

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between the City of Lincoln, Nebraska, a municipal corporation (hereinafter sometimes referred to as the "City"), and the Lincoln Chamber Economic Development Corporation, a Nebraska nonprofit corporation, formerly known as the Lincoln Chamber Industrial Development Corporation (hereinafter referred to as "LCEDC"), effective as of September 1, 2011 (the "Effective Date"):

WITNESSETH:

WHEREAS, Article W, Section 12 of the Charter of the City of Lincoln authorizes and requires the Mayor of the City to encourage commercial and industrial growth in the City;

WHEREAS, Neb. Rev. Stat. §13-315 (Reissue 1997) authorizes the City to expend annually from the General Fund an amount not to exceed four tenths of one percent (.4%) of the taxable valuation of the City, either directly or through local development corporations, to encourage immigration, new industries, and investments and to conduct publicity campaigns, to exploit and advertise the various agricultural, horticultural, manufacturing, commercial and other resources, including utility services available within the city;

WHEREAS, the City and LCEDC have joined in a public-private cooperative agreement to establish and operate the Lincoln Partnership for Economic Development as a separate operating division of LCEDC (hereinafter the "Partnership") to encourage and promote economic development within the City; and

WHEREAS, the City and LCEDC now desire to continue the existence and operation of the Partnership:

NOW, THEREFORE, in consideration for their respective agreements and undertakings, as herein set forth, the sufficiency of which are hereby acknowledged, the City and LCEDC agree as follows:

1. **Agreement to Continue Partnership.** For and during the term of this Agreement, LCEDC hereby agrees to maintain the existence of the Partnership as a separate operating division of LCEDC and to operate the Partnership for the purpose of promoting economic development within the City upon the terms and subject to the conditions set forth in this Agreement.
2. **Steering Committee.** The operations and affairs of the Partnership shall be governed by a Steering Committee, as hereinafter defined, which shall establish its Annual Partnership Budget and the Annual Program of Projects, as provided for in Section 6 below. The Steering Committee shall be composed of twelve (12) official members and three (3) *ex officio* members (the "Steering Committee"). The Mayor of the City and the Chair of LCEDC shall be *ex officio* members and joint chairs of the Steering Committee. The Partnership Administrator, as hereinafter defined, shall be an *ex officio* member of the Steering Committee. Six (6) members of the Steering Committee shall be appointed by the

joint agreement of the Mayor of the City and six (6) members of the Steering Committee shall be appointed by the Chair of the LCEDC. All appointments to the Steering Committee are for a period of one (1) year and shall begin on January 1st. The proposed agenda for all meetings of the Steering Committee shall be prepared in advance by the Partnership Administrator and provided to the joint chairs by hand delivery, facsimile, or email at least ten (10) business days prior to the meeting. Either co-chair shall have the right to suggest changes to the agenda. The failure of a co-chair to object to any agenda item before forty-eight (48) hours prior to the meeting shall be deemed to constitute an approval of the agenda.

3. **Partnership Administrator and Staff.** LCEDC shall provide an individual to serve as the Partnership Administrator (the "Partnership Administrator"). The Partnership Administrator shall serve as the principal executive officer of the Partnership and, subject to the direction and control of the Steering Committee, shall be responsible for the general management and day-to-day operation of the Partnership, including the administration of this Agreement and the management, investment and disbursement of Partnership assets. In addition, LCEDC shall provide the professional and clerical staff necessary or appropriate to the operation of the Partnership as contemplated in this Agreement. LCEDC shall make staff assigned to the Partnership available to the City, upon request and reasonable prior notice, to attend meetings, make presentations and coordinate economic development projects. All costs associated with the staff provided by LCEDC hereunder shall be reflected in the Annual Partnership Budget as hereinafter defined, and shall be reimbursed to LCEDC from the funding provided by LCEDC and the City pursuant to Paragraph 8 hereof.

4. **Mission and Goals.** The mission of the Partnership will be to help nurture a positive environment for existing businesses, attract high-impact industries and develop entrepreneurial and technological capacity through public and private partnerships

The "Goals" of the Partnership shall be as follows:

- A. To act as a clearinghouse for economic development initiatives in the Lincoln area.
- B. To develop and maintain a communication network among all the Lincoln area economic development organizations.
- C. To establish annual projects for Lincoln in the following program areas:
 - (1) Business Retention and Expansion
 - (2) Targeted Business Attraction
 - (3) Technology and Entrepreneurship Development
 - (4) Community Competitiveness

5. **Strategic Planning.** The City and LCEDC agree that *prior to ratification of* the Annual Program of Projects, the Partnership will facilitate a strategic planning workshop with members of the steering committee and other stakeholders if required. The workshop shall be designed to discuss the economic development needs of the City, and to review the proposed Annual Program of Projects prior to adoption.

6. **The Annual Program of Projects/Annual Partnership Budget.** The Partnership's fiscal year, for programmatic purposes (the "Program Year"), shall commence on September 1 of each year, and shall end at the close of business on August 31 of the next following year. On or before the first day of June each year, the Partnership shall prepare and submit to the City and LCEDC a written statement of the programs and projects which the Partnership proposes to undertake and carry out during the next Program Year (the "Annual Program of Projects"). The Annual Program of Projects shall set forth the specific programs and projects which the Partnership intends to undertake for that Program Year and the goal or goals, as identified in paragraph 4 above, which each such program or project is intended to address. In addition, on or before the first day of June, the Partnership shall submit to the City and LCEDC a budget of expenditures which sets forth in detail the expenses which the Partnership anticipates incurring in connection with its operation for the next Program Year (the Annual Partnership Budget).

Further, the City and LCEDC agree that the Annual Program of Projects shall establish goals and objectives for the Partnership which are designed to address the needs identified in the Partnership's then-current strategic plan and which are consistent with the current Comprehensive Plan as the same now exists and may from time to time hereafter be amended.

The City and LCEDC shall approve the Annual Program of Projects and the Annual Partnership Budget each year on or before the commencement of the next following Program Year.

7. **Activity Report and Evaluation.** On or before the 15th day of September, November, January, March, and May, the Partnership shall also submit a detailed report and evaluation of the work performed by the Partnership up to that time during the then-current Program Year, and an evaluation of its effectiveness in addressing the goals, identified in paragraph 4 of this Agreement. Subject to required confidentiality, said report shall include, without limitation, (i) the number of contacts made by Partnership personnel with businesses interested in relocating or expanding their primary job base in Lincoln; (ii) the number of business retention and expansion surveys completed, including follow-up activities (iii) a summary of marketing activities including recruiting trips; (iv) the number of contacts and business leads generated by marketing activities and recruiting trips; (v) the types of industries such contacts represent; (vi) the number of community visits made by businesses interested in relocating or expanding in Lincoln; (vii) the number of *active and* ongoing projects in Lincoln and the County of Lancaster; (viii) the number of publicly reported primary jobs that are created, lost or changed, including the number and employment category of such jobs; (ix) activities that relate to the objectives listed in the Annual Program

of Projects described in paragraph 6 of this agreement, and (x) the number and amount of all grants made by LCEDC from the Opportunity Fund, as hereinafter defined, during the Program Year, as well as the number of publicly reported primary jobs created, lost or changed as a result of each such grant.

8. **Funding.** With respect to each Program Year of the Partnership which commences during the term of this Agreement, the City and LCEDC shall fund the Annual Partnership Budget as follows:

A. Base Contributions.

(1) Base City Contribution. The City shall fund fifty percent (50%) of the Annual Partnership Budget for each Program Year up to a maximum amount of Three Hundred Thousand Dollars (\$300,000) (the "Base City Contribution"). Funding shall occur through the appropriation of General Fund revenue, and the amounts so appropriated shall be paid in two (2) equal, semi-annual installments on or before January 1 and June 1 of each Program Year;

(2) Base LCEDC Contribution. LCEDC shall fund fifty percent (50%) of the Annual Partnership Budget up to a minimum amount of Three Hundred Thousand Dollars (\$300,000) through donations and/or in kind contributions (the "Base LCEDC Contribution").

On or before May 1 of each year, LCEDC shall provide the City with evidence, acceptable to the City, in City's reasonable discretion, that LCEDC has received donations and/or pledges for in-kind contributions which are, in the aggregate, sufficient to meet LCEDC's funding obligation as set forth in subparagraph 8A(2) above for the next following Program Year. (For purposes of this Agreement, in-kind contributions shall be professional services approved by the City and valued at the regular billing rate of the contributor). In the event that LCEDC is unable to secure donations and/or pledges for in-kind contributions which are, in the aggregate, sufficient to permit LCEDC to make a Base LCEDC Contribution to the Partnership in an amount of at least \$300,000 for any Program Year then, in that event, the City's obligations to make the Base City Contribution for that Program Year shall be reduced proportionately and the Annual Program of Projects and Annual Partnership Budget for that Program Year will be revised to reflect the aggregate funds available.

LCEDC's financial obligations hereunder shall be limited solely to the contributions raised by LCEDC pursuant to the provisions of this paragraph and specifically designated for the Partnership's budget.

B. Supplemental Contributions. For any Program Year with respect to which LCEDC receives donations or pledges which are in aggregate sufficient to fund the Base LCEDC Contribution in an amount of at least \$300,000, LCEDC may deposit any additional donations it may receive with respect to such year in the "Opportunities Fund," which was established during the 2006-2007 Program Year, and in such event, the City shall make a

supplemental contribution to the Partnership in an amount equal to such deposit up to a maximum of \$200,000, as follows:

- (1) Maintenance of LCEDC Opportunities Fund. During the term of this Agreement, LCEDC agrees to maintain the Opportunities Fund as a segregated fund on its books. Except for Supplemental City Contributions, as provided here-in-after, said Opportunities Fund shall be funded exclusively with private donations solicited and received by LCEDC which are in addition to the donations and pledges required to permit LCEDC to make its Base LCEDC Contribution to the Partnership in an amount of at least \$300,000 as provided in subparagraph 8A(2) above, and shall be used exclusively to provide economic incentives for the creation of primary jobs in Lincoln and Lancaster County, Nebraska. The Opportunities Fund shall be administered by the LCEDC Board of Director which shall, subject to required confidentiality, report its activities to the Steering Committee on a quarterly basis.

- (2) Supplemental City Contribution for Subsequent Program Years. For each Program Year as long as the Agreement remains in effect, unless the City's obligation to make Supplemental City Contributions is terminated as hereinafter provided, LCEDC shall certify to the City in writing on or before the first day of May that immediately precedes the commencement of the Program Year as to whether or not LCEDC has made an additional contribution to the Opportunity Fund for such Program Year, and if so, the amount of such contribution. In the event LCEDC notifies the City that it has made a contribution in the Opportunities Fund for such Program Year, and provided LCEDC has in addition received donations and/or pledges which are in the aggregate sufficient to permit LCEDC to fund the Base LCEDC Contribution to Partnership for such Program Year in an amount of at least \$300,000, then, in that event, as soon as is reasonably possible and in all events within thirty (30) days following its receipt of such notice, the City shall make an additional Supplemental City Contribution to the Partnership for such Program Year, in an amount that is equal to the lesser of the amount of the LCEDC contribution to the Opportunities Fund as set forth in the notice, or \$200,000. For clarification purposes, it is agreed that the maximum amount the City will be required to contribute pursuant to this Agreement with respect to any one Program Year will be an aggregate amount of \$500,000.

- (3) City's Right to Terminate Supplemental Contributions. Anything herein to the contrary notwithstanding, the City shall have the right to terminate its commitment to continue to make Supplemental City Contributions pursuant to Section 8B(2) above for any Program Year, provided only that the City shall give LCEDC a written notice of its

intent to so terminate its Supplemental Contribution at least ninety (90) days prior to the first day of such Program Year.

All payments to be made by the City pursuant to this Agreement shall be paid upon the City's Finance Director's receipt of invoices from the Partnership Administrator requesting that payment be made.

All payments from the City shall be used to fund the Partnership's Annual Budgets.

If, at the conclusion of any Program Year, the Partnership has unexpended and unobligated funds, such funds shall be carried forward to the next Program Year and applied to the Annual Partnership Budget for that Program Year.

9. **Audit.** All Partnership assets shall be maintained in separate accounts. The City Controller or contract auditor as defined in Chapter 4.66 of the Lincoln Municipal Code shall have the right to inspect all Partnership work, materials, payroll records, personnel records, materials invoices, and other relevant data, documents and records, and to audit the books, records, and accounts of the Partnership and LCEDC insofar as such materials, books, records and accounts pertain to services rendered by the Partnership. Said audit, insofar as it relates to LCEDC, shall be separate from and independent of any audit of the general activities of LCEDC.
10. **Independent Contractor.** The City is interested only in the results obtained by the Partnership under this Agreement. As such, the relationship between the City and LCEDC and the relationship between the City and the Partnership shall be that of an independent contractor and shall not be deemed or construed to constitute a partnership or joint venture. LCEDC and the Partnership shall have the sole and exclusive control of all persons employed by the Partnership to perform services in connection with this Agreement and LCEDC and the Partnership shall have exclusive control over the manner, means and methods by which all services which are to be provided by the Partnership under this Agreement are performed. No employee or agent of LCEDC or the Partnership shall be deemed to be an employee or agent of the City, and no employee or agent of the City shall be deemed to be an employee or agent of LCEDC or the Partnership. LCEDC and the Partnership shall be solely responsible for the payment of all wages or other compensation or benefits which may at any time during the term of this Agreement become due or payable to their employees, and LCEDC and the Partnership shall be solely responsible for the withholding and payment of all state and federal income taxes, and all social security benefits, including FICA and FUTA, which may be required to be withheld or paid with respect to their employees.
11. **Term; Extension.** Unless sooner terminated as provided in Section 13 below, this Agreement shall be for a term of three (3) years commencing on September 1, 2011 and ending on August 31, 2014.
12. **Events of Default.** The following shall be events of default of this Agreement:

- A. Material failure in the observance or performance of any condition, covenant, or obligation set forth in this Agreement for a period of sixty (60) days after written notice to the party failing to observe or perform from the other party specifying the nature thereof.
- B. The entry of any order or final decree by a court of competent jurisdiction enjoining or prohibiting LCEDC, the City and/or the Partnership from performing or satisfying their respective obligations under this Agreement if such order or decree is not vacated or appealed within sixty (60) days after the entry thereof.
- C. LCEDC and/or the City becoming insolvent or unable to pay its or their debts as they mature or making an assignment for the benefit of creditors.
- D. Failure of the City and LCEDC to approve the Annual Program of Projects and the Annual Partnership Budget for any Program Year on or before the 31st day of August immediately preceding the commencement of such Program Year.
- E. Failure of LCEDC to meet its funding obligation for any Program Year as set forth in paragraph 8 above on or before the 1st day of May immediately preceding the commencement of such Program Year.
- F. Failure of the City to appropriate or pay the amounts required to be paid by it pursuant to paragraph 8 hereof.

13. **Termination.** If any of the events of default set forth above shall occur and the defaulting party fails to cure the same within the time period (if any) herein provided, then the sole remedy of the non-defaulting party shall be the right to terminate this Agreement by giving written notice to the other party of such termination at least seven (7) days before the effective date of such termination. In the event of termination under this paragraph, the City shall pay to the Partnership its proportionate share of any sums necessary to meet all outstanding debts, contractual obligations and other commitments incurred by the Partnership pursuant to this Agreement prior to the effective date of such termination. In the event any project funds remain unobligated after the payment of all debts, obligations and commitments, the Partnership shall repay the City and LCEDC their proportionate shares of such unobligated funds.

14. **Equal Employment Opportunity.** In connection with the performance of work under this Agreement, LCEDC and the Partnership agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In employing individuals under this Agreement to perform services on behalf of the Partnership, LCEDC shall comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall take affirmative action to ensure that applicants are employed and treated during employment without regard to their race, color, religion, sex, disability, national origin, age or marital status. LCEDC shall submit an Affirmative Action, Program Information Sheet to the City's Equal Opportunity Officer upon a form prescribed by the City.

15. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, promotional materials, and any other materials or properties produced by the Lincoln Partnership for Economic Development under this Agreement shall be jointly available to the City and LCEDC with full and unrestricted rights of either party to publish, disclose, distribute and otherwise use the same, in whole or in part. The copyright of any such material shall be held jointly in the name of the City and LCEDC .
16. **City Representative.** Except as to appropriations required to fund the City's commitments to the Partnership pursuant to the terms of this Agreement, the Mayor of the City of Lincoln or his/her designee shall be the authorized representative of the City responsible for carrying out the terms of this Agreement on behalf of the City.
17. **LCEDC Representative.** The Chair of LCEDC or his/her designee shall be the authorized representative of LCEDC, responsible for carrying out the terms of this Agreement on behalf of LCEDC.
18. **Partnership Representative.** The Partnership Administrator shall be the representative of the Partnership, responsible for carrying out the terms of this Agreement on behalf of the Partnership. Individuals assigned by LCEDC to perform services on behalf of the Partnership shall be available at reasonable times and upon reasonable prior notice to attend meetings and consult with the Mayor, the Chair of LCEDC and/or their respective designees for purposes of information, coordination and liaison.
19. **Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and for and during its term, this Agreement shall supersede and replace all prior understandings or agreements, whether written or oral, between the parties with respect thereto.
20. **Amendment.** This Agreement shall not be amended except by written amendment executed by duly authorized representatives of the parties hereto.
21. **Notices.** Any notice provided hereunder shall be properly served if mailed by certified mail, U.S. postage prepaid:

To the City:
 c/o Office of the Mayor
 555 South 10th Street
 Lincoln, NE 68508

To LCEDC:
 c/o Partnership Administrator
 Lincoln Chamber of Commerce
 1135 M Street, Suite 200
 Lincoln, NE 68508

22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this _____ of _____, 2011.

THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

Attest:

City Clerk

By _____

Mayor

LINCOLN CHAMBER ECONOMIC
DEVELOPMENT CORPORATION,
a Nebraska Non-Profit Corporation

Attest:

Secretary

By _____

Chair