

MEMORANDUM

October 15, 2014

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: Clara VanBlargan, City Clerk, MMC

SUBJECT: Amendment to the Economic Development Agreement between the Lake Wales Area Chamber of Commerce and the City of Lake Wales

SYNOPSIS: The approval ratifies the funding increase to the Economic Development Agreement from \$100,000 to \$125,000 approved by the City Commission on September 16, 2014. Other terms of the Agreement remain the same.

RECOMMENDATION

The recommendation is for the City Commission to approve an Amendment to the Economic Development Agreement between the Lake Wales Area Chamber of Commerce and the City of Lake Wales increasing the funding from \$100,000 to \$125,000.

The City Commission approved the \$25,000 increase in funding on September 16, 2014 through the adoption of the FY2014-2015 Budget. The approval of the Amendment ratifies this approval.

BACKGROUND

The original Economic Development Agreement between the Lake Wales Area Chamber of Commerce and the City of Lake Wales was approved by the City Commission on March 19, 2013, the effective date of which is June 24, 2013. During the 2014 budget adoption process the City Commission agreed to increase the funding to the Chamber of Commerce from \$100,000 to \$125,000. Other terms of the Agreement remain the same.

FISCAL IMPACT

The \$25,000 increase in funding to the Economic Development Agreement is budgeted in the FY2014-2015 Budget.

ATTACHMENT

Original Agreement
Amendment to the Original Agreement

ECONOMIC DEVELOPMENT AGREEMENT

This **Amendment to the** Economic Development Agreement (“Agreement”) is made and entered into this _____ day of October 2014, by the City of Lake Wales, a Florida municipal corporation, whose mailing address is 201 West Central Avenue, Lake Wales, Florida 33853 (the “City”), and the Lake Wales Area Chamber of Commerce, Inc., a Florida not-for-profit corporation, whose address is 340 W. Central Avenue, Lake Wales, Florida 33853 (the “Chamber”).

RECITALS

The parties hereto agree that it is in the best interest of the City and the Chamber to strengthen and enhance economic development activities within the City and the Chamber through an Economic Development Council (the “EDC”), which shall be a division of the Chamber, in accordance with the terms and conditions set forth herein.

The parties hereto agree that the joint funding of the EDC by the City and the Chamber will enhance the economic development activities within the City and will give the City and the Chamber a greater return on the investment of both public and private funds by forming an EDC.

The parties hereto agree that all funding provided by the City for this venture will be expended to fulfill a public purpose, that is economic development, and that periodic reporting will be performed in order to assure that the funds provided by the City will be utilized only for public purpose as set forth herein.

The parties hereto acknowledge that it is their mutual goal for the EDC to be a stand alone entity, separate from the Chamber and the City, as soon as practically and financially possible.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE 1 – RECITALS

The parties acknowledge and agree that above stated recitals are true and correct and are incorporated herein by reference.

ARTICLE 2 - SERVICES

The EDC desires to engage in economic development efforts for the Lake Wales area which shall include, but not be limited to, the following:

- a. Employ an Executive Director who is an economic development professional with the requisite knowledge, skills, expertise necessary to lead the economic development efforts.
- b. Advise private businesses located outside the City, existing businesses and the business community of the availability of opportunities within the City and within its utilities service area of which they may take advantage and counsel them regarding their suitability to participate in available federal and state economic development programs and grants.
- c. Monitor and aid in the retention, expansion and development of existing businesses, including minority owned businesses.
- d. Advise and counsel private businesses about the development of infrastructure plans for the expansion of business districts and the creation of business and industrial parks.
- e. Advise and counsel private businesses about annexation strategies.
- f. Advise and counsel private businesses on strategies designed to foster the best possible pro-business environment within the City.
- g. Promote the City as a location for business operations, clean manufacturing, and research and development companies.
- h. Serve as an information source for those interested in economic development and provide relevant responses to all requests for economic development information.
- i. Provide an EDC web page to be linked to the City's web site. The web page shall be updated and revamped continuously to provide the most current information concerning economic development in the City and surrounding area for the purpose of furthering the mission of the EDC.
- j. Provide for the support and nurturing of businesses and the development of an entrepreneurial environment through cooperation with other local, county, state and national economic development organizations.
- k. Endeavor to represent all business interests wherever located in the City and to conduct its affairs in such a way that no segment of business or area of the City is unfairly advantaged or disadvantaged.

ARTICLE 3 – PLACE OF WORK

It is understood that EDC services will be rendered largely at 340 W. Central Avenue, Lake Wales, Florida 33853; but that the EDC will, on request, come to City Hall

or such other places as designated by the City to meet with the City's representatives.

ARTICLE 4 – PAYMENT

The City will pay the EDC the total sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) annually payable in equal quarterly payments on or before the fifth day of the beginning of each quarter beginning on the Effective Date. The first quarterly payment shall be prorated based on the Effective Date so future payments fall on respective quarters of the City's fiscal year. The effective date of the \$25,000 increase is October 22, 2014.

ARTICLE 5 –REPORTS

- a. The Chamber shall maintain two separate and distinct operating accounts: one for the deposit and expenditure of privately raised funds and one for the deposit and expenditure of public funds provided by the City.
- b. The Chamber will use only privately raised funds for the provision of client and business services for its members. All expenditures of said funds shall be managed, maintained and controlled by the Chamber.
- c. The EDC will prepare and present to the City Commission quarterly evaluation reports on the progress of economic development programs and activities.
- d. The EDC will submit and present to the City Commission annual expenditure reports on the use of City funds.

ARTICLE 6 – RELATIONSHIP OF PARTIES

- a. The Chamber is an independent entity and not a department, agency or subdivision of the City. The EDC is a division of the Chamber, which operates in cooperation with the City. The elected Mayor or other member of the City Commission, with the consent of the Mayor, may serve as a member of the EDC, along with the City Manager or other city staff, as deemed appropriate by the Chamber.
- b. Neither the Chamber nor the EDC is authorized to commit or obligate the City or its funds to any agreement and the EDC has not been delegated or granted any governmental or advisory authority.
- c. The City and the Chamber are two separate and autonomous entities. As such, the parties agree that documents and records kept by the Chamber are not intended to be subject to the Florida Public Records Laws. Nothing in this Agreement is intended to subject the Chamber or the EDC to the Florida Government in the Sunshine Law.
- d. The City and the Chamber acknowledge that this Agreement is not a delegation

of any public function of the City, and that neither the Chamber nor the EDC will play an integral part in any decision-making process of the City by reason of this Agreement.

- e. Notwithstanding the foregoing, the parties hereto acknowledge that federal, state and local laws and regulations may apply to the EDC in regards to its performance of this Agreement, non-profit status under the Internal Revenue Code, corporate records and meeting requirement, lobbying efforts, occupational licenses and business operations.

ARTICLE 7 - DURATION

- a. The initial term of this Agreement shall be for a period of two (2) years and this Agreement may be renewed annually.
- b. Either party may terminate this Agreement after the initial two (2) year term upon one hundred and eighty (180) days written notice to the other of its intention to terminate.
- c. Any notice required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the address first listed above, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith.

ARTICLE 8 - ASSIGNMENT

The Chamber shall not assign any rights or duties under this Agreement to any party other than the EDC without the prior written consent of the City.

ARTICLE 9 - NONDISCRIMINATION

The Chamber shall not discriminate against any employee or person served under this Agreement on account of race, color, sex, age, religion, ancestry, national origin, handicap or marital status, or as otherwise prohibited by applicable law.

ARTICLE 10 - MISCELLANEOUS

- a. The effective date of this Agreement shall be the date upon which the Executive Director begins his/her employment with the Chamber and the EDC (the "Effective Date"). **The effective date of the original Agreement is June 24, 2013.**
- b. The Chamber acknowledges that the City, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted or the reduction of revenues for those budgeted agreements that may be available for expenditure during such fiscal year. Any agreement, verbal or written, made

in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreement for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the City's performance and obligation to pay under this Agreement is contingent upon annual appropriation.

- c. The Chamber shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state and local laws.
- d. The Chamber shall at all times maintain its status as a private not-for-profit corporation, organized and created under the laws of the State of Florida.
- e. This Agreement may be modified or amended by mutual written agreement of the parties, duly executed by both parties.
- f. This Agreement contains all the terms and conditions agreed upon by the parties.
- g. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any legal action to enforce or interpret this Agreement shall be in Polk County, Florida.
- h. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- i. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- j. If any party seeks to enforce or interpret this Agreement through litigation, each party shall bear its own attorney's fees and costs incurred.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent to be bound by its terms.

Execution on following page

<p>CITY OF LAKE WALES</p> <p>BY: _____ EUGENE FULTZ, MAYOR</p> <p>DATE OF APPROVAL: _____</p> <p>ATTEST: _____ CLARA VANBLARGAN, CITY CLERK</p>	<p>Lake Wales Area Chamber of Commerce, Inc.</p> <p>BY: _____ BRIAN MARBUTT, PRESIDENT</p> <p>DATE: _____</p>
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Effective Date: 6/24/2013

ECONOMIC DEVELOPMENT AGREEMENT

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- d. The City and the Chamber acknowledge that this Agreement is not a delegation of any public function of the City, and that neither the Chamber nor the EDC will

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- b. Either party may terminate this Agreement after the initial two (2) year term upon one hundred and eighty (180) days written notice to the other of its intention to terminate. *6mths*
- c. Any notice required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the address first listed above, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith.

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such agreement. Nothing herein contained shall prevent the making of agreement for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the City's performance and obligation to pay under this Agreement is contingent upon annual appropriation.

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- f. This Agreement contains all the terms and conditions agreed upon by the parties.
- g. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any legal action to enforce or interpret this Agreement shall be in Polk County, Florida.
- h. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- i. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- j. If any party seeks to enforce or interpret this Agreement through litigation, each party shall bear its own attorney's fees and costs incurred.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent to be bound by its terms.

Execution on following page

<p>CITY OF LAKE WALES</p> <p>BY: <u></u> MIKE CARTER, MAYOR</p> <p>DATE OF APPROVAL: <u>3/19/2013</u></p> <p>ATTEST: <u></u> CITY CLERK <u>4/8/2013</u></p>	<p>Lake Wales Area Chamber of Commerce, Inc.</p> <p>BY: <u></u> BRIAN MARBUTT, PRESIDENT</p> <p>DATE: <u>3/22/13</u></p>
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Clara VanBlargan

From: Charlotte Kosek [Charlotte@lakewaleschamber.com]
Sent: Wednesday, July 03, 2013 1:54 PM
To: Clara VanBlargan
Subject: RE: EDC Agreement

On June 24, 2013 Jim Bell began employment as Executive Director of the Lake Wales Area Chamber of Commerce and Economic Development Council.

Charlotte Kosek
Welcome Center Manager/Administrative Assistant
Lake Wales Area Chamber of Commerce
340 West Central Ave.
Lake Wales, FL 33853
863-676-3445
863-676-3446 Fax
charlotte@lakewaleschamber.com
www.lakewaleschamber.com

From: Clara VanBlargan [<mailto:CVanBlargan@cityoflakewales.com>]
Sent: Wednesday, July 03, 2013 1:06 PM
To: Charlotte Kosek
Subject: EDC Agreement

In accordance with Article 10 of the agreement with the City and the Chamber, the City Attorney said I need something in writing from the Chamber stating when the Executive Director began his employment with the Chamber. This date serves as the official effective date of the agreement.

A response to this email can serve as the "official notice" that is needed from the Chamber stating the start date of employment. Include in the response the name of the person that was hired as the new Executive Director.

Page 4, Article 10 – The effective date of this Agreement shall be the date upon which the Executive Director begins his/her employment with the Chamber and the EDC (the "Effective Date").

Thanks,
Clara

NOTICE: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this department by phone or in writing. Also, please be aware that all e-mail communications to city officials and employees become part of the public record and are subject to public review as well as the record retention requirements of the applicable Florida statute.