

RESOLUTION NO. 2018-02-011R

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
OF AN ECONOMIC DEVELOPMENT AGREEMENT**

(Champaign County Economic Development Corporation, FY 2017-2018 & FY 2018-2019)

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Section 6 of Article VII of the State of Illinois Constitution of 1970; and

WHEREAS, the City of Urbana has determined that supporting regional economic development coordination and initiatives across Champaign County provides a benefit to the City; and

WHEREAS, the Champaign County Economic Partnership DBA Champaign County Economic Development Corporation (“EDC”) is well positioned to provide those regional economic development services for the City and the Champaign County region; and

WHEREAS, the City and the EDC have previously held a relationship related to regional economic development services; and

WHEREAS, the City and EDC believe that it would be mutually beneficial to the City and EDC to renew their agreement whereby EDC would provide regional economic development services for and on behalf of the City and the City would reasonably compensate EDC for such services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

An Economic Development Agreement by and between the City of Urbana, a Municipal Corporation, and the Champaign County Economic Partnership DBA Champaign County Economic Development Corporation, a 501c.6 Not-For-Profit Corporation, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to

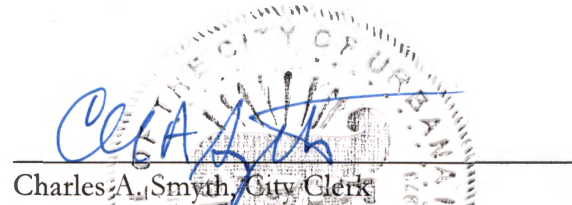
attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this 5th day of March, 2018.

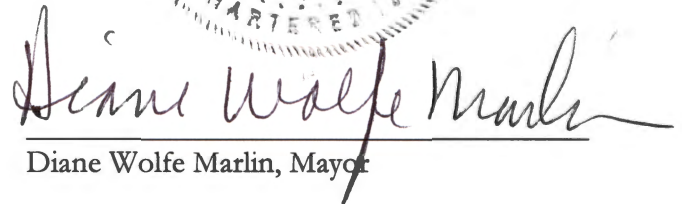
AYES: Ammons, Hazen, Jakobsson, Miller, Roberts, Wu

NAYS:

ABSTENTIONS:


Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this 6th day of March, 2018.


Diane Wolfe Marlin, Mayor

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (hereinafter, "Agreement") is entered into by and between the City of Urbana (hereinafter, the "City") and the Champaign County Economic Partnership DBA Champaign County Economic Development Corporation (hereinafter, "EDC") (collectively, the "Parties").

WHEREAS, the City is a home rule unit of local government pursuant to Section 6 of Article VII of the State of Illinois Constitution of 1970; and

WHEREAS, EDC is an Illinois not-for-profit corporation which has been granted tax-exempt status by the Internal Revenue Service pursuant to Section 501(c)(6) of the Internal Revenue Code (26 U.S.C. § *et seq.*) and which is certified by the Illinois Department of Commerce and Economic Opportunity as both the Illinois Small Business Development Center (hereinafter, "SBDC") and the International Trade Center (hereinafter, "ITC") for Champaign County; and

WHEREAS, the City seeks to provide financial support for ongoing economic development, business development and workforce development activities in the City of Urbana and Champaign County, as conducted by the EDC; and

WHEREAS, EDC seeks to promote Champaign County as an epicenter of entrepreneurship, innovation, and talent in Central Illinois and the Midwest; and

WHEREAS, EDC is experienced in the development of relationships between governments, businesses, employers and educational/research institutions in Champaign County to promote new business startups and business growth; retention and expansion of existing employers; improvements in the available workforce by working with schools, Parkland College, the University of Illinois, and employers; and promoting the economic and physical growth of the Champaign County; and

WHEREAS, EDC is also experienced in the marketing and promotion of Champaign County to geographic areas and populations outside of Champaign County by utilizing existing communication tools, such as the YourWelcomeCU website, specifically designed marketing campaigns and initiatives, such as the IFLYCU.com Willard Airport marketing program, and experienced in developing awareness campaigns within Champaign County such as "Made in Champaign County", recurring programs such as Tech Mix and annual celebrations such as Innovation Celebration; and

WHEREAS, EDC is experienced in coordinating and disseminating site selection RFPs and inquiries to local real estate developers and brokers, and managing real estate regional and site data to provide information to the public and professionals about development opportunities in Champaign County and to perform regional analysis that will inform decision makers and businesses about growth, employment and development options; and

WHEREAS, EDC is host to and manages the Small Business Development Center and International Trade Center supported by grants from the federal SBA and state DCEO to provide small business advising, promote start up and growth of small businesses in the county and promote and support the creation of businesses with international sales capabilities; and

WHEREAS, EDC is recognized as the regional point of contact for economic development in Champaign County; and

WHEREAS, the City and EDC seek to form a mutually beneficial arrangement whereby EDC undertakes the foregoing economic development activities for the benefit of Urbana as a key part of the county economy and coordinates such activity with the other municipalities, villages and county government as well as the University of Illinois to expand the regional marketplace for jobs and commerce and strengthen the economy of the City and Champaign County.

NOW for good, valuable and mutual consideration which each Party acknowledges as having in hand received and for the mutual exchange of the covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

A. CITY OBLIGATIONS TO EDC:

1. City Funding and In-Kind Services to EDC:

a. City Monetary Funding to EDC: The City shall provide EDC with certain funding which EDC may use to operate its business and also perform its duties as the SBDC and ITC for Champaign County. The amount of funding which the City shall provide to EDC for such purpose in each of the following City fiscal years, each of which shall commence of July 1 and end on June 30 (hereinafter, "City FY" or "City FYs") shall be:

FY 2017-2018:	\$28,763
FY 2018-2019:	\$28,763

b. City In-Kind Services to EDC: Separate and apart from the funding provided for in Sub-Paragraph A(1)(a) of this Agreement, the City may at its discretion provide in-kind services at no cost to EDC, but is under no obligation to provide any such in-kind services. The City shall value any in-kind services which it provides to, for, or for the benefit of EDC based on the rates which the City customarily charges for the provision of the same or similar services in connection with special public events held within the City's corporate limits as described in Section 10.2 of the City of Urbana Policy & Procedure Manual.

c. Collective City Funding: Unless the context of any Paragraph or Sub-Paragraph in this Agreement provides or suggests otherwise, reference to "City Funding" or "City Funds" shall mean and include the monetary funding and any in-kind services provided for in Sub-Paragraphs (A)(1)(a) and (A)(1)(b) of this Agreement.

2. Disbursement of Funds: The Parties recognize and agree that it shall be a goal of EDC that, during the term of this Agreement, EDC shall undertake efforts within its own operations, marketing and other activities, as provided for in Sub-Paragraphs B(1) through B(5), to grow its membership of businesses and institutions as well as to increase expand its services to businesses. Thus, the Parties intend that EDC's receipt of City Funding shall be based in whole or in part on EDC's performance during the term of this Agreement. However, nothing herein shall be deemed or construed as barring the Parties from entering into one or more other written agreements for other EDC services which benefit the City and/or its business community and the City from compensating EDC on covenants, terms and/or conditions separate and apart from those provided for in this Agreement. To this end, EDC shall submit invoices to the City on a quarterly basis on or about July 1st, October 1st, January 2nd and April 1st with each invoice representing one-fourth (1/4th) of the City Funds due in the City FY. The City shall disburse City Funds to EDC within thirty (30) days of the City's receipt of an invoice from EDC within the term of this Agreement.

Notwithstanding anything to the contrary provided for in Sub-Paragraphs A(1) of this Agreement, EDC shall not use or expend any City Funds, whether as staff funding and/or operational funding, for political purposes and activities including, but not necessarily limited to, funding of any political action committee, funding any organization's, candidate's, or public office-holder's political campaign, lobbying activities, or other activities which are or may be contrary to EDC's IRS Section 501(c)(6) tax-exempt status. Nothing herein shall be deemed, construed or interpreted as prohibiting EDC from engaging in any of the aforesaid political activities or lobbying activities where such activities are clearly and plainly intended to benefit the City or Champaign County as whole rather than any particular political constituency.

3. Limits on City Funding: Nothing in this Sub-Paragraph shall be deemed, construed or interpreted as limiting the amount of additional funding, if any, which the City may, in its sole discretion, provide to EDC for any purpose, whether specific or general in nature and whether or not pursuant to one or more separate agreements entered into and executed by and between the Parties.

B. EDC'S OBLIGATIONS TO THE CITY:

1. Promotional, Marketing, and Sponsoring Activities: EDC shall undertake such efforts as reasonably possible and within the limits of funding provided by the City to promote and market the City as a vital part of the Champaign County economy and to coordinate and plan specific activities, events and materials that promote the City as a unique destination in Champaign County in concert with Urbana businesses, city staff and the Urbana Business Association. Such activities shall include but shall not be limited to: support of and participation in City and Urban business events, promotion and support of businesses located within the City, planning and attending visits to employers identified by the City, holding promotional activities in Urbana businesses, planning and attending business openings or receptions, and including City programs, incentives and events in EDC website, emails, social media posts and printed promotional pieces. Such efforts shall also be complimentary to and consistent with EDC's regional efforts to promote all of Champaign County and improve the region's businesses, institutions and industries as a whole.

Notwithstanding anything to the contrary contained in this Sub-Paragraph B(1), all EDC promotional, marketing, staging, or sponsorship activities shall be undertaken in a manner which

- a. presents the City, its officials, and its business community in a favorable light;
- b. is presented in good taste and in such manner as to avoid offending the overall City residential and business community;
- c. does not promote any particular religious or political positions or persuasions;
- d. is presented or conducted in a manner so as not to endanger human life, health or safety.

EDC shall comply with all federal, state and City laws, rules and regulations in connection with any and all EDC activities.

2. Board Representation: The City shall designate one person and one alternate to sit on the EDC Board of Directors with full voting authority during the term of this Agreement as is consistent with the EDC bylaws.

3. EDC Work Plan: EDC shall develop a work plan for each of the City FYs provided for in Sub-Paragraph A(1)(a) of this Agreement and shall submit each said work plan to the City before June 1st preceding the start of the respective City FY, upon approval by EDC Board of Directors, or upon the effective date of this Agreement, whichever is latest. EDC's work plan submitted to the City for any given City FY shall include the following: (i) provide an overview of EDC's programmatic and organizational goals for the year; (ii) list specific activities and measurable objectives that EDC intends to complete over the course of the year; and, (iii) describe how such activities and objectives benefit the City and other communities being served. In the event, after presentation of each said work plan to the City, the EDC Board of Director's amends the work plan, EDC shall provide the City with any and all such amendments within seven (7) days after the EDC Board of Directors' adoption of any such plan amendment or amendments.

4. EDC Budget: EDC shall submit to the City an annual budget approved by the EDC Board of Directors and said budget shall be submitted at the same time EDC submits the work plan provided for in Sub-Paragraph B(3) of this Agreement. In the event EDC amends the aforesaid budget, EDC shall provide a copy of each such budget amendment to the City along with a statement of the reason therefor within seven (7) days of when EDC's Board of Directors approval of such amendment.

5. EDC Reports to City Council: EDC shall submit to the City, within ninety (90) days following the close of the City FY, its written annual partnership report which shall (i) describe the activities which EDC has undertaken for, on behalf of and/or for the benefit of the

City, of businesses located within the City, and of events located within the City during the immediate past City FY; (ii) provide a summarized accounting of all funds received by EDC during the aforesaid City FY, including but not limited to the City Funds provided for in Sub-Paragraph A(1) of this Agreement; and (iii) provide a summarized accounting of all expenditures and disbursements made by EDC during the aforesaid City FY.

EDC shall annually provide a representative of EDC to present the aforesaid annual partnership report to and address questions from the City Council at such time as the City may direct. All reports and accountings provided in this Sub-Paragraph B(5) shall be in writing and shall appear on the letterhead of EDC.

6. Dissolution of EDC: In the event that EDC should dissolve or elect to cease operations for any reason after any payment provided for in Sub-Paragraphs A(1)(a) and A(1)(b) of this Agreement has been made for a City FY not then completed, then EDC shall notify the City at least ninety (90) calendar days before ceasing operations and work in good faith with the City on a written plan for dissolution of the EDC. Such a plan shall be mutually agreed to by the Parties in writing and shall account for the payment of all just debts and obligation of the EDC including any refund to the City as may be agreed to by the Parties.

If within at least sixty (60) calendar days after ceasing operations the Parties do not mutually agree on such a written plan for dissolution as herein described, then EDC, after its payment of all just debts and obligations, shall refund to the City so much of the amount which the City provided to EDC in the City FY when it dissolves computed as a percentage of days within said City FY which have passed expressed as a fraction or percentage of the total number of days in the said City FY – i.e., 365 or 366 depending on whether the year of dissolution is a “leap-year.” For example and by way of example only, in the event that the City provided EDC with \$10,000 in the City FY 2017-2018 and EDC elects to dissolve on February 29, 2018, then the amount refunded to the City shall be computed as follows: $(\$10,000) \times (244 \div 365) = \$6,684.93$. However, EDC shall be relieved of its obligation to tender such refund should it be determined that state and/or federal law, rules or regulations bar the making of such refund. Separate and apart from the refund provided for in this Sub-Paragraph, in the event that EDC announces its intent to dissolve or cease operations, the City may, at its sole election and discretion cease to provide additional funds to EDC.

C. MISCELLANEOUS TERMS:

1. Term of Agreement: This Agreement shall commence on July 1, 2017 and shall expire at 11:59 p.m. on June 30, 2019.

2. Default and Opportunity to Cure: In the event that either Party believes that the other Party has defaulted on any covenant, term or condition contained in this Agreement, the non-defaulting Party shall provide written notice to the other Party of such default. The aforesaid written notice shall state or describe the nature of the default, whether by act or omission, and the Paragraph and/or Sub-Paragraph, as the case may be, which governs the obligation which is alleged to be in default. Within ten (10) calendar days of the effective date of such notice of default (as defined by Sub-Paragraph C(6) below), the recipient of such notice shall (i) cure the default

and provide documented evidence of the nature and/or manner of such cure; (ii) respond in writing to such notice which writing shall advise that the recipient reasonably believes that it is not in default and which describes the reasons for such belief; or (iii) provides a written plan of cure in those instances where cure of a default cannot be completed within the aforesaid ten (10) calendar day period.

3. Dispute Resolution: In the event that the Parties cannot resolve any dispute between them, they shall submit to mediation in an effort to resolve any such dispute. The Parties shall agree on the selection of the mediator and that mediator's rules and/or procedures shall govern any such mediation. The Parties shall share equally in the cost of the mediation. In the event that the Parties fail to resolve their dispute through mediation, then either or both Parties shall be free to initiate and maintain an action to construe, interpret and/or enforce this Agreement in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

4. Termination:

a. This Agreement may be terminated by the City immediately and without written notice if EDC –

(i) defaults on this Agreement without reasonable cure as provided for in Sub-Paragraph C(2) and which default/dispute is not resolved through mediation;

(ii) files a petition or is the subject of an involuntary petition for bankruptcy filed in a United States Bankruptcy Court;

(iii) files a notice of intent or other paper with the Secretary of State for the State of Illinois which evidences an intent to liquidate or dissolve;

(iv) loses its IRS 501(c)(6) status as a tax-exempt business league by reason of any act or omission on the part of EDC;

(v) loses its Illinois Department of Commerce and Economic Opportunity certification as either the SBDC or the ITC for Champaign County;

(vi) becomes involuntarily dissolved for any reason by the Secretary of State of the State of Illinois and where EDC fails to apply for reinstatement within ten (10) business days of notice of such involuntary dissolution;

(vii) enters into any arrangement with creditors which could reasonably be deemed, construed, or interpreted as a common law composition with creditors;

(viii) is placed in receivership by a lawful court order;

(ix.) acts or fails to act in such a manner as would injure or likely injure the City in any way, or cast the City or any business located within the City in a

negative light unless, in the case of a business, such negative light is reasonably supported by evidence (e.g., an announcement that a business has closed or moved from the City when in fact such business has moved or closed); and/or

(x) acts or fails to act in a manner which threatens or which may reasonably threaten human life, health or safety.

In the event that the City elects to terminate this Agreement for any one or more of the reasons provided in this Sub-Paragraph, the City's obligation to provide funding to EDC shall automatically cease and become wholly null and void. In addition to any other remedy which the City may have as a matter of law or right, the City shall be entitled to seek, obtain and recover a refund from EDC in an amount calculated as if EDC elected to dissolve as provided in Sub-Paragraph B(6) of this Agreement.

b. This Agreement may be terminated by either Party by giving written notice to the other Party of its intent to terminate and such termination shall be deemed effective thirty (30) days after the effective date of such written notice (as defined by Sub-Paragraph C(7) below). Any Party providing such notice of termination shall offer the other Party an opportunity to meet and discuss such termination prior to the effective date hereunder. In the event of such termination, EDC shall refund to the City so much of those funds which the City has provided to EDC in the fiscal year in which the termination occurs computed in the manner provided for in Sub-Paragraph B(6) of this Agreement.

5. Refund of Funds: If any event arises which triggers EDC's obligation to refund any moneys to the City as provided elsewhere in this Agreement, EDC shall tender to the City such refund in the amount provided for in this Agreement within sixty (60) calendar days of when the aforesaid event occurred. In the event EDC fails to tender such refund to the City within the timeframe provided herein, the City shall be entitled to interest on the said refund at the rate of nine percent (9%) per annum with interest commencing to run on the date when the City was first entitled to said refund.

6. Indemnification: EDC agrees to and will indemnify, defend and hold harmless the City, its elected and appointed officials, employees, agents, and assigns from and against any and all claims, suits, actions, causes of action, judgments, decrees, orders, liabilities, and defenses which arise or which may arise out of or which are or may be the direct or proximate result of any unlawful intentional, willful, wanton, grossly negligent, or negligent act or omission by EDC and/or any of its directors, officers, employees, agents, contractors, or representatives. Nothing herein shall require EDC to indemnify, defend and hold harmless the City, its elected and appointed officials, employees, agents, and assigns from and against any and all claims, suits, actions, causes of action, judgments, decrees, orders, liabilities, and defenses which arise or may arise out of or which are or may be the direct or proximate result of any intentional, willful, wanton, grossly negligent, or negligent act or omission by the City or any of its elected or appointed officials, employees, agents, or assigns.

7. **Notices:** All notices required to be given shall be in writing, and such notices shall be deemed proper and effective as hereinafter provided:

a. **If by First Class U.S. Mail:** All such notices shall be sent by registered or certified mail with a return receipt requested. If any such notice is placed in an envelope properly addressed to the intended recipient and bearing proper postage, such notice shall be deemed effective four (4) days from the date of placement with the United States Postal Service.

b. **If by facsimile:** All such notices shall be deemed effective if transmitted to the intended recipient's facsimile machine and the same shall be deemed effective on the next business day following transmission if the sender's facsimile machine provides a printed receipt that the facsimile was received by the intended recipient's facsimile machine. If no such printed receipt is provided, then the notice shall be deemed effective four (4) days after its transmission.

c. **If by overnight courier:** All such notices shall be deemed effective if placed in a properly addressed overnight courier envelope properly addressed to the intended recipient with delivery charges to be paid by the sender of such notice, and such notice shall be deemed effective the next business day following delivery of such notice.

d. **If by personal delivery:** All such notices shall be deemed effective if hand delivered by an employee of the sender to an employee of the intended recipient, and such notice shall be deemed effective on the next business day following delivery of such notice.

e. **No other form of notice, including e-mail notice, shall be deemed effective whether or not such notice was in fact received by the intended recipient.**

Notices shall be delivered to the following locations unless a Party informs the other Party in writing of a different location to where notices should be directed:

TO THE CITY:

Brandon Boys
Economic Development Manager
City of Urbana

400 S. Vine St.
Urbana, IL 61801

TO EDC:

Craig Rost
Executive Director
Champaign County Economic
Development Corporation
1817 South Neil Street
Champaign, IL 61820

8. **Waiver:** The failure of any Party to enforce any covenant, term or condition contained in this Agreement or to take action to enforce the same shall not be deemed to constitute a waiver of that Party's right to enforce or take action to enforce such covenant, term or condition. Notwithstanding the foregoing, if a Party fails to enforce or undertake any action to enforce any covenant, term or condition contained in this Agreement and knows that the other Party has relied on such forbearance to its financial detriment, then such knowledge shall constitute a waiver by

the Party which has or had the right to enforce or initiate an action to enforce such covenant, term or condition.

9. Assignment: Neither Party shall have the right to assign or otherwise transfer to any third person the Party's obligation to perform or the right to receive performance of any covenant, term or condition in this Agreement without the written consent of the non-assigning Party. If either Party consents to allow the other Party to assign or otherwise transfer its obligation to perform any covenant, term or condition contained in this Agreement or the right to receive the benefit of performance of any covenant, term or condition contained in this Agreement to or from a third person, then this Agreement shall be binding upon such third person as if such third person was a signatory to this Agreement, and such third person shall be deemed a "Party" as referred to in this Agreement.


10. Human Rights: EDC, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, EDC shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

11. Representations and Warranties: Each Party represents and warrants that the individual executing this Agreement is duly authorized to do so.

12. Supersedious: This Agreement shall supersede and replace any and all agreements respecting the subject matter of this Agreement, whether oral or in writing, entered into by and between the Parties heretofore.


[END OF AGREEMENT, SIGNATURES FOLLOW.]

FOR THE CITY:



Diane Wolfe Marlin, Mayor

ATTEST:



Charles A. Smyth, City Clerk

FOR EDC:



Craig Rost, Executive Director

ATTEST:



Bruce Knight, Board of Directors Chair