

ORDINANCE NO. 46-2014

Authorizing the City of Worthington to Enter Into an Amended Agency Agreement with the Worthington Community Improvement Corporation.

WHEREAS, the Worthington Community Improvement Corporation the (“WCIC”) was organized pursuant to Chapter 1724 of the Ohio Revised Code, for the sole purpose of advancing, encouraging and promoting the industrial, economic, commercial and civic development of the City of Worthington and its environs; and

WHEREAS, the WCIC was designated by the City of Worthington as the City’s agent pursuant to Section 1724.10 of the Ohio Revised Code by Ordinance No. 13-2006; and

WHEREAS, at the time of such designation, the City Manager was authorized and directed to enter into an Economic Development Agency Agreement with the WCIC (the “Agency Agreement”) in furtherance of the City’s policy to promote the health, safety, morals and general welfare of its inhabitants through, among other things, the activities of a community improvement corporation; and

WHEREAS, the WCIC wishes to amend the Agency Agreement to address the current missions and duties of the corporation and to include provisions consistent with those permitted by the Ohio Revised Code; and

WHEREAS, at its meeting held on November 14, 2014, the WCIC voted to recommend approval of the amendments to the Worthington City Council.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the City Manager is authorized and directed to execute the First Amendment to Economic Development Agency Agreement between the City and the WCIC consistent with the provisions set forth in Chapter 1724 of the Ohio Revised Code and substantially in the form of the agreement attached hereto as Exhibit “A”.

SECTION 2. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed December 15, 2014

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced December 1, 2014
P.H. December 15, 2014
Effective January 7, 2015

EXHIBIT “A”

FIRST AMENDMENT
to
ECONOMIC DEVELOPMENT AGENCY AGREEMENT

WHEREAS, in the public interest and for the public purposes authorized by Section 13 of Article VIII of the Constitution of the State of Ohio, and pursuant to the provisions of Chapter 1724 of the Ohio Revised Code and in conformity with its policy to promote the health, safety, and general welfare of its inhabitants, the City of Worthington, a municipal corporation organized and existing under the laws of the State of Ohio (herein called the “City”), has designated the Worthington Community Improvement Corporation, a community improvement corporation organized and existing as a corporation not for profit under the laws of the State of Ohio (hereinafter referred to as the “Corporation”), as its agency and instrumentality for commercial, distribution and research development in the City; and

WHEREAS, the Corporation was formed to serve the residents of the City in the revitalization and enhancement of property and the business environment within the City by advancing, encouraging and promoting industrial, commercial and civic development; and

WHEREAS, Section 1724.10 of the Ohio Revised Code grants a community improvement corporation the authority to serve as an agent of the City for the industrial, commercial, distribution and research development in the City and as the agent of the City for administering economic development grants; and

WHEREAS, under such agency designation, Section 1724.10 authorizes the City to enter into an agreement with a community improvement corporation to provide for the terms and conditions of the corporation’s operations and responsibilities as agent for the City; and

WHEREAS, City Council authorized the City to execute and deliver an Economic Development Agency Agreement pursuant to Ordinance No. 13-2006 (the “Agreement”); and

WHEREAS, the Board of Directors of the Corporation and the City have reviewed the Agreement and have recommended amendments to reflect changes made to provisions of the Ohio Revised Code governing community improvement corporations and to address the current missions and duties of the Corporation as an agency of the City.

NOW, THEREFORE, the City and the Corporation do mutually agree this _____ day of _____, 20__, as follows:

1. The Corporation will constitute and act as the agency and instrumentality of the City for industrial, commercial, distribution and research development in the

City and, as such agency and instrumentality, will participate in activities in furtherance of industrial, commercial, distribution and research development for the City to the extent and in the manner hereinafter provided.

2. From time to time the Corporation may make recommendations regarding economic development to the City Council of the City of Worthington. Said recommendations shall be effective only when and to the extent that they shall be confirmed by the City Council.

3. It is the purpose of the City in having designated the Corporation as its agency and instrumentality for industrial, commercial distribution and research development, and the purpose of the Corporation in accepting and agreeing to act under such designation, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the City and of the State of Ohio by exercising through the Corporation as the agency and instrumentality of the City, the power granted to the City by law, to encourage and cause the maintenance, location, relocation, expansion, modernization and equipment of sites, buildings, structures and appurtenant facilities for industrial, commercial, distribution and research activities within the City and thereby to maintain and create additional opportunities for employment within the City in order that tax revenues may be available to provide services for the preservation of the public peace, property, health, safety, morals and general welfare of the City.

4. The maintenance, location, relocation, expansion or modernization of any industrial, commercial, distribution or research activity or facility within the City which will further the aforesaid purpose of the City to create or preserve jobs and employment opportunities and to improve the economic welfare of the people is hereby identified and hereinafter referred to as a "Project".

5. The Corporation may cause to be prepared and maintained a current inventory and catalog of both publicly and privately owned lands, buildings, or other improvements which are or may become available and which are or may be suitable for the location, relocation, expansion, modernization, or conversion of or to industrial, commercial, distribution or research activities in furtherance of the accomplishment of the Corporation's purposes. The Corporation may commence the preparation and maintenance of such inventory and catalog in order that it may be currently maintained.

6. The Corporation may as soon as feasible cause to be prepared an analysis of the social, economic, geographic and other advantages which the City can offer in support of industrial, commercial, distribution or research development and shall cause such analysis to be assembled and reproduced in a form suitable for distribution to those which the Corporation seeks to interest in such development in the City.

7. From time to time, the Corporation may prepare and present to the City Council recommendations for action to be taken in aid of industrial, commercial, distribution and research development in the City. Where appropriate, such recommendations shall include the location, relocation, construction, expansion, modernization, modification, or improvement of public utility or City facilities or services. The Corporation may review any Project proposed by or financed by the City pursuant to the authority granted by Article VIII, Section 13, Ohio Constitution and Chapter 165 of the Ohio Revised Code, to determine whether such Project is in the best interest of the City and following such review, may certify to the City Council its determination whether or not such project is in the best interest of the City.

8. The Corporation may cause advertising, promotional and educational materials to be prepared, printed or otherwise reproduced and distributed and otherwise made available to such extent and in such manner as in the judgment of the Corporation will best assist industrial, commercial, distribution and research development within the City.

9. The Corporation, in such manner and by such method as it shall deem most effective, may contact and solicit any person, firm or corporation which then or in the immediate future is likely to or may be induced to locate, relocate, expand, modify or improve industrial, commercial, distribution or research activities or facilities within the City or which then or in the immediate future intends or threatens to terminate or reduce employment in any such activities or facilities then existing within the City (any which person, firm or corporation is hereinafter call "Prospective Employer"), in order to induce said Prospective Employer to locate, relocate, expand, modify, maintain or improve its said industrial, commercial, distribution or research activities or facilities in the City when such action on the part of the Prospective Employer will be in accord with the policy of the City to promote the health, safety, morals and general welfare of its inhabitants and will further the purpose of creating jobs and employment opportunities and improving the economic welfare of the people of the City.

10. In furtherance of promoting and encouraging the establishment, growth and maintenance in the City of industrial, commercial, distribution and research facilities the Corporation may exercise the following powers as an agent and instrumentality of the City:

- a. To insure mortgage payments required by a first mortgage on any industrial, economic, commercial or civic property for which funds have been loaned by any person, corporation, bank or financial or lending institution upon such terms and conditions as the Corporation may prescribe;

- b. To incur debt, mortgage its property, no matter from what source and by what method acquired, and issue its obligations for the purpose of acquiring, constructing, improving and equipping buildings, structures and other properties, and acquiring sites therefore, for lease or sale by the Corporation, provided that any such debt shall be solely that of the corporation and shall not be secured by the pledge of any monies received or to be received from the City, the State of Ohio, or any political subdivision thereof;
- c. To make loans to any person, firm, partnership, corporation, joint stock company, association, or trust, and to establish and regulate the terms and conditions with respect to any such loans; provided the Corporation shall not approve any application for loan unless and until the person applying for said loans shows that the person has in good faith applied for the loan through ordinary banking or commercial channels and that the loan has been refused by at least one bank or other financial institution;
- d. To purchase, receive, manage, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, sublease, or otherwise dispose of real and personal property, together with such rights or privileges as may be incidental and appurtenant thereto and the use thereof, including but not restricted to, any real or personal property acquired by the Corporation from time to time in the satisfaction of debts or enforcement of obligations, and to enter into contracts with third parties, including the federal government, the state, any political subdivision or any other party;
- e. To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, partnerships, corporations, joint stock companies, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, partnership, corporation, joint stock company, association, or trust; to acquire improved or unimproved real estate for the purpose of constructing commercial buildings or other business establishments thereon or for the purpose of disposing of such real estate to others in whole or in part for the construction of commercial buildings or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, sublease, or otherwise dispose of commercial buildings or business establishments;
- f. To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association, or trust, and while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including voting rights; provided that no tax revenue, if any, received by the Corporation shall be used for such acquisition or subscription;

- g. To mortgage, pledge, or otherwise encumber any property acquired pursuant to the powers contained in subparagraphs d, e, or f, of this section;
- h. To make application to any applicable statewide economic development entity for insurance or advance commitments for insurance or mortgage payments required by the first mortgage on any Project for which the Corporation has loaned its funds or upon which the Corporation has borrowed funds, and to make assignments of insured mortgages and provide other forms of security in accordance with the provision of Section 122.451, Ohio Revised Code;
- i. To solicit, receive and use donations or commitments of money or other property of any kind whatsoever from private corporations, firms, or organizations.
- j. To serve as an agent for grant applications and for the administration of grants.
- k. To do all acts and things necessary or convenient to carry out the powers especially created in Chapter 1724 of the Ohio Revised Code.

11. All revenue bonds issued by the Corporation under Sections 1724.02 and 1724.10 of the Ohio Revised Code are lawful investments of banks, savings banks, building and loan and savings and loan associations, deposit guarantee associations, trust companies, fiduciaries, trustees, or other officers having charge of sinking or bond retirement funds of county corporations and other subdivision of the state, and of domestic insurance companies notwithstanding Section 3907.14 and 3925.08 of the Ohio Revised Code.

12. The Corporation is hereby authorized to sell or to lease any lands or interest in the lands owned by the City determined from time to time by the City Council not to be required by the City for its purposes, for uses determined by the City Council as those that will promote the welfare of the people of the City, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution and research activities to the benefit of the people of the City and will provide additional opportunities for their gainful employment. The City Council shall specify the consideration for such sale or lease and any other terms thereof. Any determination made by the City Council under this paragraph of the Agreement shall be conclusive. The Corporation acting through its officers and on behalf and as agent of the City shall execute the necessary instruments, including deeds conveying the title of the City or leases, to accomplish such sale or lease. Such conveyance or lease may be made without advertising and receipt of bids. A copy of this Agreement shall be recorded with the office of the County Recorder of Franklin County, Ohio, prior to the recording of a deed or lease executed pursuant to this Agreement.

13. The City may convey to the Corporation lands and interest in lands owned by the City and determined by the City Council not to be required by the City for its purposes and determined that such conveyance will promote the welfare of the people of the City, stabilize the economy, provide employment and assist in the development of industrial, commercial, distribution and research activities to the benefit of the people of the City and provide additional opportunities for their gainful employment. The consideration for any such lands and interest in lands so conveyed shall be determined by the City Council. The terms of any such conveyance shall be as determined by the City Council. The Corporation may also acquire, from others than the City, additional lands or interests in lands for such consideration and upon such terms as the Corporation may agree upon, provided, however, that any lands or interests in land conveyed to the Corporation, by the City or by others, shall be conveyed or leased by it for uses, as determined by the Corporation, that will promote the welfare of the people of the City, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution and research activities required for the people of the City and for their gainful employment. Any conveyance or lease by the City to the Corporation shall be made without advertising and receipt of bids. If any lands or interests in lands conveyed by the City to the Corporation are sold by the Corporation at a price in excess of the consideration received by the City from the Corporation therefor, such excess shall be paid to the City after deducting therefrom the following costs to the extent incurred by the Corporation: the costs of acquisition and sale by the Corporation, taxes, assessments, cost of maintenance, costs of improvements to the land by the Corporation, debt service charges of the Corporation attributable to such lands or interests, and a reasonable service fee determined by the Corporation.

14. The activities of the Corporation shall be carried out in accordance with the applicable planning and zoning requirements.

15. Pursuant to Section 3 of Article XVIII of the Ohio Constitution, and in light of Sections 307.78 and 505.701 of the Ohio Revised Code, the Worthington City Council has the authority to make a contribution of money to a community improvement corporation as long as the contribution is considered a public purpose.

16. The Corporation, a not-for-profit corporation under Ohio law, shall be exempt from federal income taxes as an agency and instrumentality of the City.

17. Not less than two-fifths (2/5) of the membership of the Board of Directors of the Corporation shall be appointed or elected officers of the City of Worthington.

18. The City and the Corporation agree that each will exert its best efforts to persuade those persons, firms and corporations, over which neither has control, to coordinate through the Corporation their activities and efforts for industrial,

commercial, distribution and research development in and for the benefit of the City and its inhabitants.

19. The term of the Agreement shall commence on the date of its making and shall continue in effect thereafter except as otherwise in this paragraph provided. Upon the expiration of twenty-four months after either party shall have given to the other party notice of intention to withdraw from this Agreement, no further actions, agreements, contracts, liabilities or obligations shall be initiated or incurred pursuant to this Agreement, but any action, agreement, contract, liability or obligation which has been commenced, entered into, initiated or incurred prior to the expiration of such twenty-four month period shall not be affected by such withdrawal. Notice of withdrawal shall be given to the City by delivering a copy of such notice to the office of the City Clerk and to the Corporation by delivering a copy of such notice to the person in charge of its principal office.

20. Each member of the Board of Directors and officers of the Corporation (and each member's heirs, executors and administrators) who is made a party to any litigation, action, suit or proceeding, (whether civil, criminal, or administrative) by reason of being or having been a director or officer of the Corporation or a trustee, director or officer of any other corporation which the member served at the request of the Corporation, shall be entitled to be indemnified by the Corporation and the City of Worthington against the reasonable expenses actually incurred by the member in connection with the defense of such litigation, except in relation to the following matters:

- a. Those as to which the member shall finally be adjudicated in such litigation to be liable because of dereliction in the performance of the member's duties as such trustee, director or officer; or
- b. Those which have resulted in a judgment in favor of the Corporation and against the member, or which are settled by any payment by the member to the Corporation.

Except in cases where above clause (a) or clause (b) applies, "expense" shall be deemed to include fines and penalties imposed on such person, and amounts paid upon a plea of nolo contendere or similar plea or in compromise or settlement of the litigation or in satisfaction of judgments, if, and only if, such indemnification, and the amounts to be indemnified against, are approved as being reasonable in the circumstances by (i) the vote of a majority of the Directors of the Corporation in office if such majority are not involved in any such litigation or (ii) the vote of a majority of the members of the Corporation excluding for the purposes hereof the members involved in such litigation, or (iii) a court of competent jurisdiction. The foregoing right of indemnification shall not be exclusive of other rights to which such person, or the person's heirs, executors or administrators, may be entitled.

21. Neither the City nor the Corporation shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other party thereto.

22. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any modification or amendment of this Agreement must be in writing and must be signed by the City Manager.

IN WITNESS WHEREOF the Worthington Community Improvement Corporation and the City of Worthington, Ohio have each caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

THE WORTHINGTON COMMUNITY
IMPROVEMENT CORPORATION

By: _____
Chairman of the Board

CITY OF WORTHINGTON, OHIO

By: _____
Matthew H. Greeson, City Manager

Approved as to Form:

Pamela A. Fox, Director of Law