



PHOENIXIDA

Item 2

PROFESSIONAL MANAGEMENT & ORGANIZATIONAL SERVICES AGREEMENT

This Professional Management & Organizational Services Agreement (this “Agreement”) is made and entered into to be effective as of [January 1, 2024], by and between the **COMMUNITY ENHANCEMENT CORPORATION**, an Arizona non-profit corporation (hereinafter referred to as the “CEC”), and **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA**, an Arizona nonprofit corporation (hereinafter referred to as the “Phoenix IDA”). The CEC and the Phoenix IDA may refer to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

1. The CEC was formed with the primary mission of lessening the burdens of government and nonprofit organizations and erecting, developing, programing, financing, managing and maintaining public buildings, public works, office buildings, single family residences, multifamily residences, community facilities and educational facilities, with the power to perform all lawful acts permitted by the statutes of the State of Arizona and its articles of incorporation, including without limitation the power to make contracts and incur liabilities.
2. The Phoenix IDA is designated as a political subdivision of the State of Arizona, incorporated with the approval of the City of Phoenix, Arizona, and empowered under the Industrial Development Financing Act, A.R.S. Section 35-701 et seq., to enter into contracts and do any other act necessary or appropriate to carry out its purposes.
3. The CEC desires to engage the Phoenix IDA to provide management and organizational services in connection with the operations of the CEC.
4. The Phoenix IDA possesses the skills and expertise necessary and is willing to provide such services to the CEC upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto formally covenant, agree and bind themselves as follows:

AGREEMENT

1. TERM OF AGREEMENT

The term of the Agreement shall be for three years and will commence on January 1, 2024 (the “Effective Date”) and terminate on December 31, 2026 (the “Termination Date”) with one option to extend the term for one additional three-year period, which option may be exercised at the sole discretion of the CEC. Thereafter, this Agreement shall automatically extend for an additional year unless sooner terminated as provided herein. Either Party may terminate this agreement, with or without cause, upon not less than one hundred eighty (180) days’ prior notice to the other Party in writing by electronic mail, certified mail or personal delivery.

2. FEES FOR SERVICES

The CEC shall pay the Phoenix IDA an amount per month for performance of the Services (defined below) under this Agreement. The initial fee of \$1,000 per month is based on 10 staff hours per month plus overhead to administer the CEC. This fee will be accrued and deferred until the CEC obtains projects that produce revenue. This fee may also be adjusted as the CEC activities increase. Any changes to the monthly service fee must first be approved in writing by CEC and the Phoenix IDA before new charges begin. The Phoenix IDA shall provide a general fee invoice for Services in the form and frequency as the CEC may reasonably require. The CEC shall make payment in arrears for Services rendered no later than the fifth (5th) business day of each calendar month during the term of this Agreement.

In order to facilitate expenses incurred by the CEC in connection with its organization, start-up and initial operation, the Phoenix IDA will, upon the CEC's request, advance to the CEC up to \$100,000 (the "Start-Up Advance"). This advance will be in the form of a loan with terms supported by the CEC operating budget. Upon advancing the Start-Up Advance to the CEC, the Phoenix IDA will invoice such amount to the CEC, and CEC shall pay the Start-Up Advance to the Phoenix IDA as loan payments. These payments will also be accrued and deferred until the CEC obtains projects that produce revenue.

3. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS

The Phoenix IDA will provide professional management and organizational services (the "Services") in accordance with the Scope of Work as set forth in **Exhibit A**, incorporated herein by reference, which may be supplemented with additional detail from time to time during the term of the Agreement and that are satisfactory to the CEC.

4. MUTUAL INDEMNIFICATION

To the extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party and its officers, officials, agents, employees and volunteers (each, an "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of compliance with the terms of this Agreement, except to the extent such Claims in respect of one Party is proximately caused by the gross negligence or willful misconduct of the other Party.

5. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER

A. The parties agree that the Phoenix IDA is providing the Services under this Agreement on a contractual basis and that the relationship created by this Agreement is that of independent contractors. Neither the Phoenix IDA nor any of the Phoenix IDA's agents, or employees shall be deemed to be the employee, agent, or servant of the CEC.

B. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of the CEC will be considered

a CEC employee. The Phoenix IDA shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless the CEC with respect thereto.

6. CONFIDENTIALITY AND DATA SECURITY

A. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the Phoenix IDA in connection with this Agreement is confidential, proprietary information owned by the CEC. Except as specifically provided in this Agreement and in carrying out the Scope of Work set forth in Exhibit "A", the Phoenix IDA shall not disclose data generated in the performance of the Services to any third person without the prior written consent of CEC's Chairmen of the Board, or his/her designee. CEC expressly acknowledges and agrees that the Phoenix IDA may disclose CEC-owned information to third parties in commercially reasonable manners in the ordinary course of conducting CEC business as contemplated under this Agreement, and CEC hereby consents to the foregoing.

B. Personal identifying information, financial account information, or restricted CEC information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Phoenix IDA must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted CEC information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

C. In the event that data collected or obtained by the Phoenix IDA in connection with this Agreement is believed to have been compromised, the Phoenix IDA shall notify the CEC Board of Directors promptly. The Phoenix IDA agrees to fully cooperate with CEC to investigate potential breaches of this data. If such breach is caused by the gross negligence or willful misconduct of the Phoenix IDA, the Phoenix IDA will reimburse CEC for any costs incurred by CEC for such investigation and, where applicable, the cost of notifying individuals who may be impacted by the breach.

D. The obligations of the Phoenix IDA under this Section shall survive the termination of this Agreement.

7. AMENDMENTS

Whenever an addition, deletion or alteration to the Services described in **Exhibit A** substantially changes the Scope of Work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by CEC and the Phoenix IDA before such addition, deletion or alteration shall be performed. Changes to the Services may be made and the compensation to be paid to the Phoenix IDA may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by the Phoenix IDA will be allowed except as provided herein, nor shall the Phoenix IDA do any work or furnish any materials not covered by this Agreement unless first authorized in

writing. Any work or materials furnished by the Phoenix IDA without prior written authorization shall be at the Phoenix IDA's risk, cost and expense, and the Phoenix IDA agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

8. NOTICES

Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent by facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

If to the CEC: []

With a copy to: []

If to the Phoenix IDA: The Industrial Development Authority
of the City of Phoenix, Arizona
Attention: Juan Salgado, Chief Executive Officer
2201 E. Camelback Road, Suite 405B
Phoenix, AZ 85016

With a copy to: Fennemore Craig PC
2394 E. Camelback Road, Suite 400
Phoenix, AZ 85016
Attn: C.W. Ross

Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent by facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

9. COMPLIANCE WITH LAWS

The Parties must comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement.

10. NON-ASSIGNABILITY; SEVERABILITY

This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by the CEC or the Phoenix IDA. Any attempt to assign without such prior written consent shall be void. The invalidity of any portion of this Agreement shall not affect the validity of the remainder hereof.

11. NO ORAL ALTERATIONS

No alteration or variation of the terms of this Agreement shall be binding on the Parties herein unless such alteration or variation is in writing and signed by each duly authorized representative of the Party to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the Parties herein.

12. INTEGRATION

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by or liable for any statement of intention not so set forth.

13. COUNTERPARTS; GOVERNING LAW

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Arizona, without reference to choice-of-law principles, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Phoenix IDA. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

14. TERMINATION OR SUSPENSION OF SERVICES

A. CEC's Right to Terminate

CEC reserves the right to terminate this Agreement without cause, or to abandon the Services, or any part of the Services not then completed, by notifying the Phoenix IDA in writing. Within 180 days of receiving a written notice to terminate or suspend Services (the "Notice of Termination"), the Phoenix IDA shall:

1. Discontinue advancing the work in progress, or such part that is described in the notice.
2. Deliver to CEC all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by CEC.
3. Appraise the work it has completed and submit its appraisal to CEC for evaluation.
4. Be paid in full the pro rata value for services performed to the date it terminates or suspends delivery of the Services (which shall be no later than 180 days after the date of its receipt of the Notice of Termination). No payment shall be made for loss of anticipated profits or unperformed services.

B. Final Payment

CEC shall make final payment for all Services performed and accepted within sixty (60) days after the Phoenix IDA has delivered to CEC any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by CEC of preliminary reports, raw data or other incomplete material returned by the Phoenix IDA shall be at CEC's sole risk for such use.

15. PROFESSIONAL COMPETENCY

A. Qualifications

The Phoenix IDA represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. The Phoenix IDA further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.

B. Level of Care and Skill

Services provided by the Phoenix IDA will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the Phoenix IDA's profession currently practicing in the same industry under similar conditions. Acceptance or approval by CEC of Phoenix IDA's work shall in no way relieve the Phoenix IDA of liability to CEC for damages suffered or incurred arising from the failure of the Phoenix IDA to adhere to the aforesaid standard of professional competence.

16. CONFLICTS OF INTEREST

A. Each Party acknowledges to the other that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no director or any employee of either Party has any financial interest in the other Party.

B. If a director or employee of the Phoenix IDA or their immediate family members has a financial interest in or serves on the board of directors of any organization or entity that seeks business or financial support from the CEC, the director or employee must immediately notify CEC through the President and CEO of the Phoenix IDA.

C. If a director or employee of the CEC or their immediate family members has a financial interest in or serves on the board of directors of any organization or entity that applies to the Phoenix IDA for a grant or other type of financial funding, the director or employee must immediately notify the Phoenix IDA through the Executive Director of CEC and the Chairman of the CEC Board of Directors.

D. This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

18. CONTINUATION DURING DISPUTES

A. The Phoenix IDA agrees as a condition of this Agreement that in the event of any dispute between the Parties, provided no Notice of Termination has been given by CEC, and if it is feasible under the terms of this Agreement each Party shall continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

B. Failure or delay by either Party to exercise any right, power or privilege specified in or appurtenant to this Agreement shall not be deemed a waiver thereof.

19. THIRD PARTY BENEFICIARY CLAUSE

The Parties expressly agree that this Agreement is not intended by any of its provisions to create any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date first written above.

COMMUNITY ENHANCEMENT CORPORATION

By: _____
Name: Barbara Ryan Thomson
Title: President

**THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF PHOENIX, ARIZONA**

By: _____
Name: Juan Salgado
Title: Chief Executive Officer

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EXHIBIT A

(SCOPE OF SERVICES)

The Phoenix IDA shall provide the following services to CEC under this Agreement:

- Leadership (Executive Director).
 - Responsible for day-to-day operations and administration.
 - Meet with business and community (nonprofit, activists, others) leaders, consumers, government officials and elected officials.
 - Oversee program / product development.
 - Government relations.
- General administration of CEC operations.
 - Record management and compliance.
 - Current review of policies and procedures.
 - Corporate governance oversight.
 - Communications and Marketing.
 - Website design and maintenance.
 - Collateral materials.
 - Social media.
 - Branding and marketing of CEC services.
- Board administration (Board Member communications and Board meeting logistics) in accordance with CEC's articles of incorporation and bylaws.
- General accounting and financial reporting (CEC).
 - Prepare monthly financial statements.
 - Oversee and support annual audits and tax returns.
 - Accounts payable and receivable.
 - Administer and oversee cash investments.
 - Prepare and monitor annual budget.

In the event CEC elects to engage the Phoenix IDA to perform any service not included in the foregoing Scope of Services, any such additional Services may be performed only upon the prior, written approval of the Chair of the CEC Board of Directors or authorized designee. The fees for such additional Services shall be determined and be set forth in writing by the Parties contemporaneously with such expansion of the Scope of Services. Notwithstanding the foregoing, the Parties understand that from time to time there may be standard tasks that are related to, but are not explicitly identified in the Scope of Services. It is the intent of the Parties that any such tasks shall neither require prior written approval of the Board Chair nor require any additional payment by CEC to the Phoenix IDA.