

RESOLUTION NO. 18-503

A RESOLUTION APPROVING A TECHNICAL ASSISTANCE AGREEMENT BETWEEN THE CITY OF PORT ARTHUR, TEXAS, THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND NATIONAL DEVELOPMENT COUNCIL FOR THE PERIOD OF NOVEMBER 30, 2018 THROUGH NOVEMBER 29, 2019 IN AN AMOUNT NOT TO EXCEED \$72,000; ACCOUNT NO.120-1429-582.54-11

WHEREAS, the City Council for the City of Port Arthur, Texas (the "City") has approved various Technical Assistance Agreements between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and the National Development Council ("NDC"); and

WHEREAS, the PAEDC Board of Directors reviewed the scope of work, the performance of services and technical assistance that NDC has provided for the preceding twelve (12) months and has determined that NDC has met its obligations; and

WHEREAS, the PAEDC Board of Directors approved entering into a new agreement that will be effective from November 30, 2018 through November 29, 2019, in substantially the same form attached hereto as **Exhibit "A"** at their regular meeting on November 5, 2018; and

WHEREAS, compensation to NDC for performance of the services listed in **Exhibit "A"** is \$6,000 per month, not to exceed \$72,000 per year; and

WHEREAS, the PAEDC Board of Directors has requested the approval and execution of the Agreement by the City.

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 Agreement between the City, PAEDC and NDC is approved in substantially the same form attached hereto as **Exhibit "A"** and shall be effective for the twelve (12) month period from November 30, 2018 through November 29, 2019.

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 20th day of Nov A.D., 2018, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Freeman; Mayor Pro Tem Kinlaw,

Councilmembers Scott, Jones, Moses and Frank,

NOES: None.


Derrick Freeman, Mayor

ATTEST:


Sherri Bellard, City Secretary

APPROVED:



Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Guy N. Goodson", written over a horizontal line.

Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Valecia R. Tizeno", written over a horizontal line.

Valecia R. Tizeno, City Attorney

Exhibit “A”

TECHNICAL ASSISTANCE AGREEMENT

This Technical Assistance Agreement is made and entered into this ____ day of November 2018, by and between City of Port Arthur, Texas (the "**City**"), a municipal corporation and the Port Arthur Section 4A Economic Development Corporation (hereinafter called "**the client**"), a non-profit corporation, whose address is 501 Procter Street, Suite 100, Port Arthur, Texas 77640 (hereinafter called "Clients") 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 1 Battery Park Plaza, Suite 710, New York, NY 10004 (hereinafter called "NDC").

WITNESSETH:

WHEREAS, the Clients have determined that they need the professional services of an advisor to work with the Clients to assist them in achieving the public goals of developing and implementing community and economic programs, and

WHEREAS, NDC is willing to provide, on such terms and conditions as are hereinafter provided, technical assistance to the Clients utilizing its expertise in economic and community development activities.

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

I. SCOPE OF SERVICES

The Clients acknowledge 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 Clients with assistance they have requested which is generally described as technical assistance and professional services. NDC agrees to perform such services as are requested from time to time by Clients 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 Clients by NDC. In performing the requested services, NDC shall consult with officers and employees of the Clients 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 Clients effective November 30, 2018 and shall continue providing technical assistance for twelve months. 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 Clients shall compensate NDC for performance of services received hereunder in the amount of \$6,000 per month, not to exceed \$72,000 per year. 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 Clients and the NDC. Payment by the Clients for services rendered under this Technical Assistance 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 projects need 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 Clients 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 Clients in accordance with the terms and conditions of this Agreement. Clients 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 Clients.

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. Clients or any of their 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 Clients designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of Clients 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 Clients or their designees or agents, and no other public official who exercises any functions or responsibilities with respect to any requested technical assistance, 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 over night mail and in all events with a written acknowledgment of receipt to the address set forth at the beginning of this Agreement.

4.7 Responsibility for Claims:

- a. Clients will indemnify and hold harmless NDC, its directors, officers, agents, representatives, contractors, and employees against any and all claims, demands, or causes of action, and all costs,

losses, liabilities, expenses, and judgment incurred in connection therewith, including reasonable attorney's fees and court costs, brought by any of Clients' employees or representatives or by any

third party, based upon, in connection with, resulting from, or arising out of NDC's actions or inactions under this Agreement or Clients' use of the Services; provided, however, that Clients' contractual obligations of indemnification shall not extend to the consequences of NDC's negligence or other fault. The City of Port Arthur will only indemnify NDC to the extent of its liability limits under the Texas Tort Claims Act.

b. Conversely, NDC agrees to indemnify and hold harmless Clients, their directors, officers, agents, contractors, representatives, and employees against any and all claims, demands, or causes of action and all costs, losses, liabilities, expenses, and judgments incurred in connection therewith, including reasonable attorney's fees and court costs, brought by any of NDC's employees or representatives or by any third party, based upon, in connection with, resulting from, or arising out of NDC's actions or inactions under this Agreement; provided, however, NDC's contractual obligation of indemnification shall not extend to the consequences of Clients' negligence or other fault.

4.8 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.

4.9 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.

4.10 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.

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

4.12 Dispute Resolution. If all three 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.

4.13 Additional Provisions. Any one of the parties may require additional provisions which will govern the agreement between the parties by attaching hereto such additional provisions as Exhibit "B".

4.14 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.

4.15 Disclaimer. The Client is a sophisticated business enterprise and has retained NDC for the purposes set forth in this Agreement and the parties acknowledge and agree that their respective rights and

obligations are contractual in nature. Each party disclaims an intention to impose fiduciary agency rights or obligations on the other by virtue of the engagement hereunder.

Standard disclaimer regarding NDC's compliance with Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and amended Section 15B of the Securities and Exchange Act of 1934 ("Exchange Act")

The National Development Council is not a Registered Municipal Advisor as defined in Dodd-Frank and the Exchange Act and therefore cannot provide advice to a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including structure, timing, terms or other similar matters concerning such financial products or issues.

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:

Valencia Tizeno, City Attorney

Guy Goodson, General Counsel for PAEDC

CLIENTS:

City of Port Arthur Section 4A
Economic Development Corporation

By: _____
President

By: _____
Secretary

City of Port Arthur, Texas

By: _____
Floyd Batiste, City Manager

NDC:

National Development Council

By: _____
Daniel Marsh III

Date: _____

**NDC TECHNICAL ASSISTANCE AGREEMENT
SCOPE OF SERVICES
EXHIBIT A**

To promote redevelopment within the community, Clients are undertaking a variety of community and economic development projects. NDC will provide technical assistance to Clients in reviewing, structuring and financing these projects during pre-development and project development.

This Scope of Services describes the assistance available under this Technical Assistance Agreement during the specified contract period. The Clients 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 and the Port Arthur City Council. Payment by the Clients evidences the Clients' acceptance of the assistance provided under this Agreement. The assistance offered includes:

1. NDC will review and evaluate projects being considered by Clients for community and economic development assistance. This may include, as directed:
 - < evaluating sponsor/developer experience and capacity
 - < financial review and structuring
 - < review of appraisals, cost assumptions, capital budgets, operating statements, marketing data and other funding commitments
 - < advising on tax credit equity sources, requirements and structuring
 - < identifying other funding sources when required
 - < assisting with development issues during pre-development and development
 - < structuring loan documents and development agreements
 - < advising on program regulation issues
2. NDC will provide technical support and/or financial analysis of economic and/or housing development program proposals as periodically referred by staff.
3. NDC will review, as directed, Client established economic development and/or housing development programs, including:
 - < program goals
 - < eligibility criteria
 - < underwriting guidelines
 - < program documents
 - < internal administration of application and approval process

4. NDC will, at the direction of Clients, assist in obtaining HOME, 108, CDBG and Float financing.
5. NDC will provide technical assistance and advocacy in Clients' efforts to seek awards of governmental monies and approval of various programs.
6. NDC will, at Clients' direction, provide up to 2 days of in-house staff training from its existing course curriculum in economic and/or housing development finance.
7. NDC may, at Clients' direction and under certain conditions, provide financing and development assistance through its non-profit development affiliate NDC Housing and Economic Development Corporation (HEDC) and its economic development bank Grow America Fund (GAF). HEDC and GAF can provide:
 - < equity for historic rehabilitation and low income housing tax credit projects through the NDC Corporate Equity Fund, L.P.
 - < HEDC can act as non-profit sponsor/developer for certain affordable housing, public purpose and economic development projects
 - < small business loans for cities participating in GAF