

Contract No. _____

**COOPERATION AGREEMENT FOR THE
FURNISHING OF MANAGEMENT AND ADMINISTRATIVE SERVICES
MATERIALS, AND EQUIPMENT BY THE CITY OF MILWAUKEE
THROUGH ITS DEPARTMENT OF CITY DEVELOPMENT
TO THE NEIGHBORHOOD IMPROVEMENT DEVELOPMENT CORPORATION**

THIS AGREEMENT, effective January 1, 2004, entered into as of the ____ day of _____, 2005, by and between the City of Milwaukee, a Wisconsin municipal corporation ("CITY") and the Neighborhood Improvement Development Corporation, a non-stock, non-profit, membership corporation existing under the laws of the State of Wisconsin ("NIDC");

WITNESSETH THAT:

WHEREAS, the purpose of NIDC is to further the neighborhood preservation and neighborhood development of CITY; and

WHEREAS, CITY, through its Department of City Development ("DCD") is engaged in neighborhood development preservation and revitalization of CITY, has staff with particular expertise in such activities and has resources from various programs, which it administers to provide financial assistance to business enterprises and residential property owners; and

WHEREAS, NIDC and CITY have been engaged in a cooperative effort since the mid-1970's; with CITY providing management and administrative services to NIDC; and

WHEREAS, such cooperative effort has also evidenced itself in CITY choosing to have NIDC administer certain Community Development Block Grant ("CDBG") and other grant funds and various neighborhood revitalization programs; and

WHEREAS, continuation of such cooperative effort is to the mutual benefit of NIDC and CITY in order to achieve the economic development and neighborhood preservation goals of each; and

WHEREAS, NIDC has authorized entering into this Agreement by action taken on _____, and the Common Council of the City of Milwaukee has authorized entering into this Agreement by adoption of Resolution File No. _____, on _____;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1

SCOPE OF SERVICES

1.1 CITY Responsibilities. CITY shall furnish to NIDC the following services:

1.1.1 Financial Assistance. DCD shall provide staff and act as exclusive representative of NIDC for the purpose of administering certain development and grant activities. In so acting, City through DCD shall not assume any liabilities of NIDC, and shall comply in all respects with the requirements of:

- (1) The Housing and Community Development Act;
- (2) Any federal, state, foundation or other funding agency which provides funds to NIDC;
- (3) Any regulations or directives that may be issued from time to time by such agencies; and
- (4) Any operating policies that may be adopted by NIDC.

1.1.2 Definition of Financial Assistance. As used herein, "financial assistance" shall mean such investment functions as are permitted under the Housing and Community Development Act and other appropriate funding legislation and under any regulations or directives issued by the United States Department of Housing and Urban Development ("HUD") or any other agency providing funds to NIDC from time to time in connection with the Community Development Program and other grant programs. It is understood that such investment functions include, but not by way of limitation, the following:

- (1) Originating loans or making grants;
- (2) Guaranteeing loans;
- (3) Providing reimbursement to lenders of all or a portion of the principal balance or interest charged on loans;
- (4) Facilitating special deposit arrangements;
- (5) Encouraging the participation of private banks in neighborhood revitalization programs;
- (6) Providing a portion of the total loan financing required by a business venture;
- (7) Acquiring equity in the ownership of an individual business; and
- (8) Purchasing, rehabilitating, constructing and reselling residential property to owner-occupants or community organizations as well as financing all or a portion of the purchase price, if necessary.

1.2 Additional Assistance. In addition, CITY shall furnish the following: During the term of this Agreement, CITY, acting through its Commissioner of DCD or other City departments such as the Office of the City Attorney, may, upon request of NIDC, provide:

- 1.2.1 A person experienced in business and financial affairs to act as the Executive Director of NIDC.
- 1.2.2 Professional, technical and administrative personnel, and material and equipment required by NIDC to fulfill its purposes of incorporation and for such other purposes as may be related to such obligations and duties of NIDC. The Common Council, acting pursuant to sec. 3-03-1-a, City Charter, hereby orders and authorizes the City Attorney to represent NIDC, except in those situations in which the City Attorney determines that such representation would conflict with the representation of the City or any City officer, department or agency. The City Attorney shall be compensated for its services to NIDC as provided in Article 4.
- 1.2.3 Space required for NIDC to carry out its functions, and shall also provide the materials, supplies and equipment necessary for NIDC to perform its duties. However, NIDC may undertake the responsibility of obtaining its own materials, supplies, and equipment, when it so determines. Title to all equipment purchased with its own funds shall remain in NIDC.
- 1.2.4 Such other services and activities as may be necessary or desirable, as requested by NIDC and agreed to by CITY, through DCD, necessary to accomplish the purposes of this Agreement.
- 1.2.5 A mechanism for regular cooperation between NIDC and any other organizations with similar or related activities and purposes. Responsibility in this regard shall rest initially with the person appointed as Executive Director of NIDC.
- 1.2.6 The development of all appropriate vehicles for the regular investment and management of NIDC's inactive funds, if any, by the Treasurer of NIDC. NIDC shall utilize such vehicles for the investment of its inactive funds, if any.
- 1.2.7 For the establishment and maintenance of sources of information on related programs and alternative means of obtaining equity capital assistance, refer of those applicants who are not qualified for financial assistance from NIDC to such programs.
- 1.2.8 For the maintenance, on behalf of NIDC and under the direction of the Treasurer of NIDC, of NIDC Corporate Books, including necessary ledgers and support documentation, in accordance with generally accepted accounting principles. DCD shall prepare the annual Corporate Income Tax Return of NIDC.
- 1.2.9 For the enrollment of employees of NIDC in the CITY's medical and dental insurance/reimbursement programs, and, with the approval of the Commissioner of DCD (acting in consultation with the City Attorney and the City Comptroller), other employee benefit programs generally available to CITY employees, as such programs may exist from time to time ("Furnished Employee Benefits").

1.3 NIDC Responsibilities.

- 1.3.1 During the term of this Agreement, NIDC shall conduct financial assistance programs and activities in furtherance of the purposes stated in its Articles of Incorporation. It is anticipated that such programs and activities shall be similar to those heretofore conducted by NIDC, but such programs and activities may be modified and specific programs or activities added or deleted in the discretion of the Board of Directors of NIDC. It is understood that, subject to sections 1.3.3 and 1.3.4 below, nothing in this Agreement shall preclude NIDC from engaging in any other lawful activities consistent with its Articles of Incorporation.
- 1.3.2 NIDC shall compensate the CITY for services of personnel, office space, materials, supplies, equipment, Furnished Employee Benefits and other items furnished by the CITY pursuant to section 1.2 above in accordance with Article 4 below.
- 1.3.3 Charitable Organization Status. NIDC shall, at all times during the term of this Agreement, operate as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.
- 1.3.4 Favorable Tax Status. NIDC shall, to the extent feasible and consistent with its purposes, take whatever steps are necessary to (a) exempt itself from any and all federal, state or local taxes; and (b) obtain the status of an organization, contributions to which are deductible to the donor for income tax purposes.
- 1.3.5 Compensation. Regularly salaried CITY employees who may serve as officers of NIDC shall receive no additional compensation or pecuniary advantage, either direct or indirect, from NIDC as a result of their services to NIDC or in conjunction with this Agreement. All CITY employees who serve as officers of NIDC, or any other CITY employees on contract to NIDC, shall do so solely to further the public and corporate purposes herein defined.
- 1.3.6 Providing Financial Assistance. NIDC shall receive from DCD, with a report of review, such financial assistance applications as DCD shall forward to it after completion of the procedures provided in Article 1.1.1 hereof. NIDC shall then review said financial assistance applications and in its discretion, approve and grant assistance from among them in such amounts, if any, and upon such terms as its best judgment dictates. NIDC may in its discretion grant short-term financial assistance to any of DCD's CDBG or other housing programs; provided, however, that in so acting NIDC shall comply in all respects with funding legislation and with any regulations or directives that may be issued from time to time thereunder by the funding agency.
- 1.3.7 Technical Assistance. NIDC, or DCD on behalf of NIDC, may provide or arrange for such accounting, legal, technical, development and marketing assistance to firms and persons whose financial assistance applications are in process or have been approved, as may be available and appropriate in each case.

ARTICLE 2

TERM OF AGREEMENT

- 2.1 The term of this Agreement shall commence on January 1, 2004 and shall be terminated by either party upon 30 days written notice.

ARTICLE 3

TERMINATION

- 3.1 This Agreement may be terminated during the term specified in 2.1 above by either party only for material breach of the provisions hereof by the other party.
- 3.1.1 In the event of a material breach by CITY, NIDC may terminate this Agreement by giving CITY thirty (30) days written notice to CITY.
- 3.1.2 In the event of a material breach by NIDC, CITY may terminate this Agreement by giving thirty (30) days written notice to NIDC.
- 3.2 In the event of a termination under 3.1.1 or 3.1.2 above or non-renewal of this Agreement:
- 3.2.1 Any funds required to be returned or paid to CITY or NIDC under the terms of agreements or arrangements between NIDC and CITY shall be returned or paid in accordance with such agreements or arrangements.
- 3.2.2 The books, records, files and documents of NIDC (including, without limitation, NIDC's loan files and documents, hereafter referred to collectively as "Documents") and any other property of NIDC in the custody or control of CITY or its employees or located on CITY-owned premises (NIDC Property) shall be promptly delivered to NIDC; provided, however, that the Documents shall be retained by CITY until the funds to be returned or paid to CITY under 3.2.1 above have been so returned or paid. Prior to delivery to NIDC of the Documents, NIDC shall have access thereto and use thereof as may be necessary for the conduct of ongoing NIDC business activities. After delivery of the Documents to NIDC, CITY shall have reasonable access to the Documents for a period of three (3) years following delivery to NIDC and NIDC shall retain the Documents, unless otherwise agreed to by CITY acting through the City Comptroller, for said three (3) year period.
- 3.2.3 The parties shall cooperate to minimize insofar as reasonably possible any disruption or discontinuity in the conduct of NIDC's business.

ARTICLE 4
COMPENSATION

- 4.1 All costs incurred under this Agreement shall be reimbursed to CITY in consideration of performing the services and providing space, material, supplies, equipment and Furnished Employee Benefits to carry out the activities and operations described in this Agreement. Reimbursement to CITY shall, to the extent permissible, be in the form of offsetting grant revenues or other reimbursable credits for expenditures recovered by CITY from other sources. In any case, CITY shall be reimbursed for costs incurred in the following categories:
- 4.1.1 The actual cost of materials and supplies furnished by CITY for use in programs and projects of NIDC.
 - 4.1.2 The actual cost of direct salaries and wages paid by CITY for actual time worked by its personnel in providing the services and fulfilling CITY's obligations to NIDC in accordance with the terms and conditions of this Agreement.
 - 4.1.3 The actual cost of overtime premium for actual overtime hours worked by CITY personnel in providing the services and fulfilling CITY's obligations to NIDC in accordance with the terms and conditions of this Agreement.
 - 4.1.4 The indirect salaries and fringe benefits as they relate to the direct salaries and wages. The reimbursement for indirect salaries and wages and fringe benefits shall be computed by applying the percent of indirect salaries and fringe benefits for DCD as computed yearly by the City Comptroller.
 - 4.1.5 The operating expenses paid by CITY for equipment furnished relative to the performance of services to NIDC in accordance with the terms and conditions of this Agreement.
 - 4.1.6 The indirect costs of CITY as they relate to the performance of the services to be rendered under this Agreement. The reimbursement due shall be computed by applying the percent of indirect costs for DCD, as computed by the City Comptroller, and if necessary approved by CITY's cognizant agency, currently HUD, in accordance with any indirect cost negotiation agreement.
 - 4.1.7 The space rental charges as computed by the City Comptroller
 - 4.1.8 The cost of any Furnished Employee Benefits furnished to employees of NIDC, in an amount computed by or at the direction of the City Comptroller.
 - 4.1.9 All other indirect costs which are not specifically enumerated herein which may be applicable.

ARTICLE 5

METHOD OF PAYMENT

5.1 Both the CITY and the NIDC agree as follows:

- 5.1.1 Payment from the NIDC to the CITY – Through the CITY's Financial Management Information System (FMIS) and within the "Reimbursable Accounts," NIDC shall obtain all cost information relating to services provided by the CITY to the NIDC. NIDC will then provide a deposit to the City Treasurer in an amount detailed in the CITY's FMIS Reimbursable Accounts.
- 5.1.2 Payment from the CITY to NIDC – Upon receipt of an invoice/FMIS voucher from the NIDC for services provided to the CITY, the CITY will reimburse NIDC.
- 5.1.3 Reports – NIDC and the CITY shall provide all reports relating to activities described in "ARTICLE I" in whatever formats and time frames are mutually agreed to between the CITY and NIDC.
- 5.1.4 Record Retention – NIDC shall maintain all of its books, records, and other documents related to this Agreement for a period of not less than six (6) years.
- 5.1.5 Examination of Records – The City Comptroller, or any duly authorized representatives and agents of the CITY, shall have the right to examine, inspect, transcribe and audit at any time during normal business hours, and upon reasonable notice, all books, records, and other documents of NIDC related to this Agreement, whether in paper, electronic, or other form.
- 5.1.6 Project Income – Any loan repayments or other project income received by NIDC and generated from assets or funds provided by the CITY shall be transferred to the CITY at least annually, subject to NIDC grantor requirements or other disposition authorized by the CITY.

ARTICLE 6

INDEMNIFICATION

- 6.1 NIDC agrees that it will indemnify and save and hold harmless CITY, its officers, employees, or agents, from and against all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments recovered from or asserted against CITY on account of injury or damage to person or property to the extent that such damage or injury may be incident to, arising out of, or be caused, either proximately or remotely, wholly or in part, by an act or omission, negligence or misconduct on the part of NIDC or any of its agents, servants, employees or subcontractors occurring in connection with performance by NIDC of its obligations hereunder. NIDC covenants and agrees that in each case where CITY shall be made a party to any litigation arising out of this Agreement, then NIDC shall and will pay all costs and expenses, including reasonable attorney's fees and court costs, incurred by or imposed upon CITY by virtue of such litigation. However, in the case of litigation between NIDC and CITY for the purpose of

determining rights and liabilities under this Agreement, each party shall bear its own costs and expenses, including reasonable attorney's fees, incurred in connection with such litigation.

- 6.2 CITY shall tender the defense of any claim or action at law or in equity to NIDC or its insurer and, upon such tender, it shall be the duty of NIDC or its insurer to defend such claim or action without cost or expense to CITY.

ARTICLE 7

INSURANCE

- 7.1 NIDC will furnish a certificate of insurance and, upon request, a copy of the policy including any amendments or endorsements showing insurance written by a company licensed in the State of Wisconsin, and rated "A" or better in the current Best's Key Rating Guide, approved by the City Attorney, and covering any and all liability or obligations which may result from the performance of services under this Agreement. Such policy shall also cover the obligations of NIDC set forth in the Article above. Such policy and certificate of insurance will name CITY and officers, agents and employees of CITY as additional insureds. In the event that CITY reasonably concludes that because of a change of circumstances or the economic situation that the amount of insurance which NIDC must supply is inadequate, then CITY may serve a notice in writing at least ninety (90) days prior to the time such insurance is to be changed, requesting NIDC to make a change in the amount of coverage to a greater sum, and NIDC shall use its best efforts to comply therewith as a condition of this Agreement. The certificate shall provide that the insurer will furnish CITY with a sixty (60) day written notice of cancellation, non-renewal or material change. Said insurance shall be written in comprehensive form and shall protect NIDC and CITY against all claims arising from injuries to members of the public or damage to property arising out of any act or omission of NIDC or its agents, employees, contractors or subcontractors as follows:

<u>Coverage</u>	<u>Amount</u>
Worker's Compensation	Statutory
Comprehensive General	The Comprehensive General Liability shall be a broad Liability form policy with a combined single limit of not less than \$1,000,000 per occurrence. Medical payment \$1,000 per person, \$10,000 per accident.
Automobile Liability	"Non-Owned and Hired Automobile" endorsement to the broad form Comprehensive General Liability Policy.
Fire and Extended Coverage	Actual Cash Value
Directors and Officers	As specified by NIDC Resolution

- 7.2 The Comprehensive General Liability Insurance shall apply to direct operations, subcontract work, and completed operations and contractual liability, including the contractual liability assumed in the above Article, and said policy shall name CITY, its officers, agents and employees as additional insureds as said CITY and its officers, agents and employees relate to this Agreement.
- 7.3 The adequacy of said insurance shall be determined and the form and proof of insurance shall be approved by the City Attorney. Failure of NIDC to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Agreement. Neither the provisions of this Article nor any damages recovered by CITY hereunder shall be construed to or limit the liability of NIDC under this Agreement or for damages.
- 7.4 NIDC shall maintain, for the duration of this Agreement, all insurance policies (or policies affording substantially the same or broader coverage subject to the approval by the City Attorney) in force and effect as of the date of the execution of this Agreement. Policies to remain in force and effect include, but are not limited to, the Directors' and Officers' insurance.

ARTICLE 8

FINANCIAL REPORTING REQUIREMENTS

- 8.1 In recognition of the federal funds, including, without limitation, CDBG and UDAG funds, being administered by NIDC in which CITY is the grantee and to allow DCD to provide consistent management services and administrative treatment of such funds, NIDC agrees that, unless provided to the contrary by other contracts with CITY;
- 8.1.1 The annual financial report of NIDC shall be audited by a certified public accounting firm reasonably acceptable to the City Comptroller and shall be filed with the City Comptroller within 120 days following the close of NIDC's fiscal year.
- 8.1.2 NIDC financial reports are to be presented in a format prescribed by generally accepted accounting principles or otherwise reasonably acceptable to the City Comptroller.
- 8.1.3 Exceptions to or qualifications of any auditor's opinion must be reasonably acceptable to the City Comptroller.
- 8.1.4 The City Comptroller shall have the right, upon reasonable notice, to review and copy pertinent financial data of NIDC, such as tax returns and auditor's management letters and shall have access to NIDC books and records.

ARTICLE 9

NOTICES

- 9.1 Any and all notices shall be in writing and deemed served upon depositing same with the United States Postal Services as "Certified Mail, Return Receipt Requested," addressed to NIDC at:

Neighborhood Improvement Development Corporation

Milwaukee, Wisconsin 53202

Attention: _____, Executive Director

and to CITY at:

Department of City Development

809 N. Broadway

Milwaukee, Wisconsin 53202

Attention: Rocky Marcoux, Commissioner

ARTICLE 10

OTHER PROVISIONS

- 10.1 This Agreement is and shall constitute the "management agreement" referred to in other agreements between CITY and NIDC.

ARTICLE 11

SUPPLEMENTAL NIDC ACTIVITIES

- 11.1 As of January 1, 2005, NIDC will transfer to the CITY the assets of their various loan portfolios and will transfer to DCD the responsibility for the administration of the various loan portfolios and programs transferred thereunder. The Executive Director of NIDC and CITY, acting through its Commissioner of DCD, shall establish administrative procedures for the implementation of such programs and in conjunction with the City Comptroller and undertake the transfer of funds between CITY and NIDC required pursuant to such programs.
- 11.2 During the term of this Agreement, NIDC may enter into various cooperation agreements with the Redevelopment Authority of the City of Milwaukee, the Housing Authority of the City of Milwaukee, the Milwaukee Economic Development Corporation or the Community Housing and Preservation Corporation in order to carry out its corporate objectives and to fulfill its obligations under this Agreement.
- 11.3 During the term of this Agreement, NIDC may undertake the administration of additional CDBG grants and programs and other programs which are identified by CITY and approved by resolution of CITY's Common Council without the execution of additional cooperation agreements relating to each specific program. The responsibilities of NIDC

with respect to such programs shall be undertaken consistent with the terms of this Agreement and any additional procedures or requirements identified by CITY.

ARTICLE 12
TRANSFER OF FUNCTIONS FROM THE
DEPARTMENT OF NEIGHBORHOOD SERVICES TO DCD

- 12.1 CITY and NIDC acknowledge that prior to January 1, 2003 the functions and responsibilities of DCD under this Agreement were fulfilled by CITY's Department of Neighborhood Services (DNS). CITY shall cause DNS to transfer all documents, instruments, records and assets relating to NIDC to DCD and to cooperate with NIDC and DCD as necessary to implement said transfer of function and fulfill the objectives of this Agreement. In addition, CITY administrative responsibility for the Cooperation Agreement between the CITY, CHPC, and NIDC relative to the disbursement of funds to NIDC for the purpose of abating nuisances in receivership cases, the Cooperation Agreement for the NIDC Revolving Loan Fund between NIDC and CITY, the Cooperation Agreement relating to the administration of CDBG funds, and the Cooperation Agreement between RACM, CITY and NIDC relative to the administration of TID No. 28 (City Homes) shall be transferred from DNS to DCD.

IN WITNESS WHEREOF, CITY and NIDC have caused this Agreement to be executed by their duly authorized representatives and have caused their respective seals to be hereunto affixed as of the day and year first above written.

Witness:

By _____

(SEAL)

Witness:

By _____

By _____

(SEAL)

**NEIGHBORHOOD IMPROVEMENT
DEVELOPMENT CORPORATION**

By _____

President

By _____

Secretary

CITY OF MILWAUKEE

By _____

Tom Barrett, Mayor

By _____

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

By: _____

W. Martin Morics, Comptroller

CITY ATTORNEY'S OFFICE

Approved as to Form and Content
Dated _____.

By _____

Deputy City Attorney

1050-2005-900:92212

CITY ATTORNEY'S OFFICE

Approved as to Execution
Dated _____.

By _____

Deputy City Attorney

