Director will commit an average of eight hours per month to the SBDC satellite office located in Longmont. The Director will devote part of that time to developing the program and will devote the remainder to consulting, by appointment, with small businesses, including initial and follow-up contacts with clients.
 - 1.2 **One-on-one Consultation** - Small businesses will contact the SBDC for assistance through the SBDC website, by email, by phone, or at an event. The consultation topics may consist of, but are not limited to, start-up issues; development of a business plan for start-up, growth, and financing; development of marketing strategies and action plans; development and understanding of financial projections; and development of management skills. The SBDC will provide 400 hours for one-on-one consulting services.
 - 1.3 **Practical Workshops** - The SBDC agrees to develop and conduct six business plan essentials classes focusing on business planning, including identifying and reaching your market, financial statements, and other business plan elements. All classes will be taught by qualified and experienced professionals, such as attorneys, accountants, marketing consultants, and seasoned business consultants. Because the classes are sponsored by the LEGI program, the classes are offered free of charge to Longmont businesses.
 - 1.4 **Leading Edge Entrepreneurship Series** - The SBDC agrees to develop and conduct the multi-session series focusing on business planning and startup and growth topics. All classes will be facilitated and presented by qualified and experienced professionals. Because the series is sponsored by the City of Longmont, 15 City of Longmont businesses may participate at the reduced cost of \$125 for first attendee from each business (materials provided) and \$125 for each additional attendee from each business (no materials provided).
 - 1.5 **Connection to Business Resources** - The SBDC has built a local network of professional service providers, entrepreneurs, and government business contacts that further assist our small businesses, especially when the scope of the request is outside the SBDC mission or resource constraints. Especially important is a network of commercial banks and other financing sources such as micro lending institutions. While the SBDC Director and other counselors may explain to business owners the range of typical lender requirements, there is no replacement for a one-on-one meeting with actual lenders. In addition, useful tools such as templates and web-based resources will be developed to provide tangible support

to businesses, including the continued development of a minority business listing for Boulder County with the City being a supporting sponsor.

2. **REPORTING:** SBDC agrees to provide the City Manager's Office and the City Council of the City the following no later than March 15, 2019: semi-annual activity reports, SBDC's periodic newsletters (as published) and an annual evaluation specifically related to services to be performed by SBDC. The annual evaluation shall include an analysis of the impact that SBDC has had on the economic health of the City as measured by number of clients counseled, number of client hours, number of jobs created/retained, and capital generated.

3. **FINANCIAL RECORDS:** SBDC agrees to establish and maintain books of account and records reflecting all of SBDC's revenues, expenditures, and services to be performed by SBDC under this Agreement. SBDC agrees to provide the City Council of the City with an annual financial review based on an internal analysis conducted by the Small Business Administration and the state SBDC network. The review shall be provided to the City Manager's Office no later than March 15, 2018. The City may require an independent audit of SBDC at any time to be performed at the expense of the City, and SBDC agrees to assist and cooperate in any such audit.