

RESOLUTION 2023-04

A RESOLUTION APPROVING AN AGREEMENT FOR THE YEAR 2023, BETWEEN THE VILLAGE OF FREDERICKTOWN AND THE KNOX COUNTY AREA DEVELOPMENT FOUNDATION FOR THE ADMINISTRATION, IMPLEMENTATION, AND MANAGEMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT SERVICES PROVIDED BY THE FOUNDATION TO THE VILLAGE OF FREDERICKTOWN

WHEREAS, the Knox County Area Development Foundation is a non-profit corporation created pursuant to Ohio Revised Code (“ORC”) Chapter 1702 and which has defined as its mission helping create and retain more jobs of a high quality that keep residents financially secure, matching good employers to job-ready workers, and advancing efforts to support livable communities throughout Knox County; and,

WHEREAS, the Village has had a long-standing relationship with the Foundation and has relied on the Foundation for the Village’s economic and community development services since the 1980s; and,

WHEREAS, the Village desires to formally engage the Foundation to provide the day-to-day business of economic and community development services for the Village and the Foundation desires to continue to provide such services to the Village.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as provided in the attached agreement for the 2023 calendar year consisting of seven pages.

WHEREFORE, this Resolution shall take effect at the earliest date allowable by law.

PASSED: _____

Jerry L. Day, Mayor

ATTEST: _____
Suzan Graves, Fiscal Officer

CONTRACT FOR SERVICES

Between

VILLAGE OF FREDERICKTOWN, OHIO

And

AREA DEVELOPMENT FOUNDATION, INC.

THIS AGREEMENT is made and entered into this Twentieth day of March 2023 (the “**Effective Date**”), by and between the **AREA DEVELOPMENT FOUNDATION, INC.** (the “**Foundation**”), and the **VILLAGE OF FREDERICKTOWN, OHIO** (the “**VILLAGE**”), (both of whom collectively referred to herein as the “**Parties**”) and sets forth the complete understanding of the Parties as to the administration, implementation, and management of economic and community development services provided by the Foundation to the Village during the Term, defined herein.

WITNESSETH:

WHEREAS, the Foundation is a non-profit corporation created pursuant to Ohio Revised Code (“**ORC**”) Chapter 1702 and which has defined as its mission helping create and retain more jobs of a high quality that keep residents financially secure, matching good employers to job-ready workers, and advancing efforts to support livable communities throughout Knox County; and,

WHEREAS, the Village has had a long-standing relationship with the Foundation and has relied on said Foundation for the Village’s economic and community development services since the Foundation redirected its focus to the entire county in the 1980s; and,

WHEREAS, the Village desires to formally engage the Foundation to provide the day-to-day business of economic and community development services for the Village and the Foundation desires to continue to provide such services to the Village.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

1. *Services to be Performed; Term.* The Foundation agrees to provide the services described on Schedule 1 attached hereto (the “**Services**”). The Services shall be provided by the Foundation January 1, 2023 through December 31, 2025 (the “**Term**”), unless otherwise terminated pursuant to the occurrences defined in Section 5, below. The Parties may negotiate such terms and conditions as desired for purposes of renewing this Agreement in subsequent years for the purposes set forth herein, with each such renewal period to begin January 1 and end December 31 of said year and constituting a Term.

2. *Compensation.* The Foundation will provide the Services at a cost of \$3,500 (the “**Development Services Fee**”). The Development Services Fee is due and payable to the Foundation as of the Effective Date, and in any case must be remitted no later than March 1, 2023.

3. *Expenses.* Expenses incurred in connection with the Foundation’s provision of the Services shall be borne by the Village. The Parties acknowledge the expenses contemplated under this Section 3 include but are not limited to grant application fees that may be charged to the Foundation when it applies for grants on behalf of the Village and the cost of professional planning services related to projects in the Village.

4. *Independent Contractor.* The Village and Foundation expressly acknowledge and agree that the Services to be provided by Foundation employees under this Agreement shall be performed as an independent contractor, and not as an agent, employee, joint venturer or partner of the Village. The Parties also expressly acknowledge and agree that with respect to any payments made to the Foundation hereunder, unless otherwise provided herein, the Village shall not: (i) withhold or pay FICA, Medicare or other federal, state, or local income or other taxes or charges; or (ii) comply with or contribute to state workers’ compensation, unemployment, or other such governmental funds or programs.

5. *Termination of Services.* This Agreement shall terminate upon the occurrence of any of the following events:

- A. Upon the expiration of the Term set forth in Section 1, above;
- B. If, in the reasonable determination of a party, the other party has materially defaulted in the performance of this Agreement, or materially breaches any of its provisions, and in either case written notice of such material default or breach is provided to the defaulting or breaching party with a thirty (30) day cure period, upon the expiration of which the defaulting or breaching party fails to cure;
- C. Upon ninety (90) days written notice by either party; or
- D. Immediately upon the mutual agreement of the Parties (each of the preceding constituting the “**Termination Date**”).

6. *Work Product.* Records, reports, applications, data or other materials subject to Ohio’s Public Records Law and prepared by Foundation employees during the Term of this Agreement in furtherance of the Services, and not otherwise subject to attorney-client privileges, are considered the property of the Village.

7. *Return of Village Property.* The Foundation agrees that it will not use any Village property for its personal gain or in any manner that might be adverse to the Village's interests. After termination of this Agreement, which such termination may occur upon the expiration of any subsequent renewal Terms, and upon the Village’s demand, the Foundation will return to the Village any Village property that comes into the Foundation’s possession, custody, or control.

8. *Notice.* Any notice, election, request or demand required or permitted under this Agreement must be in writing and is to be delivered personally or sent by U.S. ordinary mail, postage prepared, or received by overnight courier, and addressed to the party at the address listed below:

If to the Village:	Village of Fredericktown 2 East Sandusky Street Fredericktown, Ohio 43019
If to the Foundation:	Area Development Foundation, Inc. P.O. Box 29 Mount Vernon, Ohio 43050

9. *Indemnification.* The Village shall indemnify and hold the Foundation, its board of directors, and employees harmless from and against any claim, allegation, action, demand, loss, cost, expense, liability, penalty, and/or damage, including reasonable attorney fees, which is the result of or is incurred in connection with the Foundation’s provision of Services, any act or omission of the Foundation which occurs in connection with the provision of Services, and any debt, liability, or obligation of the Village that is incurred or accrued outside of the Foundation’s provision of the Services.

10. *Entire Agreement of the Parties; Modification.* This Agreement supersedes any and all agreements, both oral and written, between the Parties with respect to the rendering of services by the Foundation for the Village and contains all of the covenants and agreements between the Parties with respect to the rendering of these services in any manner whatsoever. Each party acknowledges that no representations, inducements, promises or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. Any modification of this Agreement will be effective only if it is in a writing signed by the Parties.

11. *Severability.* The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

12. *Force Majeure.* If the performance of either party hereunder is delayed or prevented at any time due to circumstances beyond the control of the other, including, without limitation, those resulting from labor disputes, fire, floods, riots, civil disturbances, weather conditions, control exercised by a governmental entity, unavoidable casualties or acts of God or a public enemy, the performance of such party shall be excused for so long as the circumstance shall prevent such performance.

13. *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

14. *Construction.* The Parties acknowledge that each party has reviewed this Agreement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and any modification or amendment thereto.

The Parties hereto have executed this Agreement as of the day and year first written above.

AREA DEVELOPMENT FOUNDATION, INC.

VILLAGE OF FREDERICKTOWN

By: _____
Adam Garn, Chair

By: _____
The Honorable Jerry Day, Mayor

SCHEDULE 1

Scope of Services

The Area Development Foundation, Inc. (the “**Foundation**”) will undertake administration, implementation, and management of the specific economic and community development services of the Village of Fredericktown (the “**Village**”) pertaining to the following:

- A. Coordinate, implement, manage and support the Village’s economic development activities that help create or retain jobs of a high quality, including:
- i. Create and administer protocols for evaluating the intake of economic development prospects, inquiries, and leads from businesses considering the Village for development and job retention and growth opportunities. This includes identifying and recruiting potential end-users for available land and buildings in the Village.
 - ii. Economic development and public-private partnership deal structuring that pertains to real property tax exemptions under the Enterprise Zone and/or Community Reinvestment Area programs, loans under the Knox County Revolving Loan Fund, and creation of municipal income tax grants (“**Basic Economic Development Deal Structuring Services**”). The cost for the Foundation to provide Basic Economic Development Deal Structuring Services is fully covered by the Development Services Fee defined in Section 2 of this Agreement. The Foundation will complete all the necessary documentation and implementation steps involved in creating financing and incentive mechanisms under the component programs listed as Basic Economic Development Services, which such documentation and implementation steps include:
 1. The Foundation will create and administer protocols for evaluating proposed economic development projects’ financial impacts, revenue streams, and relative costs.
 2. Negotiate terms, specifications, and partnerships with economic development prospects on terms desirable to the Village and that satisfy economic development best practices.
 3. Manage all financial incentive program contracts.
 - iii. The Parties may negotiate additional compensation under this Agreement whereby the Foundation will provide all the necessary documentation and implementation steps on behalf of the Village in deal-structuring any of the following financial incentive or economic development programs (each such program constituting an “**Additional Compensated Service**”):

Community Reinvestment Area (CRA)
Enterprise Zone (EZ)
Downtown Redevelopment District (DRD)
Joint Economic Development District (JEDD)
New Community Authority (NCA)
Property-Assessed Clean Energy (PACE)
Special Improvement District (SID)
Tax Increment Financing (TIF) under ORC §§ 5709.40 and 5709.41
Transportation Improvement District (TID)

- iv. Monitoring performance by program participants in component programs included under Basic Economic Development Deal Structuring Services and Additional Compensated Service(s). The Foundation will create and administer protocols for compiling data and evaluating the annual performance of participants in each financial incentive program and reporting the same to regional, State and/or federal partner organizations.
 - v. The Foundation will complete regular field services, including:
 1. Create and administer protocols for evaluating and qualifying economic development prospects, and identifying building and land development opportunities.
 2. Maintain extensive and regular contacts with area businesses, property owners, community stakeholders, and elected and appointed officials to make sure economic development prospects are expeditiously serviced and that all opportunities are addressed in an expedited manner.
- B. Coordinate, implement, manage and support activities related to workforce development within the Village, to include leading organizations and initiatives to connect willing and capable workers with employers.
- C. Coordinate, implement, manage and support the Village's community development activities to help foster and advance the Village as a livable community, to include the following:
- i. Planning and Development activities, including engaging in land use planning practices and entering into third-party engagements to identify high impact development projects and adequately plan for future land uses and development.
 - ii. Evaluating the Village's land and building portfolio for development partnerships with other public or private developers, investors and owners and developing and securing project financing through public or private sources.

- D. At least once (1X) during the Term, and more frequently as requested, appear at Village Council and at such other venues to report to the Village's elected leadership detailing the Foundation's operational activities to advance the Village's economic and community development, with such reporting to include, but not be limited to, the number and status of current and active development prospects and/or financial incentive projects.

- E. Assist in the development of current and long-term economic and community development goals and objectives as well as policies and procedures for the Village's development. Establish plans to achieve goals set by the Foundation's Board and/or Village Administration and Council and implement policies and programs to achieve said goals.