



**AGREEMENT BY AND BETWEEN  
CITY OF COLUMBIA  
AND  
NATIONAL DEVELOPMENT COUNCIL  
REGARDING  
PROJECT UNDERWRITING AND LAYERING ANALYSIS**

This Agreement is made and entered into this 22 day of July 2019, by and between the **CITY OF COLUMBIA – COMMUNITY DEVELOPMENT DEPARTMENT** ("Client or CDD"), a municipal corporation with an address of 1225 Lady Street, Suite 201, Columbia, South Carolina 29201 and the **NATIONAL DEVELOPMENT COUNCIL** ("NDC" or the "Contractor"), a New York non-profit corporation and a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, with an address of One Battery Park Plaza, 24 Whitehall Street, Suite 710, New York, New York 10004,.

**WITNESSETH THAT:**

WHEREAS, NDC is the oldest national economic development non-profit with a focus in creating housing, jobs, and communities for our clients. From 1969 to the present, its work has been guided by the overarching mission to deliver capital where it is needed most by assisting clients to leverage available resources for the greatest possible impact.

WHEREAS, NDC works exclusively on behalf of municipalities, local development corporations, and non for profit organizations.

WHEREAS, NDC is uniquely suited to provide consulting services to client because of extensive experience in the field, professional capacity and depth, and a deep knowledge of federal and state resources.

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, specifically the redevelopment of the incorporated City limits of Columbia.

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.

WHEREAS, NDC undertakes its work through two areas of activity focus: capacity building and financing and development, as shown below. In both areas, we bring resources to the implementation side of development projects through either technical assistance or direct capital.

**CAPACITY**

**Technical Assistance**



**Technical Assistance** – NDC field directors help define, design and execute development and business finance initiatives

**Training** — NDC instructors teach the skills and knowledge needed to successfully facilitate housing and economic development projects

**Training & Certification**



**FINANCING & DEVELOPMENT**

**Corporate Equity Fund**



**Corporate Equity Fund** - NDC serves as a development partner as well as provides syndicated investments in low income and historic tax credits

**Grow America Fund** – NDC creates jobs through SBA lending that focuses on LMI as well as W/MBE businesses

**Housing & Economic Development Corporation (HEDC)** – A 501(c)3 non-profit affiliate of NDC finances and builds community and public facilities on behalf of our client communities through public-private partnerships and new markets tax credits

**Grow America Fund**



**HEDC**



**I. SCOPE OF SERVICES**

The purpose of this contract and scope of services is to set forth the terms upon which NDC will provide the Client with assistance it has requested, which is generally described below.

NDC's activities generally include project review, financial structuring, project feasibility, and determining the appropriate level of public incentives and funding. NDC will utilize its extensive experience in real estate, economic and community development finance for project applications to be submitted to the City's Community Development Department (CDD) for financial assistance, review applications, analyze financial statements and prepare underwriting and/or layering analysis reports.

In performing the requested services, NDC shall consult with officers and employees of the Client and shall meet and confer with representatives from the Community Development Department and other financial or community stakeholders.

NDC's scope of services related to project underwriting include up to six (6) project applications will need to be reviewed for financial and programmatic underwriting by NDC.

The specific scope of services includes:

1. Review the development program, operating pro forma, capital budget for reasonableness and consistency with both the market and programmatic goals.
2. Determine if both debt and developer equity have been maximized based upon the application of standard underwriting ratios (debt coverage and loan to value) and developer yield expectations (developer fee, cash on cash, yield to cost, and internal rate of return).





3. Review cost estimates and other third- party reports such as appraisal and/or market studies, as appropriate, to determine that the capital budget and operating budget are consistent to other comparable developments in the Columbia market.
4. Review and determine whether other sources of unconventional funding from sources such as community development finance institutions (CDFIs), state and federal agencies, and foundations, among others, have been considered for the capital structure of the development.
5. Review experience and capacity of development team, including developer, contractor, architect/engineer and property manager.
6. Determine the appropriateness of the requests requested of CDD and the right sizing of financial benefits required for financial feasibility.

It is the understanding of NDC that the sources of gap/subsidy funding include:

- CDBG-DR,
- HOME, and
- CDBG
- General Fund

## II. DURATION, RENEWAL, TERMINATION

NDC agrees to commence work on July 1, 2019 through June 30, 2020 for a period of twelve months. The Client may terminate this Agreement for reasonable cause by sending written notice, in which event this Agreement shall be terminated effective 30 days after receipt of such notice, provided however, the Client shall remain obligated for the payment of any past due month fees.

## III. COMPENSATION

The Client shall compensate NDC for performance of services received hereunder for \$7,500 per project. Payment terms are \$4,000 at the initiation of project review and the remaining \$3,500 due at the completion of the written report. The base fee amount includes all 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.

Within and/or after the initial (6) six-month period, the Client and NDC may reconsider a revised contract to include an expanded and/or revised scope of work related to the needs of the City of Columbia, Offices of Community Development and Economic Development.



#### 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.** 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 South Carolina.
- 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 and the parties and partners involved in Client's projects, 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.

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.

- 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. It is mutually understood, between the Client and NDC the scope of work described above may require more than the term of this limited scope contract described above.

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

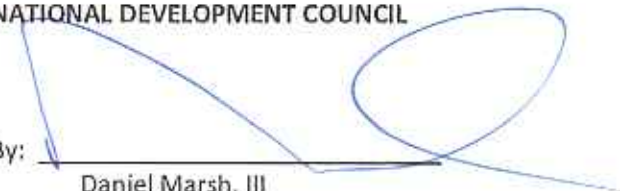


**CITY OF COLUMBIA**

By:   
Teresa Wilson  
City Manager

Date: 8/9/19

**NATIONAL DEVELOPMENT COUNCIL**

By:   
Daniel Marsh, III  
President and CEO

Date: 7/22/19

**APPROVED AS TO FORM**

  
Legal Department City of Columbia, SC