

AGREEMENT

This agreement entered into this 1st day of August 2012, by and between the County of Cuyahoga, Ohio (hereinafter referred to as the "County") and The National Council for Community Development, Inc. dba The National Development Council (hereinafter referred to as "NDC"), a non-profit corporation with offices located at 708 Third Avenue, Suite 710 New York City, New York 10017, for economic development technical assistance.

WITNESSETH:

WHEREAS, the County is authorized and empowered by the provisions of Section 307.07 of the Ohio Revised Code, to spend monies from the general fund for economic development purposes; and

WHEREAS, the County desires to engage NDC to provide technical assistance services in that area of economic development finance; and

WHEREAS, the County desires to make funding available from general fund proceeds for this consultant agreement:

NOW THEREFORE, in consideration of mutual covenants contained herein, the County and the NDC do hereby agree as follows:

ARTICLE I

SECTION 1.01 Project

The NDC agrees to undertake, or cause to be undertaken the activities described in Attachment A: "Scope of Work".

SECTION 1.02 Financing Sources for the Project

It is expressly understood that in no event will the total compensation and reimbursement to be paid by the County hereunder exceed the maximum sum of ninety three thousand five hundred (\$93,500) for all of the services required. Compensation shall be on a fixed fee basis and will be paid in equal monthly increments of five thousand and five hundred dollars (\$5,500) per month upon receipt of an invoice and a report detailing technical assistance provided during the month. The contract amount includes all costs to the NDC, including travel and other incidental costs.

SECTION 1.03 Timetable for Project Activities

The services of the NDC are to commence August 1, 2012 and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement, but in any event, all of the services required herein shall be completed by December 31, 2013.

SECTION 1.04 Guarantee of Completion

NDC unconditionally and irrevocably guarantees timely completion of the Project in accordance with Section 1.03. The county may terminate the contract at any time upon submission of thirty (30) day written notice.

ARTICLE II

Representations and Warranties

NDC represents and warrants to the County as of the date of this Agreement and throughout the time period set forth as described in Section 1.03 of this Agreement the following:

SECTION 2.01 Organization

NDC is duly organized, validly existing, and in good standing under the laws of the State of Ohio and has power to carry on its business as it is presently being conducted, and to enter into and observe the provisions of this Agreement.

SECTION 2.02 Authorization (As Applicable)

The entering into and performance by NDC of this Agreement and the execution and delivery of all instruments required under this Agreement have been duly authorized by all necessary governmental, corporate, company or partnership action and will not violate any law, rule, regulation, order, writ, judgement, decree, determination or award presently in effect and having applicability to NDC or any provision of NDC's articles of incorporation, regulations or by-laws, articles of organization, or operating agreement, or result in a breach of or constitute a default under any indenture, bank loan, credit agreement or any other agreement or instrument to which NDC is a party or by which it or its property may be bound or affected.

SECTION 2.03 Enforceability

When this Agreement is executed by NDC and the County, it shall constitute the legal, valid, and binding obligation of the parties thereto in accordance with its terms.

SECTION 2.04 Litigation

There are no legal actions, suits, or proceedings pending, or, to the knowledge of NDC, threatened against NDC before any court, arbitrator, or administrative agency, which, if determined adversely to NDC, would have an adverse effect on the financial condition or businesses of NDC which have not been disclosed to the County.

SECTION 2.05 Absence of Default

NDC is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

SECTION 2.06 Tax Returns and Payments

NDC has filed all required tax returns and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against NDC or its personal or real property by any federal, state or local taxing agency. No tax liability has been asserted by the Internal Revenue Service or any other taxing agency, (federal, state or local) for taxes materially in excess of those already provided for, and NDC knows of no basis for any such deficiency assessment.

SECTION 2.07 No Adverse Change

There has been no adverse change since the date of application for this General Fund Grant in the financial condition, organization, operation, business prospects, fixed assets or personnel of NDC.

SECTION 2.08 Material Facts

No representation or warranty contained herein or made hereunder and no certificate, schedule or other document furnished or to be furnished in connection herewith contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated herein or therein.

SECTION 2.09 Compliance with Federal, State and Local Laws

NDC, its subsidiaries and any Event subcontractors shall comply with all applicable federal, state and local laws, ordinances, regulations and administrative rulings pertaining to the Event, including all state and federal reporting requirements applicable to the Event.

SECTION 2.10 Performance on Other Contracts with the County

NDC and its subsidiaries shall perform all other contracts with the County in a timely and workmanlike manner.

SECTION 2.11 Indemnification

NDC shall indemnify and save harmless the County and its respective officers, agents and employees from and against all suits or claims that may be based upon any injury to persons or property arising out of an alleged action, condition or error, omission or negligent act of NDC or its subcontractors; and NDC shall, at its own expense, defend the County in all litigation, pay all attorneys' fees, damages, court costs and other expenses arising out of such litigation or claims incurred in connection therewith; and shall, at its own expense, satisfy or cause to be discharged such judgments as may be obtained against the County, any of its officers, agents or employees, arising out of such litigation.

ARTICLE III

SECTION 3.01 Miscellaneous

This Agreement embodies the entire agreement and understanding between the County and NDC and supersedes all prior agreements and understandings relating to the subject matter hereof. NDC and the County hereby expressly reserve all rights to amend any provision of this Agreement and all such amendments shall be in writing and executed by the County and NDC.

SECTION 3.02 Notices

All notices, consents, requests, demands and other communications required hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to the County at its address set forth at the end of this Agreement, and to NDC at the address set forth at the end of this Agreement or at such other addresses as any party may have designated in writing to any other party hereto.

SECTION 3.03 Survival of Representations and Warranties

All agreements, representations, and warranties made by NDC in connection with this Agreement or in any other document or certificate delivered to the County in connection with the transactions contemplated by this Agreement shall survive the delivery of this Agreement and shall continue in full force and effect until the General Fund Grant Event is completed.

SECTION 3.04 Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of NDC and the County and their successors and assigns permitted under Section 4.08 hereof.

SECTION 3.05 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 3.06 Article and Section Headings

Article and section headings used herein are for convenience only and shall not affect the interpretation of this Agreement.

SECTION 3.07 Prohibition Against Assigns

NDC shall not assign or transfer any or all of its rights or obligations under this Agreement without obtaining the prior written approval of the County; provided, however, that if the County approves such assignment or transfer, NDC and the permitted assigns shall be bound by the terms and conditions of this Agreement.

SECTION 3.08 County Approvals

Any provision of this Agreement requiring the approval or consent of the County shall be interpreted as requiring written action by the Director of the Cuyahoga County Department of Development granting, authorizing or expressing such approval or consent, unless such provision expressly provides otherwise.

SECTION 3.09 Public Disclosure of Documents

Public disclosure of documents that are in the possession of the County shall be governed by the applicable federal, state and local laws.

SECTION 3.10 Non-Discrimination

NDC shall act under this Agreement in a manner such that no discrimination will be exercised against any person because of race, color, religion, or national origin, as provided in Title VI of the Civil Rights Act of 1964, and that violation thereof shall be deemed a material breach of said Agreement.

SECTION 3.11 Remedies

If NDC defaults and fails to cure within thirty days, then the County shall have the right to exercise concurrently or successively any one or more of the following rights or remedies:

- i. Wholly or partially terminate this Agreement and the rights given to NDC in it; temporarily or permanently withhold or reduce funds not yet paid to NDC;
- ii. recover funds previously paid to NDC;
- iii. disallow all or part of the cost of a noncompliant activity;
- iv. wholly or partially suspend the Agreement;
- v. exercise any and all additional rights the County may have in law or equity;

Termination pursuant to clause (i) above shall be effective five (5) days after the date the County has given written notice to NDC of such termination. If the County chooses any of the other remedies outlined, that remedy is effective immediately upon default of any of the obligations pursuant to the Agreement and the failure to cure within thirty days. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps models, photographs, and reports prepared by NDC under this Agreement, at the option of the County, shall become the property of the County and NDC shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents; provided, however, that such compensation may be reduced in the event the County determines that any money owed the County by NDC has not been paid.

SECTION 3.12 Notice

Any notices or invoices required by this Agreement shall be sufficient if sent by the parties through U.S. Mail, postage paid, to the addresses below:

County: Cuyahoga County, Department of Development
Attention: Larry Benders, Director
1701 East 12th Street, 1st Floor
Cleveland, Ohio 44114
(216) 443-7277

NDC:

The National Council for Community Development, Inc.
708 Third Avenue, Suite 710
New York City, New York 10017
(212) 682-1106

SECTION 3.13 Electronic Signature.

The County and NDC further agree to include the following language (modified to suit the situation) in all agreements, contracts, amendments to agreements and contracts, requests for proposals, requests for qualifications, notices and instructions to bidders and all applicable procurement documents:

BY ENTERING INTO THIS [AGREEMENT/CONTRACT/AMENDMENT TO AGREEMENT OR CONTRACT] OR [BY SUBMITTING A BID] OR [BY SUBMITTING A PROPOSAL] I AGREE ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. I ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

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IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF CUYAHOGA, OHIO

Edward Fitzgerald, County Executive

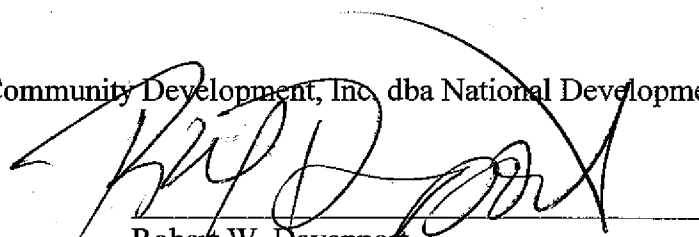


2012-08-09 11:28:27

Edward G. Fitzgerald, County Executive

Date

The National Council for Community Development, Inc. dba National Development Council



Robert W. Davenport,
President

6/19/12

Date

NDC TECHNICAL ASSISTANCE AGREEMENT
SCOPE OF SERVICES
EXHIBIT A

NDC shall perform and carry out in a satisfactory and proper manner the following Scope of Services to Cuyahoga County. All tasks presented in this Scope of Services shall be performed in conjunction with the staff of the Department of Development.

A. Assist the County in undertaking the following efforts:

1. Increase the skills and capacity of municipal and county staff to analyze, evaluate and underwrite loan requests from small businesses in coordination with NDC's continued administration and servicing of the Grow Cuyahoga Fund, a community development bank organized under NDC's Grow America Fund to provide SBA 7a financing to small businesses in Cuyahoga County.
2. Assist county staff in accessing federal and state economic development programs and in securing funding for economic/community development projects prioritized by Cuyahoga County. This task may include assisting the County in evaluating the potential uses of federal and state programs, and in recommending strategies that could increase the impact of such program in supporting and leveraging additional investment in community development projects. Such evaluation and assistance may specifically address potential assistance from the CDBG, HOME, Section 108 loan, CDBG Float Loan, EDI, BEDI, EDA, New Market Tax Credit, and federal and state historic rehabilitation tax credit programs.
3. Assist the county in evaluating economic development projects for financial assistance through the Western Reserve Fund. Advise the County in syndication of the Western Reserve Funds with other funding sources to achieve the most effective use of all funds and maximize the economic impact of the project.
4. Evaluate the use of 63-20 and 501(c)(3) bond financing to finance public developments. Such developments may include public office and service buildings, university dormitory and class-room facilities, and other developments undertaken to support Cuyahoga County.
5. As requested by the County, structure and undertake development projects on behalf of the County under NDC's HEDC subsidiary. All such projects shall be structured for long-term economic viability, and with the County or other entity having the ability to assume ownership at no cost, or at a known minimum cost. (The goal shall be to structure the development such that the County, or entity approved by the County, can assume ownership when the debt is retired for no additional expense.)
6. Assist the County in structuring affordable housing developments that are, to the greatest extent possible, mixed income, of superior quality and create long-term value in the community.
7. Assist the County on a project by project basis to structure small business financing that targets financially under-served communities, women and minority businesses.
8. Assist the County to structure financing on a project by project basis to re-develop 'brownfield' sites to support the long-term economic viability of their redevelopment.
9. Work with the county on the creation of a fund for commercial, industrial and mixed use projects on "greyfield" sites in New Markets Tax Credit eligible areas.

10. As requested by the County, conduct research and analysis and present findings to the County and/or the Great Lakes Energy Development Task Force, or a subcommittee of the task force, regarding the potential financing and ownership of the offshore wind project including both the initial and smaller iconic project and the larger wind farms that may follow. Presentation should include information on specific private, state and federal sources of financing that may be available and the process to secure these investments to finance the project.

B. Staff Training and Capacity Development

NDC staff will work closely with County and local staff on all activities. Individual work assignments shall be undertaken in a manner that affords County and local staff maximum experience so that local staff capacity is expanded. The goal is to make local staff more effective in working with private developers, lenders and investors so that local staff can effectively work to leverage private investment into affordable housing and other community development in the future.

C. Other Activities

NDC will provide assistance in other developments at the direction of the County. NDC, through its subsidiaries, can act as developer on housing and commercial developments that the County would like to move forward.