

The Main Street CDC Joint Venture – Guidelines for Addressing Key Issues

1. What do you need to know before drafting the Term Sheet?

- a. What specifically is the subject of the “partnership”? For example, how big is the proposed center, what are the development costs, how long is it projected to take, have specific tenants been identified, etc.
- b. What sources of financing have been identified and/or confirmed for the project?
- c. Why did the Board select Commercial Enterprises, Inc.?
- d. What do you know about this entity, its experience, and why it is interested in working with the CDC?
- e. What does Commercial Enterprises, Inc. want out of the “partnership”?
- f. What strengths does the CDC bring to the project and what specific gaps does it need to fill through this “partnership”?
- g. What is the CDC’s leverage in negotiating the agreement?
- h. Does the CDC have the legal authority undertake this project and enter the “partnership”?
- i. Does the project further the CDC’s charitable purposes? If not, what structure should be used to protect the CDC’s tax-status?

2. What are the options for structuring this transaction?

- a. Contract for Services
- b. Joint Ownership
 - i. Limited Partnership
 - ii. Limited Liability Company
 - iii. Corporation

3. What are the advantages/disadvantages of these options?

- a. Contract
 - i. CDC’s retains control & ownership (+)
 - ii. Role of Commercial Enterprises, Inc. is specified and limited (+)
 - iii. CDC bears all economic risk (-)
 - iv. Commercial Enterprises’ commitment to the success of the project is likely to be limited (-)
- b. Joint Ownership
 - i. CDC’s control over project is limited (-)
 - ii. Economic benefits of the project will be shared (-)
 - iii. Economic risks will be shared (+)
 - iv. Commercial Enterprises’ likely to have long-term interest in the success of the project (+)

Comment [m1]: I personally find these helpful, (+) and (-)

4. What concerns might you have about the transaction?

- a. It may be too early in project planning to enter into a formal relationship with Commercial Enterprises
- b. It may not be clear as to whether Commercial Enterprises is the right “partner”
- c. It may be too early to negotiate the terms of the relationship
 - i. Structure
 - ii. Purpose
 - iii. Management Control
 - iv. Economic Rights
 - v. Economic Burdens
 - vi. Compliance with IRC 501(c)(3) rules