

12/18/12

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF CHATTANOOGA, TENNESSEE, AND THE ENTERPRISE CENTER, INC. FOR THE PURPOSE OF PROMOTING ECONOMIC DEVELOPMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Mayor to execute an agreement between the City of Chattanooga, Tennessee, and The Enterprise Center, Inc. for the purpose of promoting economic development, for a term beginning January 1, 2013 and extending through June 30, 2015, which may be extended by agreement between the parties for up to three additional one-year periods.

ADOPTED: _____, 2012.

/mms

AGREEMENT BETWEEN THE CITY OF CHATTANOOGA
AND
THE ENTERPRISE CENTER, INC.

THIS AGREEMENT is made effective as of the 18th day of December, 2012 by and between **THE CITY OF CHATTANOOGA**, hereinafter referred to as "the City", and **THE ENTERPRISE CENTER, INC.**, hereinafter referred to as "Enterprise Center".

WITNESSETH:

WHEREAS, Enterprise Center is a Tennessee private nonprofit corporation with a charitable purpose of promoting economic development in Chattanooga and Hamilton County, Tennessee;

WHEREAS, the City of Chattanooga has an interest in the promotion of economic growth;

WHEREAS, the City of Chattanooga seeks and receives funding and other programmatic assistance from the federal government and the State of Tennessee for the purpose of implementing initiatives designed to stimulate the local economy;

WHEREAS, the City of Chattanooga has determined that the management, staffing and implementation of these initiatives would be most efficiently and effectively performed by Enterprise Center as a private nonprofit entity;

NOW, THEREFORE, in consideration of the recitals, the promises made in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Recitals**: The parties agree that the foregoing recitals are true and correct and are incorporated in this Agreement by this reference.
2. **Responsibilities of the Enterprise Center are as follows:**
 - (a) Manage the day-to-day operations of specific economic development initiatives related to job growth in the City of Chattanooga (the "Enterprise Center Projects," as detailed below).
 - (b) Provide adequate staff to oversee these Enterprise Center Projects.
 - (c) At the request of the City, participate in and organize meetings related to economic development initiatives.
 - (d) Recommend policy and programmatic changes to the City related to these initiatives if the Enterprise Center deems such changes to be advisable.



- (e) Assist and advise the City on brownfield cleanup and redevelopment initiatives.
 - (f) Provide technical guidance, assistance, implementation, and management with regard to: (i) development, deployment, and marketing of commercial usage of the City's wireless mesh telecommunications network; and (ii) any other initiative to utilize the City's existing infrastructure for commercial services, for the purpose of stimulating job creation, new capital investments, and other economic development activities in the City of Chattanooga.
3. Enterprise Center Projects: For the purpose of this Agreement, the following initiatives are Enterprise Center Projects:
- (a) The Chattanooga Community Revitalization Initiative, including, among other things, the "Green Jobs" Environmental Workforce Development and Job Training program, pursuant to a grant awarded by the Environmental Protection Agency.
 - (b) The High Speed Ground Transportation/Maglev project, undertaken pursuant to grants from the Federal Railroad Administration and: (i) a Memorandum of Understanding between the Georgia Department of Transportation, the City of Chattanooga, and the Cumberland Community Improvement District; and (ii) a Grant Contract between the Tennessee Department of Transportation and the Enterprise Center, together with Amendments thereto.
 - (c) Brownfield cleanup and redevelopment projects initiated by the City.
 - (d) The Connect the Valley Initiative (Technology Development, Transfer and Commercialization), including Nuclear Renaissance initiatives; Gig City initiatives (branding of Chattanooga's high speed telecommunications connectivity, and "imagineering" of future uses of this high-speed capacity); Wireless Mesh Network initiatives; STEM Education Initiative (Science, Technology, Engineering and Math); and Telecommunications Infrastructure Usage initiatives undertaken by the City; initiatives directed at enhancing Chattanooga's standing as a center for medical research and medical device development; and
 - (e) Other economic development projects as mutually agreed upon.
4. Coordination and Oversight: Enterprise Center shall also coordinate and oversee economic development activities in concert with the Chattanooga Chamber of Commerce, the Center for Energy, Transportation and Environment at the University of Tennessee at Chattanooga, CARTA's Intelligent Transportation System Project, Connect the Valley (technology development and transfer) Initiatives, the SimCenter at the University of Tennessee at Chattanooga, SimCenter Enterprises, and the Center for Entrepreneurial Growth

5. Responsibilities of the City:

- (a) Provide separate and sufficient space for Enterprise Center to conduct its affairs, with costs for such space to be paid by Enterprise Center under the terms of its separate agreement with the City.
- (b) Provide technical assistance to the Enterprise Center staff in coordinating Community Revitalization activities. Technical assistance will include review and financial evaluation of applications, grants, and contracts, conducting Workshops, and guidance in submission of various reports required by the U.S. Department of Housing and Urban Development.
- (c) Provide Enterprise Center staff with the opportunity to enroll within the City's healthcare, vision care, and dental insurance programs, with the cost of such insurance to be paid by Enterprise Center and its staff members, as options are selected by such staff members.

6. Term: The term of this Agreement shall be from January 1, 2013, to June 30, 2015, which term may be renewed annually thereafter by mutual agreement of the parties for up to three additional years.

7. Payment: During the term of this agreement, Enterprise Center shall make request to the City Council during its normal budget cycle for supplemental funding as needed. Annual funding shall be subject to council appropriation. Additional cost sharing payments to the Enterprise Center for its partnership work with the City on commercialization projects arising under Paragraph 2(f) above shall be addressed as a part of each specific contract, agreement, or other understanding which is generated for each such project as undertaken by third parties proposing to utilize the City's infrastructure.

8. Required Reporting and Right to Audit: Enterprise Center shall furnish the City with quarterly reports detailing the progress of the Enterprise Center projects and other Enterprise Center activities. Such reports shall be sent to the Mayor of the City, City Finance Officer and other City departments, as designated.

The Enterprise Center shall be responsible for meeting all reporting requirements otherwise imposed upon the City for any Enterprise Center projects, including but not limited to the U.S. Department of Housing and Urban Development related to the Community Revitalization Initiative.

Enterprise Center shall obtain an independent annual audit and furnish a copy to the City.

Enterprise Center shall maintain all books and records relating to this Agreement for a period of ten years and shall grant the right to the City to audit any and all expenditures of funds paid to the Enterprise Center pursuant to this Agreement.

9. Termination: Either party may terminate this Agreement at any time by giving the other party at least thirty (30) days written notice before the effective termination date.

If Enterprise Center fails to properly perform its obligations under this Agreement or violates any terms of this Agreement, then after notice from the City and opportunity to correct or cure all identified deficiencies in performance, the City shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Performance shall include meeting all reporting requirements as prescribed by any appropriate granting agency. The Enterprise Center shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Agreement by the Enterprise Center. Should the City exercise its option to terminate, Enterprise Center shall be entitled to receive equitable compensation for satisfactory authorized services completed as of the termination date.

Enterprise Center shall not assign this Agreement or enter into subcontract for any of the services performed under the Agreement without obtaining the prior written approval of the City.

10. Effect and Severability: The City is not bound by this Agreement until it is approved by the City Council and signed by the Mayor. If any provision of this Agreement is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken and the remainder of this Agreement shall remain in full force and effect.
11. Amendment: The Agreement may be modified only by a written amendment that has been duly authorized and approved.
12. Non-Discrimination: No person on the grounds of handicap, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Enterprise Center.
13. Compliance: Enterprise Center shall comply with all applicable Federal, State and local laws and regulations and grant conditions in the performance of this Agreement.
14. Non-Liability; Independent Contractor: In performing this Agreement, Enterprise Center is acting as an independent contractor and not as an agent for or on behalf of the City. Accordingly, the City shall have no liability for actions of the Enterprise Center, and shall not be obligated to third parties by any action or inaction of the Enterprise Center. The City shall not be obligated or liable

hereunder to any party other than Enterprise Center. The City shall not be responsible for fees or expenses resulting from the professional services of third parties.

15. Procurement: All purchases using or encumbering municipal funds shall be purchased pursuant to the provisions of the Municipal Purchasing Law of 1983, T.C.A. Section 6-56-301, et seq., as amended and purchases using encumbering funds from federal grants shall be purchased pursuant to all grant requirements and restrictions.
16. Publicity: Any publicity generated by the Enterprise Center concerning the Enterprise Center Projects pursuant to this Agreement will make reference to the contribution of the City in making such project(s) possible. Appropriate attribution with the statement, "City of Chattanooga, Ron Littlefield, Mayor" (or the then current mayor), or similar appropriate attribution, will be provided in any and all publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles that are generated by the Enterprise Center staff.
17. Governing Law: This Agreement shall be governed by and construed under the laws of the State of Tennessee
18. Insurance: Enterprise Center shall be responsible for providing any and all insurance related to performance of this contract, including general liability with limits of not less than Five Hundred Thousand (\$500,000.00) Dollars, personal injury and One Hundred Thousand (\$100,000.00) Dollars, property damage for each occurrence, with a minimum of One Million (\$1,000,000.00) Dollars, aggregate for all occurrences.
19. Notices: Whenever any notice is required to be or may be given pursuant to this Agreement, it shall be deemed given when sent to the party to receive such notice by registered or certified mail or personal delivery at the following address:

If to the City of Chattanooga:

Ron Littlefield, Mayor
(Or Then Current Mayor)
City of Chattanooga
101 East 11th Street
Chattanooga, Tennessee 37402

If to the Enterprise Center:

J. Wayne Cropp, President
(Or Then Current President)
The Enterprise Center, Inc.
1250 Market Street, Suite 3020
Chattanooga, Tennessee 37402

IN WITNESS WHEREOF, the City and Enterprise Center have by their authorized representatives set their signatures and executed this Agreement.

THE CITY OF CHATTANOOGA

_____ Date: _____
Ron Littlefield, Mayor

THE ENTERPRISE CENTER, INC.

_____ Date: _____
J. Wayne Cropp, President