

AGREEMENT BY AND BETWEEN ROCKVILLE
ECONOMIC DEVELOPMENT, INC. AND
THE MAYOR AND COUNCIL OF THE
CITY OF ROCKVILLE, MARYLAND

July 1, 2013

AGREEMENT

This AGREEMENT, made this day of July, 2013, by and between the MAYOR AND COUNCIL OF THE CITY OF ROCKVILLE, MARYLAND, hereinafter referred to as the “City,” and ROCKVILLE ECONOMIC DEVELOPMENT, INC., a Maryland non-stock corporation, hereinafter referred to as “REDI.”

WHEREAS, REDI has been organized by the City for the purposes set forth in REDI’s Articles of Incorporation; and

WHEREAS, the City is the sole member of REDI; and

WHEREAS, the City has determined to fund the operations of REDI, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
TERM, FUNDS, PAYMENTS, AND
LEASE

1.1 Term

The term of the Agreement will commence on the date hereof, and will expire three years from the date hereof.

1.2 Funds and Payments

Subject to the terms and conditions of this Agreement and funding by the Mayor and Council, the City will pay the sum of \$554,850 to REDI for work to be completed pursuant to this Agreement during FY 2014. The City will pay amounts subject to available appropriations for FY 2015 and FY 2016.

REDI will submit a request for payment and the City will pay REDI in two equal semi-annual installments in July and January of each fiscal year. The administrator of the Agreement will forward REDI’s requests approved for payment to the Department of Finance. The Department of Finance will pay REDI by City check within 20 business days of receipt of each request for payment.

By December 15 of each year, REDI will submit a budget request and spending plan identifying how REDI plans to spend the City funds designated in this Agreement during the following fiscal year. The budget request shall be submitted on forms and according to

instructions provided by the City.

1.3 Lease

The current lease between Pavilion Partners, Inc. and the City for the space occupied by REDI expires on May 31, 2014. No later than 90 days prior to June 1, 2014, REDI will provide a copy of a lease for the period beginning June 1, 2014 to the administrator for review and approval. REDI must not enter into the lease without prior approval from the administrator. If the approved and executed lease for the period beginning June 1, 2014 results in lower payments than the current lease, the City payment to REDI for FY15 will reflect the lower lease payment amount. If the new lease results in higher lease payments, REDI will submit to the City a request for additional funds in the FY15 budget for review and approval.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF ROCKVILLE ECONOMIC DEVELOPMENT, INC.

REDI hereby represents and warrants to the City as follows, it being understood that such representations and warranties are being relied upon by the City as a material inducement to enter into and perform this Agreement. REDI is a non-stock corporation organized, validly existing and in good standing with the State of Maryland. REDI has no authorized capital stock. The sole member of REDI is the City. REDI has full corporate power and authority to execute and deliver this Agreement and to perform its obligations contemplated hereby. The execution and delivery of this Agreement has been duly and validly approved by the Board of Directors of REDI and no other corporate proceedings on the part of REDI are necessary to approve this Agreement. This Agreement has been duly and validly executed and delivered by REDI and (assuming due authorization, execution and delivery by the City) will constitute valid and binding obligations of REDI, enforceable against REDI in accordance with its terms, except as enforcement may be limited by general principals of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE CITY OF ROCKVILLE, MARYLAND

The City hereby represents and warrants to REDI as follows, it being understood that such representations and warranties are being relied upon by REDI as a material inducement to enter into and perform this Agreement. The City has full power and authority to execute and deliver this Agreement. This Agreement has been duly and validly approved by the Mayor and Council of the City, and no other approvals or proceedings by or on behalf of the City are necessary for the City to perform its obligations under this Agreement. This Agreement has been duly and validly executed and delivered by the City and (assuming due authorization, execution and delivery by REDI) will constitute valid and

binding obligations of the City, enforceable against the City in accordance with its terms, except as enforcement may be limited by general principals of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar law affecting creditors' rights and remedies generally.

ARTICLE IV
COVENANTS RELATING TO CONDUCT OF BUSINESS

4.1 Covenants of REDI

During the term of this Agreement, and for so long as the City makes the payments contemplated by Section 1.2 hereof, REDI agrees to use the Funds exclusively to further REDI's efforts to accomplish its goals and mission, including to:

- (a) Seek to establish the City as a leading center for economic development while sustaining an equitable balance between commercial and residential segments of the City;
- (b) Promote the retention and expansion of resident businesses in the City;
- (c) Encourage the formation of new business enterprises in the City and attract new businesses to the City;
- (d) Create, retain and attract jobs within the City;
- (e) Foster education and communication between the City's business community and the general public;
- (f) Assemble, maintain and disseminate information on the City's business community, workforce and economic climate;
- (g) Promote work force development and a positive business climate within the City;
- (h) Provide economic development, marketing and organizational assistance for redevelopment of strategic business areas within the City, including the Town Center and the Rockville Pike corridor;
- (i) Engage in such other activities within the power and authority of REDI as the Board of Directors of REDI reasonably deems necessary to carry out the goals and mission of REDI, as determined from time to time.
- (j) Participate with the City to develop monetary and non-monetary incentives to be used in coordinated efforts with Montgomery County and the State of Maryland to attract and retain businesses;
- (k) Assignments requested by the Mayor and Council that regularly fulfill the

functions of Economic Development.

- (l) REDI agrees to submit the following to the administrator of this Agreement:
- (i) A Strategic Initiatives and Work Plan submitted annually during the first quarter of the City's fiscal year which begins on July 1. The document will include goals, strategies, and actions for the current fiscal year. The Strategic Initiatives and Work Plan will also designate measures associated with each goal that REDI will use to assess success in completing the organization's strategic initiatives and work plan;
 - (ii) A written report summarizing the operations and activities of REDI during the previous fiscal year submitted by August 30 of each year. The report will include data for the measures of performance defined in REDI's Strategic Initiatives and Work Plan;
 - (iii) An annual financial statement submitted by August 30 of each year; and
 - (iv) A copy of the accountant's review of REDI's books and supporting documentation submitted annually during the first quarter of the fiscal year.
- (m) In addition to the foregoing, REDI agrees to:
- (i) Summarize the Strategic Initiatives and Work Plan in a presentation to the Mayor and Council annually during the first quarter of the fiscal year; and
 - (ii) Grant the City the right to examine REDI's financial records and books at the City's request.

4.2 Covenants of the City

During the term of this Agreement, the City agrees to use its reasonable best efforts to support REDI, including, but not limited to, taking such actions as the sole member of REDI as may be necessary for the efficient operations of REDI, and providing such City resources as may reasonably be required or advisable, in the City's sole discretion, for REDI to accomplish its goals and missions.

The administrator of this Agreement is:
Barbara B. Matthews, City Manager
111 Maryland Avenue, Rockville, MD 20850
240-314-8102

The administrator of the Agreement will receive, and upon completion of a satisfactory review, forward requests for payment to the Department of Finance, participate in budget discussions, and approve and distribute the documents described in Section 4.1 of this Agreement. The administrator, or her designee, will serve as a member of the REDI

Board of Directors and shall attend Board of Directors' meetings on behalf of the City. The Rockville City Council shall also appoint one of its members to serve as liaison to REDI and as a member of the REDI Board of Directors.

ARTICLE V
TERMINATION AND AMENDMENT

5.1 Termination

This Agreement may be terminated with sixty days notice:

- (a) By mutual consent of the City and REDI;
- (b) By the City at any time upon written notice to REDI; or
- (c) By REDI if the City does not make any payment contemplated by Section 1.2.

5.2 Amendment

Subject to compliance with applicable law, this Agreement may be amended by the parties hereto, by action taken or authorized, as to the City, by the Mayor and Council, and as to REDI, by its Board of Directors. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

ARTICLE VI
GENERAL PROVISIONS

6.1 Expenses

All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such expense.

6.2 Notices

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- (a) If to REDI:

Rockville Economic Development, Inc.
95 Monroe Street
Rockville, MD 20850
Attn: Chairperson

(b) If to the City: City of

Rockville
111 Maryland Avenue
Rockville, MD 20850
Attn: Mayor

6.3 Entire Agreement; Governing Law; Venue

This constitutes the entire Agreement with respect to the subject matter hereof. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, without regard to any applicable conflicts of law. Venue for any litigation related to this Agreement shall be in courts of competent jurisdiction located in Montgomery County, Maryland.

6.4 Assignment; Limitation of Benefits

Neither this Agreement nor any of the rights, interests or obligation hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first written above.

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE

Douglass Barber
City Clerk
City of Rockville

Barbara B. Matthews
City Manager
City of Rockville

ATTEST:

ROCKVILLE ECONOMIC DEVELOPMENT INC

Laurie Boyer
Executive Director
REDI

Ray Whalen
Chairperson
REDI Board of Directors