

1 BILL NO. S-16-05-13

2
3 SPECIAL ORDINANCE NO. S-_____ /

4 AN ORDINANCE approving the 2016 AGREEMENT FOR
5 ECONOMIC DEVELOPMENT SERVICES BETWEEN
6 FORT WAYNE – ALLEN COUNTY ECONOMIC
7 DEVELOPMENT ALLIANCE, INC. and the City of Fort
8 Wayne, Indiana by and through the Division of Community
9 Development.

10 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE**
11 **CITY OF FORT WAYNE, INDIANA:**

12 **SECTION 1.** That the 2016 AGREEMENT FOR ECONOMIC DEVELOPMENT
13 SERVICES BETWEEN THE FORT WAYNE – ALLEN COUNTY ECONOMIC
14 DEVELOPMENT ALLIANCE, INC. and the City of Fort Wayne, by and through its Division of
15 Community Development, respectfully for:

16 2016 funding for the Fort Wayne – Allen County Economic Development
17 Alliance for Direct Marketing Services and Economic Development
18 Activities during 2016;

19 involving a total cost of ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100
20 DOLLARS – (\$125,000.00) all as more particularly set forth in said AGREEMENT FOR
21 ECONOMIC DEVELOPMENT SERVICES BETWEEN THE FORT WAYNE – ALLEN
22 COUNTY ECONOMIC DEVELOPMENT ALLIANCE, which is on file in the Office of the
23 Department of Purchasing, and is by reference incorporated herein, made a part hereof, and
24 is hereby in all things ratified, confirmed and approved.

25 **SECTION 2.** That this Ordinance shall be in full force and effect from and after its
26 passage and any and all necessary approval by the Mayor.

27 _____
28 Member of Council

29 APPROVED AS TO FORM A LEGALITY

30 _____
Carol Helton, City Attorney

AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

This Agreement for Economic Development Services is dated _____, 2016 but effective as of July 1, 2016 (the "Effective Date") by and between the City of Fort Wayne, Indiana, by and through its Division of Community Development ("City") and the Fort Wayne – Allen County Economic Development Alliance, Inc., an Indiana non-profit corporation, by and through its affiliate, Greater Fort Wayne, Inc., an Indiana non-profit corporation ("GFW").

RECITALS:

City is engaged in an ongoing economic development program to benefit its citizens through the retention and creation of employment opportunities and the expansion of City's tax base. City desires to obtain professional marketing and project coordination services to enhance the effectiveness of its economic development program. GFW is engaged in various economic development activities in northeast Indiana including the providing of professional marketing and project coordination services for the benefit of public and quasi-public entities (the "Economic Development Services") and desires to perform the Economic Development Services for City in accordance with the term and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained in this Agreement, City and GFW agree as follows:

1. **SCOPE OF SERVICES:** GFW shall perform the Economic Development Services described in Schedule A attached hereto and made a part hereof (the "Scope of Economic Development Services"). The Economic Development Services shall be performed by GFW in accordance with the goals and performance measures set forth in attached Schedule A. The goals and performance measures will be used by the parties to evaluate the performance by GFW hereunder during the Term.
2. **TERM** This Agreement shall commence as of the Effective Date and shall continue until December 31, 2016 (the "Term ") unless terminated by City or GFW prior thereto in accordance with Section 10 hereof. GFW shall perform and deliver all of the Economic Development Services during the Term at such times and in such components as the parties shall determine or as City may reasonably request.
3. **COMPENSATION.** Subject to Section 10. hereof, GFW shall be paid a fee of One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00) (the "Fee"), payable in two (2) equal quarterly installments of Sixty Two Thousand Five Hundred and 00/100 Dollars (\$62,500.00) for the performance of the Economic Development Services in accordance with the terms of this Agreement, commencing with the third quarter of 2016. The Fee shall include payment for all costs and expenses incurred by or on behalf of GFW in the performance and delivery of the Economic Development Services. Each quarterly payment shall be made within thirty (30) days following submission of an invoice for payment which shall include a detailed description of the Economic Development Services performed by GFW for such quarter.
4. **CHANGES TO SCOPE OF ECONOMIC DEVELOPMENT SERVICES.** City may from time to time during the Term request changes in the Scope of Economic Development Services. Such changes, including any increase or decrease in compensation hereunder upon which City and GFW agree as a

result of such changes, shall be contained in a written amendment to this Agreement. City may also request a decrease in the amount of compensation payable to GFW hereunder in the event GFW fails to perform and deliver the Economic Development Services or fails to achieve the goals or meet the performance measures in the performance and delivery of the Economic Development Services as provided in attached Schedule A. The parties shall negotiate in good faith any adjustment to compensation under this Section 4.

5. STAFFING. GFW shall utilize qualified and competent professional staff, consultants, independent contractors and subcontractors authorized under applicable federal, state and local laws, rules and regulations to perform and deliver the Economic Development Services under this Agreement. GFW shall provide City in advance with a written list of consultants, independent contractors and subcontractors whom GFW intends to engage in the performance and delivery of the Economic Development Services.

6. REPORTS. GFW shall submit quarterly written or electronic reports to City which shall provide a description of the goals targeted, activities undertaken and accomplishments that have been achieved during the previous quarter together with a description of projects to be undertaken during the following quarter. On or before January 15, 2017, GFW shall submit to City a final written report which documents the Economic Development Services performed and the work accomplished by GFW under this Agreement during the Term (the "Final Report"). The Final Report shall document the accomplishments during the Term, identify any significant deviation by GFW in the performance of the Scope of Economic Development Services and outline plans, recommendations and projections for calendar year 2017 in the event the parties have agreed to renew this Agreement.

7. OWNERSHIP OF DOCUMENTS. All documents, data, literature, logos and other materials (including computer software), whether in written or electronic form, generated by GFW in the performance of its obligations under this Agreement (the "Documents") shall be and remain the property of GFW. Upon City's written request, GFW shall reproduce and deliver copies of the Documents to City.

8. COMPLIANCE WITH LAWS.

A. GFW shall comply with all federal, state and local statutes, rules, regulations and ordinances in the performance and delivery of the Economic Development Services and regarding any other matter pertaining in any manner to this Agreement.

B. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Indiana.

C. The parties agree that any action at law or in equity initiated by either party regarding or relating to this Agreement shall be heard by a court of applicable jurisdiction located in Allen County, Indiana.

9. RELEASE AND INDEMNIFICATION. To the fullest extent permitted by law, GFW agrees to forever release, defend, indemnify and hold harmless City, its officers, directors, employees, agents, departments and divisions, from and against any and all loss of or damage to property, injuries to or death of any person or persons, and/or all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Worker's Compensation

claims, both known and unknown and whether now existing or hereafter arising, which is in any manner related to or associated with the performance and delivery of the Economic Development Services by or any other act or omission to act by GFW, its employees, independent contractors, subcontractors, consultants and agents in connection with this Agreement. This release and indemnification shall survive the expiration or earlier termination of this Agreement for any reason.

10. TERMINATION. Either City or GFW may terminate this Agreement prior to the expiration of the Term, with or without cause, upon written notice to the non-terminating party. If termination is for cause, which shall include any impropriety, default or breach under this Agreement by the non-terminating party, the terminating party shall provide ten (10) days' notice of termination. If termination is without cause, the terminating party shall provide thirty (30) days' notice of termination. City may also terminate this Agreement prior the expiration of the Term, in the event budgeted funds are not available to pay GFW the compensation described in Section 3. hereof upon written notice to GFW. In the event of termination prior to the expiration of the Term by either party, City shall be responsible for payment of the compensation to and including the date of notice of termination under this Section 10.

11. BEST EFFORTS. GFW shall devote its best efforts and resources to the performance and delivery of the Economic Development Services hereunder and the performance of all ancillary services reasonably requested by City or required under this Agreement in connection with GFW's performance hereunder in order to achieve the maximum effectiveness and success of City's economic development program.

12. INDEPENDENT CONTRACTOR. GFW is at all times serving as an independent contractor of City hereunder, and no employees, consultants and subcontractors of GFW are employees of City. GFW is responsible for all obligations relating to federal and state income tax, self-employment, Medicare and FICA taxes and contributions and all other employer taxes, contributions and withholdings related to its employees.

13. NOTICES. All notices sent by City or GFW under this Agreement shall be personally delivered or sent by United States prepaid certified mail, return receipt requested as follows:

If to City:

City of Fort Wayne
Citizens Square 200 East Main Street
Suite 420
Fort Wayne, IN 46802
Attn: Deputy Mayor

If to GFW:

Greater Fort Wayne, Inc.
200 East Berry Street Suite 800
Fort Wayne, IN 46802
Attn: Chief Executive Officer

14. ASSIGNMENT. GFW shall not assign, subcontract or transfer any right, duty or obligation of GFW under this Agreement without the prior written consent of City. City understands that GFW may engage consultants or subcontractors to assist GFW in the performance and delivery of the Economic Development Services.

15. AMENDMENTS. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written instrument executed by City and GFW.

16. CAPTIONS. The captions provided herein at the beginning of each section shall not in any way limit, restrict or define the meaning of the section.

IN WITNESS WHEREOF, the City of Fort Wayne and Greater Fort Wayne, Inc. have executed this Agreement as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By and through its Division of Community Development

By: _____

Greg Leatherman, Director

FORT WAYNE-ALLEN COUNTY

ECONOMIC DEVELOPMENT ALLIANCE, INC.

By and through Greater Fort Wayne, Inc.

By: _____

John Urbahns

Executive Vice President