

AGREEMENT BY AND BETWEEN
CITY OF OLYMPIA, WASHINGTON
AND
NATIONAL DEVELOPMENT COUNCIL
REGARDING
COMMUNITY AND ECONOMIC DEVELOPMENT ADVISEMENT

This Agreement is made and entered into this ___ day of _____ 2013, by and between the **City of Olympia, Washington**, a public benefit corporation whose address is **601 4th Avenue, E., Olympia, Washington 98507** (the "Client") and **NATIONAL DEVELOPMENT COUNCIL** ("NDC" or the "Contractor"), 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,

WITNESSETH THAT:

WHEREAS, the Client desires to receive professional services from NDC to develop and assist in the implementation of the Client's community and economic development programs;

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

WHEREAS, the activities to be carried out under this agreement are eligible program delivery activities under the Community Development Block Grant (CDBG) program regulations 24 CFR Sections 570.201 and 570.205.

NOW THEREFORE, in consideration of the above-mentioned premises and of the mutual covenants contained herein, the parties hereto agree as follows:

I. SCOPE OF SERVICES

The Client acknowledges that NDC regularly performs services for various governmental agencies and public benefit corporations located across the United States. The purpose of this Agreement is to set forth the terms upon which NDC will provide the Client with assistance it has requested, which is generally described as Exhibit A attached hereto. NDC agrees to perform such services as are requested by the 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 officers and employees of 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 August 15, 2013 and shall continue providing technical assistance for an expected period of twelve (12) months. The actual completion date will be based on NDC completing the services set forth in Exhibits A and B. Upon final payment, as set forth in Section III, this Agreement will be complete. 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 thirty (30) days after receipt of such notice.

III. COMPENSATION

The Client shall compensate NDC for performance of services received hereunder in the total amount of **Sixty Thousand and No/100 Dollars (\$60,000.00)**, payable in monthly installments of **Five Thousand and No/100 Dollars (\$5,000.00)** per month. The final installment payment of \$5,000 will be withheld by the Client until the provision of all services set forth in Exhibits A and B have been completed. The base fee 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 Agreement evidences the Client's acceptance of such services in accordance with the terms of this Agreement.

IV. MISCELLANEOUS PROVISIONS

- 4.1 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 Client designates in writing as confidential. Such information shall not be made available to any person, firm, corporation or entity without first obtaining the prior written consent of Client unless otherwise mandated by applicable law.
- 4.2 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. In the event a party is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of

federal, state, or local law, this Agreement may be cancelled, terminated or suspended in whole or in part by the Client, and that party may be declared ineligible for further Client contracts.

- 4.3 Conflicts of Interest.** No board member, officer or employee of Client or its 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.
- 4.4 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.
- 4.5 Responsibility for Claims-Mutual Indemnification.** Client agrees to indemnify and save harmless NDC, their agents, officials, and employees from any liability, damage, expense, cause of action, suit, claim, judgment or expenses (including attorneys' fees) arising from injury to person, including death or personal property or otherwise, caused by or resulting from the activities in furtherance of the work described herein. NDC agrees that such indemnity shall not apply to any actions, claims or damages arising as a result of NDC's bad faith, willful misconduct, gross negligence, or negligence. NDC agrees to indemnify and save harmless Client, their agents, officials, and employees from any liability, damage, expense, cause of action, suit, claim, judgment or expenses (including attorneys' fees) arising from injury to person, including death or personal property or otherwise, caused by or resulting from the activities in furtherance of the work described herein. Client agrees that such indemnity shall not apply to any actions, claims or damages arising as a result of Client's bad faith, willful misconduct, gross negligence, or negligence. Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs, and the indemnification and agreement to defend and hold harmless contained herein expressly includes any and all claims by employees, subcontractors, and assignees of Contractor or for which Contractor would otherwise have immunity under the Worker's Compensation Act or any similar law in the absence of Contractor's waiver of such immunity herein. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.

- 4.6 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 Client.
- 4.7 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 Washington
- 4.8 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.
- 4.9 Severability.** A determination that any part of this Agreement is invalid shall not invalidate or impair the force of the remainder of this Agreement.
- 4.10 Acknowledgement.** The Client expressly acknowledges that all opinions and advice (written or oral) given by NDC to the Client in connection with NDC's engagement are intended solely for the benefit and use of the Client considering the financing and the Client agrees that no such opinion or advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time without the prior consent of NDC, unless or to the extent that Client may be required by law to take such actions.
- 4.11 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.
- 4.12 Independent Contractor/Conflict of Interest.** It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized

that Contractor may be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

4.13 Insurance. The Contractor shall carry, as a minimum, the following insurance in such forms and with a carrier rated A.M. Best "A:VII":

4.13.1 Workers' Compensation. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

4.13.2 Commercial General Liability Insurance. Commercial general liability insurance with limits of liability not less than \$1,000,000 per occurrence, and \$2,000,000 in the general aggregate, for bodily injury, including personal injury or death, products liability and property damage. The commercial general liability insurance shall also include the following coverages:

- Products and Completed Operations Liability;
- Automobile liability, including coverage for owned, non-owned, leased or hired vehicles;
- Stop Gap or Employers Contingent Liability

4.13.3 Automobile Liability Insurance. Automobile liability insurance with a combined single limit of liability not less than \$1,000,000 for bodily injury (including personal injury or death) and property damage.

4.13.4 Professional Liability Insurance. Professional liability insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limits, for damages sustained by reason of or in the course of operation under this Agreement, whether occurring by reason of acts, errors or omissions of the Contractor.

4.13.5 Certificates of Insurance. The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s). The insurance provided to the additional insured shall be primary. Contractor shall provide certificates of insurance and an Additional Insured endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the

Term of this Agreement, except after forty-five (45) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

Insurance Limits. The insurance limits stated above are not intended to be an indication of exposure nor are they limitations on indemnification.

4.13.6 Expiration/Termination of Insurance. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination

4.14 Venue. All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Thurston County, Washington, Superior Court.

4.15 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.

4.16 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

4.17 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

4.18 Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

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

CITY OF OLYMPIA:

NATIONAL DEVELOPMENT COUNCIL:

By: _____
Steve Hall, City Manager

By: _____
Robert W. Davenport, President

(360) 753-8447

Telephone

Shall@ci.olympia.wa.us

E-mail

APPROVED AS TO FORM:



CITY ATTORNEY

NDC TECHNICAL ASSISTANCE AGREEMENT
SCOPE OF SERVICES
EXHIBIT A

The Scope of Services describes the assistance available under this Technical Assistance Agreement during the specified contract period. The Client and NDC, by mutual agreement, may revise this Scope of Services from time to time. The assistance within this Scope of Services includes:

- A. Assist City in identifying and screening potential project options for eligibility under the HUD Section 108 Loan Guarantee program.
- B. Provide program and financial underwriting technical assistance in the review of project specific applications under the approved Section 108 Loan Fund.
- C. Advise and provide recommendations on financial feasibility and structuring financing participation, including but not limited to advising on: key loan terms, funding requirements, conditions of approval, program compliance requirements and monitoring, conditions to funding, monitoring and disbursement during construction, performance review and project close-out requirements following construction.
- D. Prepare underwriting analysis and structuring memo for Staff and Council consideration.
- E. Assist Staff in amendment to 1-year Action Plan and implementing Citizen Participation Process as required by HUD Section 108 program. Provide staff support in public meeting presentation and plan amendment process (in accordance with application requirements). Provide support and materials needed to brief Client and stakeholders.
- F. Prepare draft and final project specific application narrative for submittal to HUD Field Office and provide coordination in responses during review.
- G. Upon Recommendation for Approval from HUD Field Office, provide coordination between HUD counsel and City legal counsel during loan documentation phase.
- H. Assist staff in confirming required conditions have been met prior to Loan Closing and Funding.
- I. Provide technical support in establishing compliance monitoring system specific to project.

NDC TECHNICAL ASSISTANCE AGREEMENT
EXHIBIT B
TENTATIVE TIMELINE

Below is an estimated timeline. Consultant agrees to make every reasonable effort to complete activities within this timeframe but makes no guarantee that such timeline can be met. The activities and target dates below are dependent on Contract Execution by April 15, 2013, and further dependent on timely responses to requests for information from Client and project borrower(s) and timely review and response from HUD.

TASK	Deliverable	Timeframe
1. Project Identification/Potential Project Review	Meetings, Eligibility analysis (verbal or written)	8/15/13 – 10/15/13 (as needed)
2. Underwriting analysis on selected project(s)	Underwriting Analysis & Structuring Memo	8/15/13 – 11/31/13 (as needed)
3. Assist in 1-yr Action Plan Amendment and Citizen Participation process activities required prior to application submittal	Draft Plan Amendments, support for staff report	As determined
4. Prepare draft and final Project-Specific application narrative(s) for HUD Field Office submittal	Narrative & required attachments	As determined
5. Manage City responses to HUD Field Office review process.	Status update reports to Client during application review / meetings or phone conferences as applicable	As determined
6. Provide coordination with HUD counsel in loan documentation phase	Coordination calls/loan terms/meetings as appropriate	Estimated February-June
7. Coordination in loan closing & funding	On-call assistance during closing process	June 2014