

RESOLUTION NO. 13-080

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A DEVELOPMENT SERVICES AGREEMENT WITH THE NATIONAL DEVELOPMENT COUNCIL IN AN AMOUNT NOT TO EXCEED \$40,000.

WHEREAS, it is deemed in the best interest of the citizens of Port Arthur to enhance the appearance of the downtown area and to create an environment conducive to business and entertainment activities for the community; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") desires to relocate its offices to downtown Port Arthur; and

WHEREAS, per Resolution No 12-641, the City Council authorized the PAEDC to pursue the building development plan to retrofit the property at 501 Procter based upon the cost estimate attached hereto as **Exhibit "A"**; and

WHEREAS, at a special Board meeting on January 28, 2013, the PAEDC Board of Directors determined that they need the professional services of a developer to manage the redevelopment process of the structure located at 501 Procter Street; and

WHEREAS, the National Development Council is willing to provide such developer services to PAEDC utilizing its expertise in development activities as the owner's representative on such terms and conditions as are attached in **Exhibit "B"**; and

WHEREAS, at the special Board meeting on January 28, 2013, the PAEDC Board of Directors also voted that the amount of the agreement shall not exceed \$40,000.00 and will

include all of National Development Council's time, travel expenses, supplies, postage, telephone and other similar expenses.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City Council authorizes the PAEDC to enter into a Development Services Agreement with the National Development Council for an amount not to exceed \$40,000.

Section 3. That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 12th day of Feb A.D., 2013, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

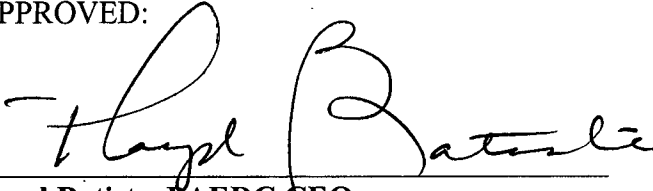
Mayor Prince; Mayor Pro Tem Tom Lewis
Councilmembers Scott, Segler, Asuncion,
Williamson and Thomas

NOES: None

Deloris Prince
Deloris "Bobbie" Prince, Mayor

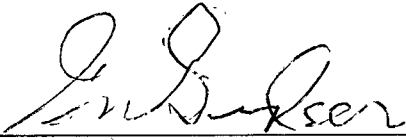
ATTEST:
Sherri Bellard
Sherri Bellard, City Secretary

APPROVED:



Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

see confidential memo

Valecia R. Tizeño, City Attorney

EXHIBIT “A”

NMTC Sources and Uses Notes

While the New Market Tax Credit Program is tool for revitalization, it is not a guaranteed program and there are upfront costs associated with it such as:

- Legal
- Audits
- CDE AM Fee
- Put Reserve

In regards to the rehabilitation project at 501 Proctor St, the costs associated with using NMTC are as follows:

- Legal: \$200,000
- IF Audit: \$65,421
- Audit Fee: \$78,321
- CDE AM Fee: \$138,425
- Put Reserve: \$63,549

\$545,716 is the estimated cost associated with accessing \$1,337,153 in NMTC equity. All costs are included in the development budget and not taken out of operations.

With NMTC**Sources**

I/O Loan - PAEDC	\$	4,066,847
I/O Loan - NMTC Equity	\$	1,283,667
Deferred Loan - NDC	\$	53,486

Total Development Sources	\$	<u>5,404,000</u>
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Gap	\$	-
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Uses

Acquisition	\$	200,000
Site Improvements	\$	27,500
Construction	\$	4,011,811
Professional Fees	\$	489,982
Construction Finance	\$	76,395
Permanent Finance	\$	-
Soft Costs	\$	6,000
Reserves	\$	46,596

Legal	\$	200,000
IF Audit	\$	65,421
Audit Fee	\$	78,321
CDE AM Fee	\$	138,425
Put Reserve	\$	63,549

Total Development Costs	\$	<u>5,404,000</u>
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NMTC Equity

I/O Loan - NMTC Equity	\$	1,283,667
Deferred Loan - NDC	\$	53,486
Total NMTC Equity	\$	<u>1,337,153</u>

NMTC Equity	\$	1,337,153
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NMTC Cost	\$	545,716
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Net NMTC Proceeds	\$	<u>791,437</u>
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NMTC Costs

Legal	\$	200,000
IF Audit	\$	65,421
Audit Fee	\$	78,321
CDE AM Fee	\$	138,425
Put Reserve	\$	63,549

Total NMTC Costs	\$	<u>545,716</u>
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W/O NMTC**Sources**

I/O Loan - PAEDC	\$	4,858,284
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Total Development Sources	\$	4,858,284
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Gap	\$	-
Additional Funding Needed	\$	791,437

Uses

Acquisition	\$	200,000
Site Improvements	\$	27,500
Construction	\$	4,011,811
Professional Fees	\$	489,982
Construction Finance	\$	76,395
Permanent Finance	\$	-
Soft Costs	\$	6,000
Reserves	\$	46,596
Total Development Costs	\$	4,858,284

RTC Sources and Uses Notes

While the Historic Rehabilitation Tax Credit Program is tool for revitalization on historic properties, it requires compliance with the National Parks Service standards for historic properties and there are ongoing operating costs associated with it such as:

- RTC Investor Exit Tax or Put
- Annual RTC Investor Return on Investment
- Administrative Fee
- Annual Property Taxes (property must owned by a for-profit entity)

In regards to the rehabilitation project at 501 Proctor St, the costs associated with using RTC are as follows:

- RTC Investor Return: 15% of Equity = \$100,065
- RTC Investor Return on Investment: 3% COC, 20,013 x 5 years = \$100,065
- Administrative Fee: \$1,000 x 5 years = 5,000
- Est. Property Taxes on \$3M: \$77,342 a year

\$591,845 is the estimated cost and ongoing property taxes associated with accessing \$667,116 in RTC equity. Using NMTC will extend the compliance period to seven years bringing the estimated operating cost increase to \$828,583 which is \$161,467 over the \$667,116 in RTC equity.

With RTC			
Sources		Uses	
I/O Loan - PAEDC	\$ 4,211,168	Acquisition	\$ 200,000
RTC Equity	\$ 667,116	Site Improvements	\$ 27,500
		Construction	\$ 4,011,811
		Professional Fees	\$ 489,982
		Construction Finance	\$ 76,395
		Permanent Finance	\$ -
		Soft Costs	\$ 26,000
		Reserves	\$ 46,596
Total Development Sources	\$ 4,878,284	Total Development Costs	\$ 4,878,284
Gap	\$ -		

Operating Cost Comparison	Year 1	Year 2	Year 3	Year 4	Year 5
RTC Investor Ret (15%)	20,013	20,013	20,013	20,013	20,013
RTC Investor ROI + Admin	21,013	21,013	21,013	21,013	21,013
Property Taxes	77,342	77,342	77,342	77,342	77,342
Operating Expenses w RTC	\$ 118,369	\$ 118,369	\$ 118,369	\$ 118,369	\$ 118,369
RTC Equity	\$ 667,116				\$ 667,116
Operating Increase	591,845				828,583
RTC Operating Difference @ 5 years	\$ 75,271				\$ (161,467)

W/O RTC			
Sources		Uses	
I/O Loan - PAEDC	\$ 4,858,284	Acquisition	\$ 200,000
		Site Improvements	\$ 27,500
		Construction	\$ 4,011,811
		Professional Fees	\$ 489,982
		Construction Finance	\$ 76,395
		Permanent Finance	\$ -
		Soft Costs	\$ 6,000
		Reserves	\$ 46,596
Total Development Sources	\$ 4,858,284	Total Development Costs	\$ 4,858,284
Gap	\$ -		
Additional Funding Needed	\$ 647,116		

EXHIBIT “B”

DEVELOPER SERVICES AGREEMENT

This Developer Services Agreement is made and entered into this 13th day of February, 2013, by and between the Port Arthur Section 4A Economic Development Corporation (hereinafter called "**the client**"), Texas non-profit industrial development corporation created pursuant to Chapter 501 and 504, Texas Local Government Code, whose address is 4173 39th Street, Port Arthur, Texas 77642 (hereinafter called "Client") and **NATIONAL DEVELOPMENT COUNCIL**, a New York non-profit corporation, which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, whose address is 708 Third Avenue, Suite 710, New York, New York 10017 (hereinafter called "NDC").

WITNESSETH:

WHEREAS, the Client has determined that they need the professional services of a developer to manage the redevelopment process of the structure 501 Procter Street, Port Arthur, Texas 77640 (hereinafter called "the bank building"), and

WHEREAS, NDC is willing to provide, on such terms and conditions as are hereinafter provided, developer services to the Client utilizing its expertise in development activities as the owner's representative.

NOW THEREFORE, the Client and NDC do hereby agree as follows:

I. SCOPE OF SERVICES

The Client acknowledges that NDC regularly performs services for various clients located across the United States. The purpose of this Agreement is to set forth the terms upon which the NDC will provide the Client with development services they have requested which are generally described as development services. NDC agrees to perform such services as are requested from time to time by Client and to provide such services as it deems necessary to accomplish the goals requested. Exhibit A attached hereto fully describes the services to be offered to the Client by NDC. In performing the requested services, NDC shall consult with public stake holders, architects, engineers, contractors and the Client and shall meet, as appropriate, with such representatives or other entities when necessary, including without limitation State and Federal officials and other local organizations.

II. DURATION, TERMINATION

NDC agrees to commence work for the Client effective as of February, 2013 subject to approval by the City of Port Arthur, Texas and shall continue providing development services until project completion. Either party may, at any time, terminate this Agreement with or without cause by sending written notice to the other party, in which event this Agreement shall be terminated effective 30 days after receipt of such notice.

III. COMPENSATION

The Client shall compensate NDC for performance of services received hereunder in the amount not to exceed \$40,000 as follows:

1. \$10,000 at 25% of the completion of the Project.
2. \$10,000 at 50% of the completion of the Project.
3. \$10,000 at 75% of the completion of the Project.
4. \$10,000 at 100% of the completion of the Project (certificate of occupancy)

The Client will also be compensated for any unpaid amounts from prior installments, if any, at project completion. This amount includes all of NDC's time, travel expenses, supplies, postage, telephone, and other similar expenses. As an independent contractor, NDC is responsible for all taxes and other benefits of the employees of NDC and nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Client and the NDC. Payment by the Client for services rendered under this Development Services Agreement evidences Clients' acceptance of such services in accordance with the terms of the Agreement.

PAEDC will be paying 100% of the contract price. The project needs to be primarily projects consistent with the authority and limits of the PAEDC.

IV. MISCELLANEOUS PROVISIONS

4.1 Ownership of Material and Documents. All final reports and other materials prepared by NDC for the Client shall be the property of Clients, however all work papers and other source materials shall be the property of the NDC. NDC shall deliver such materials to Client in accordance with the terms and conditions of this Agreement. Client shall not, without NDC's written consent, associate NDC's name with the report\product, if a subsequent change is made in such report\product after submission to Client.

4.2 Right to Audit. NDC shall establish and maintain appropriate procedures which will assure the proper accounting of all funds paid to it under this Agreement. The Client or any of its duly authorized representatives shall have access to any books, documents, papers and records of NDC and/or its subcontractors which are directly pertinent to a specific program for the purpose of making an audit, an examination, excerpts and transcriptions. All such books and records shall be retained for such periods of time as required by law, provided, however; notwithstanding any shorter periods of retention, all books, records and supporting details shall be retained for a period of at least three (3) years after the expiration of the term of this Agreement.

4.3 Confidentiality of Reports. NDC shall keep confidential all reports, information and data given to, prepared or assembled by NDC pursuant to NDC's performance hereunder and the Client designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the Client first obtained.

4.4 Equal Opportunity. NDC shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and of the rules, regulations and relevant order of the Secretary of Labor regarding discrimination.

4.5 Conflicts of Interest. No board member, officer or employee of the Client or its designees or agents, and no other public official who exercises any functions or responsibilities with respect to any requested development services, shall be permitted to financially benefit from this Agreement or have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

4.6 Notices. All notices shall be sent by certified mail, hand-delivery or overnight mail and in all events with a written acknowledgment of receipt to the address set forth at the beginning of this Agreement.

4.7 Release of News Information. No news release, including photographs, public announcements or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of the NDC and PAEDC.

4.8 Compliance with Laws. NDC agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. This Agreement shall be construed, interpreted and the rights of the parties determined, in accordance with the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

4.9 Assignment. Neither this Agreement nor any rights, duties, or obligations described herein may be assigned by either party without the prior expressed written consent of the other party.

4.10 Severability. A determination that any part of this Agreement is invalid shall not invalidate or impair the force of the remainder of this Agreement.

4.11 Dispute Resolution. If both parties agree, any disputes or claims under this Agreement shall be submitted to arbitration in a manner provided under the Commercial Arbitration Rules of the American Arbitration Association then in effect, such arbitration to be conducted before three arbitrators chosen in accordance with the rules of the State of Texas and shall be binding on the parties.

4.12 Entire Agreement. This Agreement contains the final agreement between the parties regarding the matters covered and supersedes any and all other agreement, either oral in writing, regarding the matters contained herein.

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

Approved as to form:

Guy Goodson,
General Counsel for PAEDC

CLIENTS:

City of Port Arthur Section 4A
Economic Development Corporation

By: _____
President

Date: _____

By: _____
Secretary

Date: _____

NDC:

National Development Council

By: _____
Robert W. Davenport, President

Date: _____

EXHIBIT A

501 PROCTER ST. NDC DEVELOPMENT SERVICES AGREEMENT SCOPE OF SERVICES

NDC will provide development services to the Port Arthur Economic Development Corporation (PAEDC) in the pre-development and rehabilitation of the commercial structure at 501 Procter St.

This Scope of Services describes the services available under this Development Services Agreement during the specified contract period. The Client and NDC by mutual agreement may revise this Scope. The Chief Executive Officer of the PAEDC will direct NDC's activities and determine which services will be rendered by NDC, based on the direction from the PAEDC Board. Payment by the Client evidences the Client's acceptance of the assistance provided under this Agreement. The assistance offered includes:

1. NDC will manage the development process of 501 Procter St. in a manner that provides local (City of Port Arthur and Jefferson County) businesses, contractors, subcontractors, material men and other suppliers with information regarding the planned construction contract, subcontract, goods and services to be procured and encourages Port Arthur business participation in the project. NDC will oversee the development process of the rehabilitation of the building owned by the PAEDC located at 501 Procter Street. The following services will be provided:
 - a. Review and provide recommendations to the PAEDC as to engineering surveys, plans, and specification.
 - b. Work with the Architect to prepare a construction budget. NDC will also review said construction budget and make recommendations to PAEDC regarding any necessary medications as needed.
 - c. Develop a Request for Proposals for the construction of the building. The RFP will follow all guidelines in Section 252.043 of the Texas Local Government Code, as it pertains to the best value.
 - d. Provide the PAEDC assistance in drafting all proposed contracts, financing commitments, surveys, budgets, plans and specifications, and other items requested.
 - e. Work with the Architect to review the RFP and make a recommendation to the PAEDC on the final selection of a general contractor.
 - f. Once a General Contractor is selected by the PAEDC Board, said contract will be provided to the Port Arthur City Council for approval.

- g. Assist the PAEDC in the management and review of general administration and supervision of the construction of the Project:
 - 1. administration and supervision of the activities of the Contractor and all other contractors, subcontractors, and others employed in connection with the construction of the Project;
 - 2. Preparation of construction schedules;
 - 3. Periodic inspection of construction in progress, including but not limited to inspection at completion for defects in construction and to assure compliance with the Plans and Specification, and supervision of correction of any and all deficiencies;
 - 4. Assist the Architect in the preparation of payment applications for progress made by any contractor.
- h. Assist the Architect in managing documents necessary for the completion of the construction of the Project. Prior to the release of funds to any contractor, NDC and the Architect must provide written approval of any payment request. Payment request must then be approved by the PAEDC Board for final processing of payment.
- j. Cause the Project to be completed on or before a target completion date:
 - (i) the Plan and Specifications;
 - (ii) all obligations of the Client under any documents executed by the Client under the Loan Documents; and
 - (iii) all municipal, state, and other government laws, ordinances, and regulations governing the construction of the Project.
- k. Cause to be maintained builders risk, contractor's liability; and workers' compensation insurance required by law or by the Limited Partner with the Client.
- l. Manage and review separate projects accounts and cost records and prepare and furnish upon request financial and progress reports and statements with respect to construction of the Project.
- m. Make available to the Client upon request copies of all contracts and subcontracts.
- n. All third party costs associated with the Project are the responsibility of the Client.