

**AGREEMENT BY AND BETWEEN
NEW BRAUNFELS ECONOMIC DEVELOPMENT CORPORATION
AND
NATIONAL DEVELOPMENT COUNCIL
REGARDING
COMMUNITY AND ECONOMIC DEVELOPMENT ADVISEMENT**

This Agreement is made and entered into this ____ day of _____ 2019, by and between the **CITY OF NEW BRAUNFELS**, a Texas municipal corporation whose address is 550 LANDA STREET, NEW BRAUNFELS, TEXAS 78130 (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 One Battery Park Plaza, 24 Whitehall Street Suite 710, New York, New York 10004,

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.

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 February 1, 2019, and shall continue providing technical assistance for eight (8) 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 Client shall compensate NDC for performance of services received hereunder in the total amount of Forty thousand dollars (\$40,000) for the initial term of the agreement, payable in monthly installments of Five Thousand Dollars (\$5,000) per month. The monthly 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 overnight 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 or gross 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 or gross negligence.
- 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 Texas.
- 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.
- 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. The Contractor 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.
- 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.

NEW BRAUNFELS ECONOMIC DEVELOPMENT CORPORATION:

NATIONAL DEVELOPMENT COUNCIL:

By: _____

By: _____
Daniel Marsh III, President

Title: _____

Name _____

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. NDC shall provide a minimum of two (2) days per month of on-site technical assistance to the Client in the areas defined in this Exhibit. Off-site technical assistance will be made available to the Client as requested via email, phone, facsimile or other means between on-site engagements.
- B. NDC shall provide technical assistance to the Client in the design, implementation, and monitoring of the financing elements of the Client's economic, housing and small business development plans for specific projects and redevelopment areas as identified by the Client. Specifically, NDC shall cause to be created timely term sheets upon request from Client and to work with Client legal staff to draft and distribute agreements between Client and other interested parties.
- C. At the Client's request, NDC will review and evaluate projects being considered by the Client for community and economic development assistance. This technical assistance may include, but is not limited to:
 - a. Evaluating developer experience and capacity.
 - b. Financial review of the sources and uses, operating proformas, and financial statements for proposed projects.
 - c. Structuring of deals with available public sector economic, housing and small business development programs.
 - d. Review of appraisals, cost assumptions, capital budgets, operating statements, marketing data and other funding commitments.
 - e. Advising on tax credit equity sources, requirements and structuring
 - f. Identifying other funding sources for the range of commercial, industrial, and residential real estate and business credit deals prioritized by the Client.
 - g. Assisting with development issues during pre-development and development phases.
 - h. Advising on program regulations issues.
- D. NDC will provide technical support and financial analysis to the Client with respect to its existing and proposed economic and housing development programs. Such assistance and analysis may include, but is not limited to:
 - a. Reviewing program compatibility with other private and public financing programs.
 - b. Recommending revisions to the program to increase its ability to leverage additional private, federal, state and philanthropic resources.
 - c. Identifying issues associated with the application, review, underwriting and compliance monitoring on programs that could improve their effectiveness in meeting the Client's development goals and objectives.

- E. NDC will provide technical assistance and advocacy in the Client's efforts to seek funding or to leverage existing resources through federal, state and local governmental programs including, but not limited to:
 - a. Community Development Block Grant (CDBG) program
 - b. HOME Investment Partnership program
 - c. HUD Section 108 loans, including Brownfields Economic Development Initiative (BEDI) grants
 - d. U.S. Department of Commerce Economic Development Administration (EDA)
 - e. U.S. Environmental Protection Agency (EPA) Brownfields Program, including Targeted Assessments, Supplemental Pilot Program, and Brownfields Revolving Loan Fund
 - f. U.S. Small Business Administration 7(a), 504, and Microenterprise programs
 - g. New Markets Tax Credits Program
 - h. Federal Home Loan Bank Community Investment Program
 - i. Rehabilitation Tax Credits (Historic Tax Credits)
 - j. Low-Income Housing Tax Credits (LIHTC)

- F. The Contractor shall provide additional assistance to the Client when requested to:
 - a. Attend meetings with developers, private lenders, Federal and State officials and others.
 - b. Work with State and Federal officials to insure their continued support and assistance to the City's programs and projects.
 - c. Assist in modification of grant agreements and loan documentation as well as work to insure approval of such modifications by authorizing agencies.
 - d. Assist in the negotiations of terms and repayments on financing programs.
 - e. Inform staff of changes in Federal and State programs in a timely fashion.

- G. Technical Assistance is defined to also include training in the development of financing tools, financing analysis skills, loan programs and packaging requirements in both housing and economic development with the goal of building the capacity of the Client's staff to analyze projects and utilize public and private financing tools.

- H. Assistance to the Client in marketing, developing and maintaining the commitment of lending institutions, developers, federal state and local government officials and community groups to the Client's redevelopment plans and/or specific projects. Assistance shall include but not be limited to the following, upon request:
 - a. Attend briefings with lending institutions and potential applicants to explain the Client's economic development, small business and housing financing programs.
 - b. Make formal presentations to professional organizations of lending institutions, lawyers, accountants, architects, developers, etc.
 - c. Attend other meetings and conduct other presentations (including preparation of necessary presentation materials) as requested by the Client.

- I. Where applicable and upon request by the Client, NDC shall make available to the Client, and/or developers selected by the Client, programs and associated financial products administered by NDC. NDC may assess additional fees for such programs if it is NDC's policy to charge such fees. Such programs may include, but are not limited to:
 - a. SBA 7(a) loan Guarantee Program (Grow American Loan Fund)

- b. Low Income Housing Tax Credit syndication services (Corporate Equity Fund)
 - c. Rehabilitation (Historic) Tax Credit syndication services (Corporate Equity Fund)
 - d. New Markets Tax Credits (Housing and Economic Development Corp.)
 - e. Renewable Energy Production Tax Credit and Loan Guarantee Program
 - f. Distressed Properties Program
- J. NDC will facilitate access to its nationally recognized development finance training for the staff and Councilmembers of the City by:
- a. Developing a two to four hour workshop on public financing tools and gap financing for presentation to members of the City Commission, their staff and other City staff as determined by the City.
 - b. Providing two full (100%) tuition waivers to staff identified by the City for any open training classes offered by NDC. For any of the four five-day courses that comprise NDC's Economic Development Finance Professional (EDFP) certification series, the value of the waived tuition per class would be \$1,375. If shorter, professional development courses are selected, the value would equal \$275 per day of training.
 - c. Providing a 25% discount on NDC training classes in addition to the full discounted on two classes proposed in Section K, Subsection b of this scope of services