
**PORTFOLIO MANAGEMENT
SERVICE AGREEMENT**

Effective Date: May 1, 2013

Parties:

Milwaukee County
Milwaukee Economic Development Corporation

PORTFOLIO MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made and entered into as of the 1st day of May, 2013, by and between Milwaukee County (“County”) and the Milwaukee Economic Development Corporation (“MEDC”). Referenced together, the County and MEDC are collectively the “Parties,” and individually as a “Party.”

RECITALS

WHEREAS, the County intends to establish a Revolving Loan Fund and initiate loans using its own funds to spur economic development throughout Milwaukee County; and

WHEREAS, the County desires that MEDC service loans enrolled through this program; and

WHEREAS, the County wishes to obtain MEDC’s services in connection with the management of the County’s loan program subject to the terms and provisions of this Agreement; and

WHEREAS, MEDC wishes to perform services in exchange for the management fee provided herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein, the Parties hereto mutually agree as follows:

- 1) **DEFINITIONS** – This Agreement uses the following defined terms:
 - a) **County**. Milwaukee County, a municipal body corporate, organized and existing under the laws of the State of Wisconsin.
 - b) **MEDC**. Milwaukee Economic Development Corporation, a registered Wisconsin non-profit corporation.
 - c) **Agreement**. A Management Agreement, dated May 1, 2013, by and between the County and MEDC.
 - d) **Fiscal Year**. The twelve (12) month calendar year, ending 12/31 of each year, on which the County maintains its book and records, as modified from time to time.
 - e) **Initial Term**. Beginning May 1, 2013 through December 31, 2013. Automatic renewal annually on 12/31 of each subsequent year, if mutually agreeable to the Parties.
 - f) **Loans**. Debt instruments and related covenants created when borrowers/developers receive loans in conjunction with this program.

- g) **Servicing Requirements.** The requirements set forth in Section 5.
 - h) **Borrowers.** Companies who are eligible for loans.
 - i) **Project.** Collection and servicing of loans made to borrowers using a Revolving Loan Fund process. The financing for loans is done through the County. The loan is secured with a lien on assets of the borrower. This Agreement governs the servicing of the loans.
 - j) **Project Manager.** County or MEDC staff that shall be responsible for referring potential applicants.
- 2) **APPOINTMENT.** The County hereby appoints MEDC to oversee the management of the County's loan program subject to the terms and provisions of this Agreement. This involves responsibility for both the financial and loan administration components. MEDC hereby accepts the appointment, subject to the terms and conditions set forth herein.
 - 3) **TERM.** This Agreement shall become effective on May 1, 2013, and, except as otherwise provided herein, shall continue in full force and effect through December 31, 2013 ("Initial Term"). After the Initial Term ends, this Agreement will continue on automatic extension for successive terms of one year if mutually agreeable to the Parties and unless terminated by either Party by written notice at least thirty (30) days prior to the expiration of such particular term as shall be in effect, or unless terminated as otherwise provided herein. This Agreement shall automatically terminate if MEDC is removed pursuant to this Agreement. In the event of default or for cause, the Agreement may be terminated by the other party for any material provision hereof which remains un-remedied for thirty (30) days following written notice of such default or cause. If such extension is not agreed upon, the Agreement herein shall be considered terminated at its conclusion.
 - 4) **TRUST.** The initial \$1 million transferred from the County to MEDC shall be deemed principal for establishment of a Revolving Loan Fund. This principal shall not be used for payment by the County to MEDC for any service(s) performed by MEDC under the terms of this Agreement.
 - 5) **SCOPE OF SERVICES.** MEDC shall perform the following duties:
 - A. Loan servicing/administration:**
 1. Track loans and determine loan balances utilizing FIS or a similar system.
 2. Provide interest calculation for annual accrual and/or capitalization of interest.
 3. Review credit and documentation files for the purpose of identifying:
 - a. Specific loan covenants which must be upheld by the borrower (i.e., ensure necessary insurance certificates, financial statements, etc. are obtained).
 4. Provide 1098's to customers for loan interest paid annually
 5. Provide billing/financial status reports to County staff, on a quarterly basis.

6. At the direction of the Project Manager, act as an agent of County regarding loan status.

B. Loan structuring/restructuring/closing:

1. Accept and review Loan Applications submitted by prospective Borrowers. A sample Loan Application is attached as Exhibit A.
 - a. Ineligible Borrowers:
 - Not for profit businesses
 - Religious based or affiliated businesses
 - Businesses located outside of Milwaukee County
2. Utilize similar underwriting guidelines to structure the loan terms and conditions. General underwriting guidelines include, but are not limited to:
 - a. Debt Service Coverage greater than 1:1x.
 - b. Satisfactory environmental assessment if lending on real estate.
 - c. Satisfactory credit history of any individual that owns 20% or more of Borrower.
 - d. Limit RLF participation to no more than 40% with a minimum of approximately \$100,000.
 - e. Confirm 10% equity injection from Borrower towards Project.
 - f. Applicable general requirements as described, but not limited to those listed in attached Exhibit B.
3. Loans may be made for any lawful business purpose subject to local ordinances.
4. MEDC's Loan Committee to approve all terms and conditions.
5. Public Notice of loan requests shall be made in a similar manner to MEDC's current practices.
6. MEDC shall seek other sources of financing for Projects located within areas that have existing Revolving Loan Funds.
7. MEDC will close and document the loan using its staff and outside counsel.
8. MEDC shall maintain a file (electronic is acceptable) for each Borrower, which may include, but is not limited to the list attached as Exhibit C.
9. Provide assistance to Project Managers on loans that need to be restructured due to payment, collection, "write-off" and/or collateral issues. MEDC management has the authority to and will take all steps reasonably necessary and appropriate to preserve the principal balance of any loan.
10. County acknowledges that there is credit risk inherent in all loans and that there is the possibility that County's loan portfolio might lose value if its Borrowers become unable to pay back their debt, through no fault of MEDC.

C. Portfolio Status reports:

1. Work with project manager to provide County staff a standardized report of loan status, twice annually or as required.
2. Reports should outline original loan amount, outstanding principal, payment status, maturity date, etc. as well as any follow-up items or issues regarding the collectability of the loan.

D. Audit:

1. Provide assistance to County accounting staff during external audit period relating to “loan loss reserve” calculations and other financial data regarding loan portfolio.
- 6) **NONDISCRIMINATION.** In the performance of its obligations under the Agreement, MEDC will comply with the provisions of any federal, state or local law prohibiting discrimination on the grounds of race, color, sex, creed, handicap, familial status or national origin including Title VI of the Civil Rights Act of 1964 (42 USC 2000d).
- 7) **COMPENSATION.** The compensation to MEDC shall be billed quarterly and based on an annual fee equal to 1% of the average outstanding balance of the loans. The maximum amount for subsequent years will be adjusted based on the previous years’ experience. MEDC will provide the County with a general estimate of the annual cost at the beginning of each calendar year based on the projected outstanding loan balances under MEDC management. Compensation for additional services beyond what is contained in Section 4 is allowable only with pre-authorization by the County in writing.
- 8) **ENFORCEMENT OF LOANS.** MEDC shall take all reasonable actions to secure full compliance by borrowers receiving loans from the County. If applicable, the County shall provide written notice to all borrowers that MEDC has been authorized to act on its behalf.
- 9) **NOTICE.** Notwithstanding any other reporting provision in this Agreement, MEDC shall report promptly to the County the following:
 - a) any delinquency of sixty (60) days or more;
 - b) any notice alleging a default by the County, its borrowers, or otherwise addressing a material situation regarding the loans or loan portfolio.
- 10) **HIRING AND SUPERVISION OF EMPLOYEES.** MEDC shall, at its expense, recruit, hire, train, employ, supervise and discharge such personnel as are reasonably necessary for the efficient management of this project. Such personnel shall be in MEDC’s employ and shall not be considered to be employees or agents of the County. MEDC shall, in such hiring and other personnel transactions, follow all laws applicable to such activities.
- 11) **RECORDS AND REPORTS.** In order to ensure effective communication between the parties and in addition to any requirements specified elsewhere in this Agreement, the County shall provide MEDC with copies of all appropriate correspondence with regard to the existing portfolio, as well as agreed upon loan documents from the current borrower files. MEDC shall establish and maintain a system of records, books, and accounts. All such records, books, and accounts shall be subject to examination by any authorized representative of County with reasonable notice to MEDC.

12) **INDEMNIFICATION**

- a) **Indemnification of the County.** To the fullest extent permitted by law, MEDC agrees to defend, indemnify and save harmless the County from all claims, investigations and suits, with respect to or arising out of (i) any alleged or actual violation of state or federal labor or other laws pertaining to employees retained for purposes of performing this Agreement, it being expressly agreed and understood that as between the County and MEDC, all persons employed in connection with the Project are employees of MEDC, not the County; or (ii) MEDC's breach of this Agreement which has a material adverse effect on the Project or the County; or (iii) MEDC's negligence or willful misconduct.

- b) **Indemnification of MEDC.** To the fullest extent permitted by law, the County agrees to defend, indemnify and save harmless MEDC from all claims and suits in connection with the Project provided that such claims and suits are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and such claims and suits which arise, or are alleged to arise, in whole or in part out of any negligent act or omission of the County, its officers, employees, or agents, but only against such claims and suits which arise, or are alleged to arise, in whole or in part, while MEDC is acting in its capacity as Manager for the County under this Agreement. Milwaukee County's liability shall be limited by Wisconsin State Statutes § 345.05(3) for automobile and § 893.80(3) for general liability.

- c) **Survival of Indemnity Obligations.** The indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

13) **INSURANCE.** MEDC understands and agrees that financial responsibility for claims or damages to any person, or to MEDC's employees and agents, shall rest with MEDC. MEDC may effect and maintain any insurance coverage, including, but not limited to, Worker's Compensation, Employers Liability and General Contractual, Profession and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions.

MEDC shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation or Proof of All States Coverage	Statutory (waiver of subrogation)
Employer's Liability	\$100,000/500,000/100,000
Commercial or Comprehensive General Liability Bodily Injury and Property Damage	\$1,000,000 Per Occurrence

(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Gen. Aggregate
Professional Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned and/or hired Uninsured Motorists	Per Wisconsin Requirements
Crime Bond	\$500,000
(to cover Milwaukee County monies held by and in the care, custody and control of MEDC)	

Milwaukee County will be named as an additional insured for General and Automobile, as respects the services provided in this Contract. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Contract.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Contract.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

- 14) **RIGHT TO AUDIT AND INSPECT.** Pursuant to Milwaukee County ordinance section 56.30(6)(e), MEDC shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by MEDC, including but not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to the County. Any subcontracting by MEDC in

performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as MEDC. MEDC (or any subcontractor) shall maintain and make available to the County the aforementioned audit information for no less than three (3) years after the conclusion of each Agreement term.

- 15) **NOTICES.** All notices, demands, consents and reports provided for in this Agreement shall be given in writing and shall be deemed received by the addressee on the third (3rd) business day after mailing if mailed by United States certified or registered mail, postage prepaid or one business day after deposit with an overnight courier, or on the day delivered if personally delivered or emailed at the following addresses:

If to County:

Milwaukee County
Attn: Jill Didier
2711 W. Wells Street
Milwaukee, WI 53208
Phone: 414-278-4217
Email: jill.didier@milwcnty.com

If to MEDC:

Milwaukee Economic Development Corporation
Attn: President
809 N. Broadway, Room 104
Milwaukee WI 53202
Phone: 414-286-5840
Fax : 414-286-5778

The above addresses may be changed by the appropriate Party giving written notice of such change to the other Parties.

16) **MISCELLANEOUS**

- a) **Assignment.** MEDC shall not assign its rights under this Agreement or subcontract the performance of its obligations hereunder without the prior written consent of the County, which may be withheld for any reason, and any purported assignment without the County's prior written consent shall be of no effect.
- b) **Consent.** Whenever in this Agreement the consent or approval of MEDC or the County is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed – except in cases of Assignment. Such consent shall be in writing and shall be duly executed by an authorized officer or agent for the Party granting such consent or approval; provided, however, notwithstanding anything in this Agreement to the contrary, if such consent or approval would be required for MEDC to comply with the Requirements, MEDC shall not be responsible for a failure to comply with the

Requirements as a result of the County's refusal or unreasonable delay to so consent or approve.

- c) **Amendments.** This Agreement constitutes the entire understanding between MEDC and the County and no amendment, alteration, modification or addition to this Agreement shall be valid or enforceable unless expressed in writing, and signed by both Parties.
- d) **Cooperation.** If any claims, demands, suits or other legal proceedings arising out of any of the matters relating to this Agreement be made or instituted by any person against either the County or MEDC, the County or MEDC shall give to the other all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.
- e) **Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion.
- f) **Illegality.** If any provision of this Agreement shall prove to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected thereby.
- g) **Relationship.** Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between the County and MEDC, it being the intent of the Parties hereto that the relationship created hereby is that of an independent contractor.
- h) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the County, its successors and permitted assigns, and shall be binding upon and inure to the benefit of MEDC, its successors and its permitted assigns.
- i) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin.
- j) **Enforceability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. The County's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies nor foreclose the exercise of the County's other remedies. No waiver by the County of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.
- k) **Execution of Counterparts.** For the convenience of the Parties, this Agreement may be executed in multiple counterparts, each of which shall constitute a complete original of this Agreement, which may be introduced in evidence or used for any other purpose without the production of any other counterparts.

- l) **Power to Execute.** The Parties executing this Agreement on behalf of the County and MEDC each hereby warrant and represent that each has full right, power, and authority to enter into, execute, acknowledge, and deliver this Agreement.
- m) **Default.** In addition to the the County's right to terminate as listed in Section 3 above, if a Party defaults under this Agreement, the other Party subject to MEDC's right to cure under Section 3 above, shall be entitled to terminate this Agreement and/or pursue all available legal and equitable remedies including, without limitation, actions for damages and recovery of costs and expenses incurred. The following shall also be events of default by MEDC hereunder: if MEDC (i) files a petition for bankruptcy or reorganization, (ii) makes an assignment for the benefit of creditors; and, (iii) has a receiver or trustee appointed for its property.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

MEDC:
 DAVID E. LATONA, EXEC. VP
 By: David E. Latona
~~Patrick G. Walsh, President del~~
 Milwaukee Economic Development Corporation

County:
 By: Julie Esch
 Julie Esch, Director of Operations
 Milwaukee County

Date: 4/12/13

Date: 4/12/13

Approved as to form and independent status:

By: [Signature]
 Corporation Counsel

Date: 4/12/2013

Reviewed by:

By: [Signature]
 Risk Management *approved as to insurance requirements*

Date: 4/11/13

Exhibit A: Sample Loan Application

Exhibit B: General Requirements:

- Machinery and Equipment, furniture and fixtures, leasehold improvements, real estate purchases, construction, long term working capital.
- No debt refinancing unless there is a new project involved or to replace interim financing within 12 months of issuance.
- Amortization to match the participating lender or the estimated life of the asset
- Assignment of life insurance on primary individuals and/or succession plan
- 2nd position on collateral, subject to participating lenders lien, or
- Priority lien on specific assets
- Collateral coverage of 1:1 or guarantee or other risk mitigation if available
- Positive tangible net worth
- Satisfactory appraisal
- Satisfactory environmental assessment
- Satisfactory CCAP review
- Satisfactory lien search
- Title insurance
- Acceptable liability/general business insurance
- Current on all taxes (real estate, payroll, income, sales, etc.)
- Valid operating permits
- No active DNS orders
- Quarterly financial statements
- Annual financial statements and tax returns
- Updated personal financial statement of guarantor and tax returns
- Annual employment survey
- Assets must remain in area
- Other financial covenants as deemed necessary or required by participating lender
- Application
- Credit report
- Automatic loan payment
- Annual site visit
- No prepayment penalty
- No upfront fees, cost of attorney prepared loan documents

Exhibit C: Loan File/Legal File - Inventory Checklist/Table of Contents

Borrower:		
Operating Company:		
No.	Filed	Description
1		MEDC Commitment Letter
2		MEDC Authorization
3		Term Credit Agreement
4		Business Note
5		Letter Agreement w/:
6		Borrower's Certification/Res. Of Bd. Of Directors/LLC Borrowing Agree.
7		Articles of Incorporation/Organization
8		Bylaws/Operating Agreement
9		Project Mortgage:
10		Secondary Collateral – Mortgage:
		Secondary Collateral – Mortgage:
		Secondary Collateral – Mortgage:
		Secondary Collateral – Mortgage:
11		Real Estate Mortgage Subordination Agreement
12		Intercreditor Agreement Regarding Real Property
13		Title Insurance Policy/Commitment
14		Letter Report/Mortgage Notification Letter:
15		Lease & Addendum
16		Assignment of Lessee's Interest in Lease
17		Assignment of Lessor's Interest in Lease
18		Assignment of Leases & Rents
19		Security Agreement
20		Agreement Respecting Collateral Priorities as to Real Property
21		UCC-1 /(State) & Lien Search
22		UCC-1 (County)
23		Guarantee(s):
24		Spousal Consent(s)
25		Assignment of Life Insurance
26		Life Insurance Policy
27		Debt Subordination Agreement on Notes Payable – Officers
28		Copies of Notes Payable – Officers
29		MEDC Check for Project/Affidavit and Receipt
30		Check & Itemization of MEDC Attorney Fees
31		Evidence of Equity Injection (closing statement, warranty deed, transfer return, owner's affidavits)
32		Evidence of Project Costs
33		Miscellaneous: