

RESOLUTION NO. 13-411

**A RESOLUTION AUTHORIZING PAYMENT OF A DEPOSIT OF \$25,000.00 TO HEDC NEW MARKETS, INC. FOR THE NEW MARKETS TAX CREDIT FINANCING FOR THE REDEVELOPMENT OF THE OLD FIRST NATIONAL BANK BUILDING (501 PROCTER STREET). FUNDS AVAILABLE IN ACCOUNT NO.120-1429-582-54.00.**

**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 that promotes 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 PAEDC to pursue the building development plan to retrofit the building located at 501 Procter Street (the "Project"); and

**WHEREAS**, HEDC New Markets, Inc. ("HEDC") is the New Market Tax Credit ("NMTC") portion of the National Development Council; and

**WHEREAS**, HEDC and NDC New Markets Investments, LXXX, LLC, has proposed to sub-allocate approximately \$5,500,000 of the NMTC authority in support of the redevelopment of the Project by PAEDC; and

**WHEREAS**, in consideration for the NMTC allocation, a deposit in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) is required to be used towards preliminary legal and accounting services as part of the underwriting and closing of this investment by HEDC; and

**WHEREAS**, on September 9, 2013, the PAEDC Board of Directors at its regularly scheduled meeting will take action to approve the payment of this deposit with HEDC in an amount equal to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) as specified in **Exhibit “A”**; and

**WHEREAS**, the deposit of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) will not increase the amount of the Project.

**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 PAEDC to deposit with HEDC an amount equal to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) to be used towards preliminary legal and accounting reviews as part of the underwriting and closing of this New Market Tax Credit transaction by HEDC as specified in **Exhibit “A”**.

**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 3<sup>rd</sup> day of September A.D., 2013, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

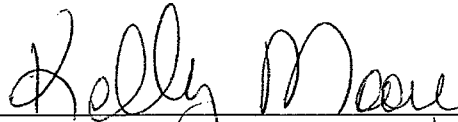
AYES:

Mayor Prince  
Councilmembers Scott, Segler, Albright, Tray, Lewis  
and Thomas

NOES: Mayor Pro Tem Williamson

Deloris Prince  
Deloris “Bobbie” Prince, Mayor


ATTEST:

  
\_\_\_\_\_  
Sherri Bellard, City Secretary on behalf of

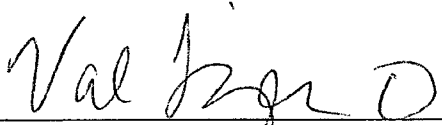
APPROVED:

  
\_\_\_\_\_  
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:

  
\_\_\_\_\_  
Deborah Echols, Finance Director

# **Exhibit “A”**

# **HEDC New Markets, Inc.**

Mr. Floyd Batiste  
Port Arthur Economic Development Corporation  
4173 39<sup>th</sup> Street  
Port Arthur Texas 77642

RE: Reservation of NMTC Allocation for the Port Arthur Economic Development Corporation –  
Downtown Development Project

Dear Mr. Batiste:

HEDC New Markets Inc. (“HEDC”) and NDC New Markets Investments, LXXX, LLC (Sub-CDE), are pleased to provide this reservation letter, which describes certain key terms and conditions pursuant to which it proposes to sub-allocate up to \$5,500,000 of the New Markets Tax Credit (“NMTC”) authority in support of the development of the project described below by City of Port Arthur Section 4A Economic Development Corporation (“sponsor”). This reservation is subject to necessary approvals by the HEDC Investment Committee and the other conditions set forth in this letter.

## **Project Description**

The Port Arthur Economic Development Corporation is planning on renovating the historic Port Arthur Savings Building located at 501 Procter Street in downtown Port Arthur Texas into new office space for the Port Arthur economic Development Corporation and other tenants. Downtown Port Arthur has seen significant decline over the past several decades as businesses and residents have moved out of the downtown. This has left many abandoned and vacant properties in the area, mostly in disrepair, creating a climate of neglect that hinders new private investment in downtown. The project will be a significant step to increase street traffic and activity in Downtown Port Arthur.

## **Conditions Precedent to Granting Sub Allocation of NMTC Authority**

1. Structure: The NMTC transaction will utilize a “leveraged model” whereby JP Morgan Chase (the “Investor”) is expected to make an equity investment of approximately \$1,758,900 into an Investment Fund (“Investment Fund”). The Port Arthur Economic Development Corporation (“Leveraged Lender”) will provide a leverage loan of approximately \$3,746,100 as a loan to the Investment Fund. The Investment Fund will be 100% owned by the Investor. The Investment Fund will use the combined debt and equity capital to make a Qualified Equity Investment (“QEI”) of \$5,500,000 in Sub-CDE. The Sub CDE will be owned 99.99% by the Investment Fund and .01% by HEDC. In return for its interest in Sub-CDE Investment Fund will receive 100% of the NMTC.

HEDC will suballocate \$5,500,000 of NMTC tax credit authority to Sub-CDE. Sub  
708 Third Avenue – Suite 710, NY, NY 10017 (212) 682-1106 (P) ~ (212) 573-6118 (F)

CDE will utilize the \$5,500,000 QEI to make a \$5,335,000 Qualified Low Income Community Investment ("QLICI") after paying a sub allocation fee equal to 3% of the QEI (\$165,000) to Sub-CDE. The QLICI will be comprised of a \$5,252,500 loan to the eligible Qualified Active Low Income Community Business ("QALICB") and a Loan Loss Reserve of \$82,500, to be held at the Sub CDE.

2. Eligibility/Deeper Distressed criteria- The subject financing is conditioned upon the project being eligible as determined by HEDC under the NMTC regulations and Section 45D of the Internal Revenue Code ("Code") and the Allocation Agreement between HEDC and Community Development Financial Institution Fund ("CDFI"). The project is located in census tract 48245006100 and meets the following distress criteria as defined in the Allocation Agreement.
  - a. Census tracts with one of the following: (a) poverty rates greater than 25%; or (b) if located within a non-Metropolitan Area, median family income that does not exceed 70% of statewide median family income, or if located within a Metropolitan Area, median family income that does not exceed 70% of the greater of the statewide median family income or the Metropolitan Area median family income; or (c) unemployment rates at least 1.25 times the national average.
    - i. Unemployment rate 1.36
  - b. State/local economic zone: Project is located in a local TIF district.

The Sponsor has represented that it is a Qualified Active Low-Income Community Business under Section 45D of the Code and the loans or equity investments will qualify as a Qualified Low-Income Community Investment under Section 45D of the Code.

3. Community Impact- The project is expected to have the following estimated Community Impacts as reportable to CDFI under the Community Investment Impact System (CIIS)
  - a. Permanent Jobs- Retention of 5 FTE's
  - b. Construction Jobs- Estimated 75 part time
  - c. Renovation of a historically significant and currently vacant building
4. Investor and other financing commitments: The Sub-allocation of NMTC authority in support of the Project is conditioned upon a commitment from a NMTC Investor. No later than July 31, 2013 the Sponsor shall submit to HEDC written evidence in the form of a commitment letter or signed term sheet from the Investor evidencing agreement to provide such capital.
5. Leveraged debt financing commitments: No later than July 31, 2013 the Sponsor shall submit to HEDC written evidence in the form of a commitment letter or signed term sheet from the Leveraged Lender(s) evidencing agreement to provide such capital.
6. Closing Conditions and Delivery of Due Diligence: The sponsor shall, in a timely manner, provide such information as shall be requested by HEDC in order to underwrite the feasibility of the project, evaluate its community impact, and ensure its eligibility under NMTC Program. The financing is subject to but not limited to

receipt and legal review and approval of the following closing documentation and due diligence:

- Organizational documents prepared in connection with the formation of the borrower
  - All required environmental reports.
  - Construction budget, plans, and specifications
  - Executed standard AIA guaranteed maximum price construction contract
  - Financial statements from all parties providing guarantees
  - Legal opinions as required by transaction participants
  - Satisfaction of any additional requirements of tax credit investor or leverage lender as outlined in their respective commitment letter and/or term sheets.
  - Agreed Upon Procedures prepared by a firm acceptable to CDE
  - Completion of HEDC “Project Information Worksheet” and “Community Impacts Survey” that includes project and loan data necessary to comply with Community Investment Impact System (CIIS) as required by the CDFI Fund
7. Approvals: The reservation of HEDC NMTC investment authority was approved by HEDC’s Investment Committee on May 29, 2013.
8. Timing: the sub-allocation of NMTC investment authority in support of the Project is conditioned upon closing the New Markets Tax Credit transaction based on terms and conditions acceptable to HEDC by August 31, 2013 (“The closing date”)

### **HEDC Fees and Expenses**

HEDC is entitled to certain fees as follows:

- **Sub-Allocation Fee** –A fee equal to 3% of the Qualified Equity Investment (QEI) paid at Initial closing.
- **Annual Asset Management Fee** -- Asset management fee of 35 basis points of the QEI per annum paid from QALICB restricted reserve fund in accordance with the Loan Administration Agreement executed by and between CDE, Sub-CDE and QALICB. Funds will be drawn quarterly.
- **Audit Reserve** -- Annual audit costs will be the responsibility of the CDE. A reserve deposit of \$80,000 will be made at closing with QLICI proceeds to a restricted account at the borrower in an amount sufficient to cover audit costs for the full compliance period. Funds will be drawn annually and used towards actual CDE audit costs. If actual audit costs are in excess of the budgeted reserve the difference will be billed to the QALICB.
- **Community Reinvestment Fee** -- The fee shall be equal to 1.5% of the QEI. Fees will be used to Capitalize HEDC New Markets Reinvestment Fund, a dedicated source of funds designed to provide grants or subsidized services to underserved communities and projects nationwide. The fee will be structured as a lump sum principal payment on the QLICI loans due at the end of the compliance period.

**Third Party Deposit**

A \$25,000 deposit is required to be used towards preliminary legal and accounting reviews and any other third party costs incurred as part of the underwriting and closing of this investment as may be required by HEDC. All fees associated with the underwriting and closing of this transaction are the responsibility of the QALICB whether the transaction closes or not. Any funds not expended or obligated for services incurred shall be refunded to the QALICB in the event the transaction does not close.

**Exclusive Right :** The sponsor hereby grants HEDC the exclusive right to sub-allocate the NMTC investment authority described above in support of the project for a period commencing on the date of this August 30, 2013.

**Termination of Reservation:** In the event the project fails to close before The Closing Date or otherwise fails to meet any of the terms and conditions contained in this reservation letter, HEDC reserves the right, in its sole discretion, to terminate this reservation. Notwithstanding any provision to the contrary contained herein, the Sponsor shall remain liable for any third-party legal and consulting fees incurred by HEDC in connection with the transaction. This reservation shall not be construed as limiting HEDC's right at any time to conduct discussions with third parties regarding alternate qualified low-income community investments that HEDC may wish to pursue in the event that the transaction fails to close on or before The Closing Date.

**Acceptance of Reservation:** If the terms and conditions of this reservation Letter are acceptable, please countersign this letter where indicated below and return a copy to my attention. This Reservation letter shall expire within seven days of issuance, unless a countersigned copy of this letter is executed and delivered on or prior to such date. The original copy of this letter and the deposit (upon approval of the reservation of NMTCs by HEDC Investment Committee) should be sent via overnight mail to (NDC New York Office), Attention: Eric Tejada.

Sincerely,



Robert W. Davenport  
Chairman  
HEDC New Markets, Inc.  
708 Third Avenue, Suite 710  
New York, NY 10017

The foregoing is hereby agreed to and confirmed on \_\_\_\_\_.



Sponsor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_