

To: Thomas Weisner, Mayor, City of Aurora
From: David Hulseberg, President/CEO, Invest Aurora
Date: 5/25/2016
Re: Seize the Future Development Foundation Agreement (STDF) and Contract Renewal

Overview	<p>On June 25, 2013, Seize the Future Development Foundation (aka Invest Aurora) entered into an agreement with the City of Aurora. This agreement, Resolution No. R13-182, establishes the framework for activities and financial support.</p> <p>Seize the Future Development Foundation was created as not-for-profit 501(c)(3) organization with the specific purpose of promoting economic development within the corporate limits of the City of Aurora. Pursuant to section 4.0 of the resolution, the City of Aurora agreed to provide Seize the Future Development Foundation with an annual funding grant in the amount of \$637,000. Section 6.0 of the resolution established terms of the agreement as follows: "This agreement shall commence on June 1, 2013, and remain in full force and effect for a period of two (2) years and shall automatically renew for three (3) additional one (1) year periods for a total of five (5) years..."</p>
Issues	<p>Seize the Future Development Foundation has consistently met or exceeded the expectations outlined in section 7.0 of the resolution, "Services To Be Performed by STDF." As such, Seize the Future Development Foundation seeks an amendment to the initial resolution whereby new agreement terms are established. This amendment would act as vote of confidence towards Seize the Future Development Foundation's continued economic development activities on behalf of the City of Aurora. The amendment provides public assurance that these services to the community will continue. Seize the Future Staff are working on a number of projects which extend well beyond one year. Annual renewal contracts do not provide much confidence to developers that we are working with. Further, staff serving the organization are reliant on these annual renewals which is not conducive to maintaining morale.</p> <p>Section 13 of the agreement provides for the ability of the City to terminate or suspend STDF for failure to perform. Hence the City has adequate means to address issues related to performance or the need of the city to eliminate all or part of funding to STDF for budgetary reasons.</p>
Recommendation	<p>The Invest Aurora Board of Directors unanimously recommends that the City of Aurora Resolution No. R13-182 will be amended to reflect new agreement terms as follows:</p> <p>Section 6.0 amended to state: "This amendment shall commence on July 1, 2016, and remain in full force and effect for a period of three (3) years and shall automatically renew for two (2) additional one (1) year periods for a total of five (5) years."</p> <p>Section 4.0 amended to state: "The City of Aurora shall provide STDF an annual funding grant in the amount of SIX HUNDRED FIFTY THOUSAND and No/100 DOLLARS (\$650,000), payable on a proportionate quarterly basis of ONE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED and No/100 DOLLARS (\$162,500). This amount will include an annual 3% CPI increase."</p>
Appendices	<p>A. City of Aurora Resolution No. R13-182</p>

CITY OF AURORA
RESOLUTION NO. R13182
DATE OF PASSAGE June 25, 2013

**A RESOLUTION APPROVING AN AGREEMENT WITH SEIZE THE FUTURE
DEVELOPMENT FOUNDATION TO PROVIDE FUNDING FOR ECONOMIC
DEVELOPMENT ACTIVITIES AND SERVICES IN THE AMOUNT OF \$637,000**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, said Section of the Constitution authorizes a home rule unit to exercise any power and perform any function pertaining to its government and affairs for the protection of the public safety, health, welfare and morals; and

WHEREAS, the Seize the Future Development Foundation (STFDF) was created for the specific purpose of promoting economic development within the corporate limits of the City of Aurora, Illinois and has the capacity to perform economic development activities and services needed for the City of Aurora, Illinois; and

WHEREAS, the City has determined that it is in the public interest to assist STFDF with funding for its economic development efforts on behalf of the City; and

WHEREAS, The City and STFDF desire to enter into an agreement which provides funding for economic development activities and services, said agreement is attached hereto and made a part thereof; and

WHEREAS, funding for the STFDF is available in the budget of the Aurora Economic Development Division (1830 Account), as well as the City's various Tax Increment Financing Districts.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, that the Mayor and City Clerk are hereby authorized to sign the attached agreement with Seize the Future Development Foundation.

PASSED AND APPROVED THIS 25th DAY OF June, 2013.

<u>Michael B. Sautelle</u>	<u>Robert J. Frank</u>
<u>[Signature]</u>	<u>Keith B. [Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>

ALDERMEN

Lynne M. Johnson
ALDERMEN

ATTEST:

AYES

11

NAYS

0

Thomas J. Weisner
MAYOR THOMAS J. WEISNER

Rachel Pruneda
CITY CLERK

**AGREEMENT BETWEEN
THE CITY OF AURORA, ILLINOIS and
THE SEIZE THE FUTURE DEVELOPMENT FOUNDATION
PROVIDING FUNDING for ECONOMIC DEVELOPMENT ACTIVITIES and SERVICES**

THIS AGREEMENT is entered this ____ day of June, 2013, between the City of Aurora, Illinois, an Illinois municipal corporation (hereinafter referred to as the "City"), with offices located at 44 East Downers Place, Aurora, IL 60507, and the Seize The Future Development Foundation, an Illinois not for profit corporation (hereinafter referred to as "STFDF"), an Illinois not-for-profit corporation with offices located at 43 W. Galena Boulevard, Aurora, IL 60506.

RECITALS

WHEREAS, Section 10 of Article 7 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or by ordinance; and _____

WHEREAS, units of local government entering into such agreements may use their credit, revenues and other resources to pay costs and to service debt related to activities which involve a public purpose; and

WHEREAS, STFDF was created for the specific purpose of promoting economic development within the corporate limits of the City of Aurora, Illinois, and has the capacity and the expertise to perform the economic development activities and services needed for the City of Aurora, Illinois; and

WHEREAS, the City has determined it is in the public interest to assist STFDF with funding for its economic development efforts on behalf of the City.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and STFDF agree as follows:

4.0 FUNDING GRANTS and OFFICE SPACE

4.1 The City shall provide STFDF an annual funding grant in the amount of SIX HUNDRED THIRTY SEVEN THOUSAND and No/100 DOLLARS (\$637,000.00), which amount shall be payable on a proportionate quarterly basis of ONE HUNDRED FIFTY NINE THOUSAND TWO HUNDRED FIFTY and No/100 DOLLARS (\$159,250.00). The first payment shall be due on the first of the month on or after the start date of a full-time Executive Director. Subsequent quarterly payments shall be due, either in advance, on or before the first day of the month on a quarterly basis thereafter, during the Term of this Agreement. Additionally, the City recognizes that there may be, from time to time, certain TIF eligible expenditures over and above the amount indicated in this paragraph, therefore the City will consider paying such additional expenditures on a pre-approved basis only.

4.2 In consideration of startup costs, expenses and services to be performed pursuant to this Agreement, the City agrees to make a onetime payment to STFDF in the amount of ONE HUNDRED TWENTY FIVE THOUSAND and No/100 DOLLARS (\$125,000.00). This onetime payment shall be made within thirty (30) days of Council approval of the Agreement.

4.3 Payments pursuant to this Agreement are subject to availability of funds and their appropriation and authorized expenditure pursuant to applicable law. The City's obligations shall cease immediately without penalty or liability for further payment if in any fiscal year this Agreement is in effect, the City fails to appropriate, budget or otherwise make available sufficient funds for this grant.

4.4 Payments to STFDF under this Agreement shall be made payable in the name of STFDF and sent to the following person and place, or directly deposited into a financial account maintained by STFDF:

Executive Director
Seize The Future Development Foundation
43 West Galena Boulevard
Aurora, IL 60506

STFDF may change the person to whom payments are sent, or the place to which payments are sent, by delivering thirty (30) days' prior written notice to the City.

4.5 The City shall supply for the use of STFDF, and without charge to STFDF, a portion of the office space the City currently rents from the Greater Aurora Chamber of Commerce, located at 43 West Galena Boulevard, Aurora, IL 60506 (the "Office Space"), so long as the City has a lease for the Office Space. The City is responsible for all costs of its lease for the Office Space with the Greater Aurora Chamber of Commerce. This Agreement imposes no obligation on the City to continue to lease the Office Space for any period of time.

5.0 STFDF'S ORGANIZATION and STAFFING

5.1 Prior to the execution of this Agreement, STFDF shall be: 1) registered to do business in the State of Illinois with the Illinois Secretary of State, and be incorporated as an Illinois not-for-profit corporation, and 2) registered with the United States Internal Revenue Service and approved to operate as a tax exempt organization pursuant to 26 U.S.C. §501(c)(3), commonly referred to as "501(c)(3)," as amended.

5.2 Prior to the execution of this Agreement, the STFDF Board of Directors shall amend its by-laws to: (1) allow for at least thirteen (13) members on its Board of Directors, (2) include a provision that if he agrees to serve, the Mayor of the City of Aurora, or his designee, shall be a member of the Board of Directors, (3) agree that a majority of Board Members shall be chosen from a list of recommended candidates prepared by the Mayor, (4) ensure at least eight (8) members of the Board of Directors be representative of the larger Aurora business community, (5) provide that the term of office shall be three (3) years for all Board Members, although Board Members may be reappointed to an unlimited number of terms, and (6) the Mayor of the City of Aurora may appoint an Aurora City Councilperson as an ex-officio Board Member. 5.3

STFDF shall hire an Executive Director within three (3) months of the execution of this Agreement. STFDF shall seek the input, participation, and approval of the City in the selection of the Executive Director, and all Executive Directors of the STFDF during the Term of this Agreement.

5.4 During the Term of this Agreement STFDF shall maintain a qualified and competent staff to provide all management and administrative services necessary to accomplish STFDF's mission, goals and objectives.

6.0 TERM OF AGREEMENT

6.1 This Agreement shall commence on June 1, 2013, and remain in full force and effect for a period of two (2) years and shall automatically renew for three (3) additional one (1) year periods for a total of five (5) years (the "Term") unless terminated by six (6) months written notice to the other party, or pursuant to the provisions contained in Section 13.

7.0 SERVICES TO BE PERFORMED BY STFDF

7.1 STFDF's duties and services pursuant to this Agreement shall be the promotion of business, industry and trade within the corporate limits of the City of Aurora. STFDF shall develop, in collaboration with the City and others, an on-going strategy for the economic development of the City of Aurora as outlined in the report prepared by the Greater Aurora Chamber of Commerce dated April 16, 2013 and entitled "A Report on Economic Development Opportunities within the City of Aurora, Illinois." A copy of the report is attached hereto for reference.

7.2 The core services to be supplied by STFDF are as follows:

A. Business Attraction:

(i) STFDF shall provide assistance to new business prospects seeking to locate in the City of Aurora by providing information on available land, buildings, demographics, labor force, housing, education, infrastructure and other such information.

(ii) STFDF shall provide infrastructure information to business prospects, when requested, by working with utility companies, local units of government and the City to facilitate the decision making process for prospective businesses considering locating in the City.

(iii) STFDF shall work with State and Federal organizations to respond to business and developer requests for information.

(iv) STFDF shall contact all economic development related prospects referred to STFDF by the City or any other entity.

(v) STFDF shall perform the following business attraction services to aid prospective businesses and developers:

- a. Review the City's existing economic development incentive programs and make recommendations if needed to ensure the programs remain advantageous and competitive, and provide feedback from the development community; and
- b. Establish relationships with real estate professionals through individual meetings and by participating in events as time and resources permit; and
- c. Market Aurora's retail opportunities and sites to key developers at Trade Show(s). At Trade Show(s) STFDF shall arrange and host follow-up on-site visits focused specifically on retail development.
- d. Attend the City's Development Services Team meetings when requested by the City of Aurora or business owner/developer.

B. Business Retention and Expansion

(i) STFDF shall conduct an annual business retention program in which existing City of Aurora businesses and employers are identified and personal contact is made by STFDF through on site visits, mail surveys, or both. Surveys shall be sent via mail or email, at STFDF's discretion, and shall be sent to companies located in not less than six (6) of Aurora's sixteen (16) business parks each year.

(ii) STFDF shall annually conduct not less than ten (10) on site business retention calls per year.

(iii) STFDF shall, in conjunction with the Greater Aurora Chamber of Commerce, conduct not less than thirty (30) business retention calls with the chief executive officer (or their designate) of companies located in Aurora.

(iv) STFDF's business retention program shall be designed to identify and address the needs of existing businesses and the manner in which STFDF, the City and the Greater Aurora Chamber of Commerce can better assist those businesses, including but not limited to the following components:

- a. Coordinate meetings of the Mayor's Economic Development Roundtable;
- b. Work with the City and On Light Aurora for delivering high speed internet services to City businesses;
- c. Serve as a resource for City businesses seeking economic, demographic, commercial real estate and other related data;
- d. Update and maintain information on Aurora's economic profile. The City shall assist STFDF in updating and maintaining such data.
- e. Conduct breakfasts, not less than six (6) per year, for business leaders detailing information about Aurora's economic and development programs;
- f. Assist businesses to assess their export and foreign market potential with the help of State and Federal agencies and others;
- g. Analyze and report to the City the results of the retention surveys and CEO visits, and identify potential actions to be taken.

C. Domestic and Global Initiatives

STFDF shall continue initiatives to attract businesses and new jobs by maintaining relationships with Department of Commerce and Economic Opportunity

offices, and communicating with the Chicago International Trade Commissioners Association and others.

D. Miscellaneous

(i) STFDF shall maintain the "*investinaurora.org*" website. The City shall provide STFDF with such administrative rights, passwords and other information as may be required for STFDF to perform its obligations under this section.

(ii) STFDF shall serve as a data and informational source for the City, as well as for other local units of government, and the City's State and Federal legislators, on all significant economic and business issues facing the City.

(iii) STFDF shall promote Aurora's positive aspects and quality of life through:

- a. The City's branding campaign;
- b. Coordinating marketing of small business training and learning opportunities with community partners.

8.0 BUDGET, FINANCIAL DISCLOSURES and REPORTS

8.1 STFDF shall, on or before October 1st of each year, submit its annual budget to the City. STFDF's budget shall set forth the objects and purposes for which it seeks to use the grant money from the City. STFDF shall further provide such information as may be necessary in the opinion of the City for inclusion in the City's annual budget report.

8.2 STFDF shall provide the City with bi-annual financial reports within thirty (30) days after the end of each six (6) month period ending on December 1, and June 1, each year. The reports shall include a detailed list of all City revenues received and expenditures incurred,

as well as specific identification of those expenditures that are TIF eligible expenses, by STFDF pursuant to this Agreement.

8.3 STFDF shall conduct an annual audit by an independent audit/accounting firm, licensed by the State of Illinois to conduct an audit in accordance with generally accepted auditing standards. Said audit shall include all income received by STFDF from the City, and all disbursements by STFDF of City funds for the prior fiscal year. A copy of the audit report shall be provided to the City within thirty (30) days of STFDF's receipt of the audit report. An auditor's management comment letter shall be submitted to the City as part of the audit report.

8.4 The City's contribution pursuant to this Agreement shall be restricted for use for the purposes described in this Agreement. Furthermore, the annual financial report shall include a supplemental schedule reflecting the City's contribution, summarizing the major classes of associated expenses, and presenting any residual equity balance. The financial statements should also include any equity balance remaining from the prior year.

8.5 STFDF shall provide the City with quarterly written informational reports on its activities within thirty (30) days after the end of each three (3) month period ending on September 1, December 1, March 1 and June 1, each year; and such other reports as may be reasonably requested by the City. STFDF's quarterly reports shall include, but not be limited to, prospective economic development activity, challenges to economic development in Aurora, local employment trends, coordinated efforts with other agencies and recommendations to improve the economic development climate in the City.

8.6 STFDF will, with assistance from the City, be responsible for tracking and maintaining data on the number of jobs created and/or retained, construction value approved, investment value approved, and the square footage of new construction and remodeling.

9.0 FINANCIAL RECORDS.

9.1 At any time during the term of this Agreement, the City shall have the right to examine STFDF's financial records during regular business hours and subject to reasonable notice.

9.2 STFDF is accountable for all City funds disbursed under this Grant. STFDF's financial management system shall be structured to provide for accurate, current and complete disclosure of the expenditure of all funds provided by the City under this Agreement. STFDF shall maintain effective control and accountability over all funds disbursed and equipment, property, or other assets acquired with City funds. STFDF shall keep records sufficient to permit the tracing of funds to a level of expenditure adequate to insure that funds have not been unlawfully spent.

9.3 STFDF acknowledges the requirements of the Local Records Act, 50 ILCS 205 *et seq.*, as amended and shall therefore maintain, in accordance with the Act, following the later of the expiration or termination of this Agreement, adequate books, records and supporting documents to verify the amounts, recipients and uses of all funds disbursed in conjunction with this Agreement. All books, records and supporting documents related thereto shall be available for inspection and audit by the City, or any duly authorized representative of the City, and STFDF agrees to cooperate fully to accomplish any such audit. STFDF shall provide full access to all relevant materials and to provide copies of same upon request.

9.4 If any services to be performed under this Agreement are subcontracted, STFDF shall include in all subcontracts a provision that the City, or any duly authorized representative of the City, shall have full access to and the right to examine any pertinent books, documents,

papers and records of any subcontractor involving transactions related to this Agreement in accordance with the Local Records Act cited above, from the later of the expiration or termination of this Agreement.

10.0 ACQUISITION OF EQUIPMENT

10.1 In the event STFDF ceases to exist, all equipment and materials purchased with City funds shall become City property.

11.0 UNUSED FUNDS

11.1 Any unused funds provided by the City pursuant to this Agreement shall be maintained in a federally insured account.

11.2 In the event STFDF ceases to exist, all unused funds provided by the City pursuant to this agreement, except as exempted herein, shall be returned to the City

12.0 LEGAL COMPLIANCE

12.1 In addition to complying with the statutes and regulations specifically referenced in this Agreement, STFDF is responsible for determining the applicability of, and complying with, any other laws, regulations or ordinances.

12.2 All applicable federal, state and local laws, rules and regulations applicable to this Agreement shall be deemed to be included in this Agreement as though fully set forth herein. Except where expressly required by applicable laws and regulations, the City shall not be responsible for monitoring STFDF's compliance.

contained herein to the contrary, in the event of the termination or suspension of funding, STFDF shall not be required to continue to provide services to the City. In the event of a reduction or temporary suspension of funding, STFDF may identify services that will not be supported due to the reduction.

13.4 If the City terminates this Agreement, STFDF shall not incur any costs or new obligations after the termination effective date. STFDF shall also attempt to cancel as many current obligations as possible.

13.5 The City shall allow full credit to STFDF, and shall pay to STFDF for any obligations properly incurred pursuant to this Agreement by STFDF and prior to termination. It is specifically agreed by the City upon any termination as provided for herein, the City will pay to STFDF the remaining salary and benefits due to the Executive Director of STFDF to the end of Executive Director's contract with STFDF, but in no event longer than one (1) year from the date of termination.

14.0 INDEMNIFICATION AND INSURANCE

14.1 Each party shall hold harmless and indemnify the other party, its elected officials, officers, directors, employees and agents from any and all claims, suits, actions, costs and fees, including, but not limited to, attorneys' fees, interest and expenses, growing out of, or connected with the performance of this Agreement, or because of any act or omission, neglect, or misconduct of a party, its officers, directors, employees, agents, volunteers, subrecipients, independent contractors, or subcontractors.

14.2 Nothing contained herein shall be construed as prohibiting either party, its elected officials, directors, officers, agents, or its employees, from defending through the selection and

use of their own agents, attorneys and experts, any claims, actions or suits brought against them.

14.3 In the event any demand or claim relating to this Agreement is known to either party, the City and/or STFDF will notify the other party in writing in an expedient manner.

14.4 STFDF shall, at STFDF's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the kinds and limits identified in this section. STFDF shall furnish Certificates of Insurance to the City before any City grants are released pursuant to this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois, which have a rating of not less than A IX, according to the latest edition of the A. M. Best Company. Such policies shall include a provision preventing cancellation of the insurance policy except upon fifteen (15) days' prior written notice to the City. Such provision shall also be stated on each Certificate of Insurance as "Should any of the above-described policies be canceled before the expiration date, the issuing company shall mail 15 days' written notice to the certificate holder named to the left." Upon the City's written request, STFDF shall provide copies of any or all policies of insurance to the City.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law.

(A) Commercial General Liability:

- i. Coverage to include Premise/Operations, Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual and Personal Injury
- ii. Limits
 - General Aggregate \$1,000,000.00
 - Each Occurrence \$2,000,000.00
 - Personal Injury \$1,000,000.00
- iii. Coverage is to be written on an "occurrence" basis.
- iv. Cover all claims arising out of STFDF's operations or premises, anyone directly or indirectly employed by STFDF, and STFDF's obligations under indemnification under this Agreement.

(B) Workers' Compensation:

18.1 This Agreement shall be governed and construed by the laws of the State of Illinois both as to interpretation and performance.

19.0 REQUIRED NOTICES OR REPORTS

19.1 Any notices, reports, records or documents required by the terms of this Agreement shall be deemed sufficiently delivered if made in writing and sent by first class mail or personal services to:

FOR THE CITY
Office of the Mayor
City of Aurora
44 East Downers Place
Aurora, IL 60507

FOR THE STFDF
Executive Director
Seize the Future Development Foundation
43 Galena Blvd.
Aurora, IL 60506

19.2 Either party may change its address for receiving notices by giving notice thereof in compliance with the terms of this Section 19.

20.0 ENTIRE AGREEMENT

20.1 This Agreement represents the entire agreement between the parties and supersedes all previous communications or understandings, whether oral or written.

21.0 SAVINGS CLAUSE

21.1 If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

22.0 CAPTIONS AND PARAGRAPH HEADINGS

22.1 Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF the parties to this Agreement by their signatures acknowledge they have read and understand this Agreement and intend to be bound by its terms as of the date first written above.

CITY OF AURORA
an Illinois Municipal Corporation,

By: Thomas Weisner, Mayor

ATTEST

By: Rachel Pineda, City Clerk

Seize the Future Development Foundation
an Illinois not for profit corporation

By: Charles B. Doss, President

Charles B. Doss

ATTEST

By: _____, Secretary