RESOLUTION 2015-002 PASSED: JANUARY 12, 2015

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO ENTER INTO AN AGREEMENT WITH GREAT LAKES ECONOMIC DEVELOPMENT, LLC FOR FUTURE ECONOMIC DEVELOPMENT INCENTIVES.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb, Illinois be authorized and directed to enter into an Agreement with Great Lakes Economic Development, LLC for consideration of future economic development agreements, substantially in the form attached hereto as Exhibit A, subject to such revisions as shall be acceptable to him.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor’s signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 12th day of January, 2015 and approved by me as Mayor on the same day. Passed on a 7-0-1 roll call vote. Aye: Jacobson, Finucane, Lash, Snow, Naylor, O’Leary, Rey. Absent: Baker.

ATTEST:

RUTH A. SCOTT, Deputy City Clerk

JOHN A. REY, Mayor
ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF DEKALB AND  
GREAT LAKES ECONOMIC DEVELOPMENT, LLC

This Agreement is by and between the city of DeKalb ("City"), an Illinois Home Rule Municipal Corporation, and Great Lakes Economic Development, LLC (referred to hereinafter as "Company"), a Delaware Limited Liability Company with offices at 3475 Lenox Road, Suite 650, Atlanta, Georgia 30326, (collectively "Parties").

PREAMBLE

Whereas, City is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and the laws of the State of Illinois; and

Whereas, City desires to increase the number of retail businesses in DeKalb that generate Retailer’s Occupation Tax by engaging in taxable, online sales; and

Whereas, Company is a consulting and business services firm that assists companies ("Clients") in building businesses with significant Illinois online retail sales, through merger, acquisition or otherwise; and

Whereas, Company and City will enter into contracts (referred to hereinafter as “Location Agreements”) with Clients, for twenty-five (25) year terms, to pay a negotiated inducement to locate taxable Client operations engaged in online retail activities in the City; and

Whereas, the attraction of new retail businesses to DeKalb will stimulate local commercial activity, and the increase in the Retailer’s Occupation Tax derived therefrom will enhance the tax base and the economic vitality of the City; and

Whereas, under this Agreement City will retain a portion of new tax revenue generated from online sales made by Clients; and

Whereas, as an economic incentive for Client to locate its business in DeKalb, Company and City have agreed to share in the benefits realized by City as a result of the Clients’ new online sales that generate local sales taxes within the City; and

Whereas, the City is entering into this Agreement in the exercise of its Home Rule and other powers and authority.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS
The Preamble to this Agreement is hereby declared to be the findings of the Parties and said Preamble is fully incorporated herein as if fully set forth in this Section 1.

SECTION 2. CITY APPROVAL PROCESS FOR CLIENTS

a) For the Company to request that the City approve of a Client, the Company and Client shall submit a written proposal to the City, which proposal shall include the following information:

1) The Client’s name and a description of its business;
2) The Client’s proposed site within the City of DeKalb or a description of the proposed specifications for such site;
3) The Client’s projected number of employees and a description of the nature of operations to be completed at the site;
4) The location of any other Client facilities within the state;
5) A financial forecast including an estimate of likely taxable online sales to be generated, based upon reliable information acceptable to the City;
6) A description of the fashion in which the proposed operation complies with the applicable Illinois statutes and regulations regarding the origin of sales and location where sales taxes are due; and,
7) Such other information as the City shall request.

b) The City has sole and exclusive right to accept or reject any retail Client presented by Company, after approval of this Agreement, and has no obligation for any payment unless and until:

1) Company and Client have submitted a written proposal to the City in accordance herewith;
2) The City Council has approved such Client proposal by resolution;
3) The City, Company and Client have entered into a mutually acceptable agreement defining the relationship between the parties which identifies the City as the sole municipality with whom the Client shall contract with, within the State of Illinois, for the term of the agreement;
4) Client has located a qualifying enterprise within the City, has obtained a final certificate of occupancy and commenced operations at such enterprise, and has generated local sales tax revenue from online sales;
5) The City has received such local share of sales tax revenue along with all documentation contemplated herein; and,
6) The City has confirmed that all parties are acting in conformity with the terms of this Agreement and the subsequent three-party agreement.

All Client operations contemplated to occur within the City shall fully comply with Illinois Department of Revenue Regulations Title 86, Part 270, Section 270.115 for consummation of sales within City, as amended from time to time. The Parties acknowledge that any sales contemplated for benefits under this Agreement will not include any Client locations that are generally open to the public (otherwise known as brick and mortar facilities), nor from any facility that solicits or permits in-person sales.
In the event that Company or Client proposes a hybrid facility offering both online and in-person sales, the facility shall only be subject to approval after acceptance of a mechanism for differentiating between online and in-person sales in the tax returns generated by the facility (with only the former being eligible for potential rebate).

SECTION 3. COMPLIANCE WITH APPLICABLE LAWS
Client shall conduct all of its activities within City in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by IDOR that apply to such activities. Neither Company nor Client shall relocate a business in a fashion that violates Illinois law or regulation, or otherwise take action in contravention of applicable laws.

SECTION 4. PROCESS FOR REBATE PAYMENTS

A. The parties agree that any disbursements by City to Company shall be based upon:

1) the monthly Illinois Retailers’ Occupation Tax (“Sales Tax”) returns submitted by Company’s Client to the Illinois Department of Revenue (hereinafter “IDOR”), a copy of which shall also be filed with the City on a monthly basis; and,
2) The report provided to City by IDOR (currently provided three times a year) showing sales tax revenues allocated to the City and attributable to Client operations within City from the facility engaged in online, taxable, retail sales.

Company shall cause Client to provide the City with Client’s Illinois Business Tax Number (IBT Number) and site location code for all Client facilities located within the City and a delineation of the identity of each such facility. If required by IDOR, Company shall also cause Client to provide an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to City all gross revenue and Sales Tax information submitted by Client to IDOR.

B. Three times per year and after receipt of: 1) the local sales tax revenue; 2) the above-described monthly Client tax return; and, 3) the IDOR-issued report of Client activities from the State, the City shall disburse to Company a negotiated portion of the local share of sales taxes attributable to taxable, online retail sales made within City by Client, which are actually received by the City.

C. In the event that any copies of tax returns which have been submitted to City are amended by Client, Company agrees to promptly forward or cause to be forwarded a photocopy of such amended tax returns to the City, clearly identifying them as an amendment of tax returns previously submitted to the City. Any adjustment of rebate payments associated with an amended return shall be made once the prerequisites described in subsection 4(A) above are satisfied.
relative to the amended return. In the event that an amended return results in a refund or reduction of sales tax liability for Client, the City/Company/Client agreement shall provide for a payment adjustment and refund mechanism whereby the City is made whole for any change in sales tax receipts generated by the amended return.

D. Nothing in this Agreement shall be construed to create an obligation or guarantee on the part of Client as to City’s quarterly or yearly distribution amount.

SECTION 5. AUDIT – RECONCILIATION

Each incentive payment by City to Company shall be accompanied by a statement executed by the City Finance Director or designee, setting forth the calculations of such payment. Company shall have thirty (30) days following the receipt of said payment to notify City in writing of any discrepancy in information contained in said statements or other objection of any form. City will work in good faith with Company to resolve inconsistencies between (1) information contained in IDOR forms submitted to IDOR by Client, and information contained in quarterly or other report provided to City by IDOR showing sales tax allocated to City attributable to Client operations within City.

If City agrees that the amounts paid to Company were less or more that the amounts that should have been paid to Company and such discrepancy is due to an error on the part of the City, either City shall pay to Company the balance of such amounts due at the time of the next payment by virtue of a credit or additional payment.

If City agrees that the amounts paid to Company were less or more than the amounts that should have been paid to Company and such discrepancy is due to an error on the part of IDOR or any other party, the City shall work with Company and Client to resolve such error, but the City shall not be liable for payment of any sums unless and until IDOR or the third party has corrected the error and the prerequisites of Section 4(A) have been satisfied with regard to any amount paid or withheld in error.

SECTION 6. CONFIDENTIALITY

The parties acknowledge that the information contained in any tax return and report made by Company’s Client is confidential information proprietary to Company and its Client and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to City, its agents and representatives, pursuant to or with regard to the provisions of this Agreement, shall be confidential. If the City receives a request to release such information, the City will make best efforts to advise the company of such requests. The City will release information required by State or local laws and regulations, and will make efforts to redact confidential information prohibited from release. The City may release confidential information when directed by a court of competent jurisdiction or when required by applicable law.

SECTION 7. TERM
This Agreement will remain in full force for ten (10) years beginning with the Effective Date. This Agreement may be renewed by mutual agreement, and shall terminate if required due to any change in applicable laws or regulations.

SECTION 8. REMEDIES

In the event of a breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party’s seeking of any remedy provided for herein. Upon a breach of this Agreement and the following the expiration of the cure period described above, the non-breaching party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party’s right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION 9. LIABILITY

The sole source of funds for payments to either Party under this Agreement shall be funds which consist of that portion of the Sales Taxes solely generated from sales by Company’s Client(s) in City which are paid from the Local Governmental Tax Fund to the City, and only to be paid after City receives Local Share from IDOR. Company may not compel any exercise of taxing authority by the City to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.

SECTION 10. APPROPRIATIONS/BUDGET

To the extent required by law, for each year during the term of this Agreement, City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriate shall be a part of City’s annual appropriations ordinance, adopted in accordance with 65 ILCS 5/8-11-20, or as a party of City’s annual budget adopted in accordance with 65 ILCS 5/8-11-20, as the case may be. City shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any is necessary. All references to provisions in 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

SECTION 11. DEFENSE AND INDEMNIFICATION

A. Covered Claims: Any lawsuit or other legal proceeding which raises a challenge: 1) to the terms of this Agreement or any subsequent agreement between the City, Company and any approved Client that arises by virtue of this Agreement;
2) to the fashion in which sales taxes are calculated, reported, collected or paid by or to any party under this Agreement or subsequent Agreements; 3) to the fashion in which the taxes associated with any transaction or series of transactions are taxed or the identity of the party to whom the local share of such taxes is paid; 4) to the determination or claim as to whether such sales are subject to local sales taxes, state sales taxes, use taxes or any other form of tax associated with the sale of tangible products; or, 5) that otherwise alleges or seeks a judicial or administrative determination that any component of this Agreement or any subsequent agreement between the City, Company and any approved Client is for any reason unlawful, unenforceable or has damaged any party, shall be deemed a Covered Claim. The Parties acknowledge that it is their intention to define Covered Claims in the most expansive fashion permitted by law.

B. Defense: Company shall at its sole and exclusive cost, provide legal counsel acceptable to the City and shall defend the City (and its elected officials and employees) from any Covered Claims, without limitation, and shall participate in good faith in such defense. The City shall also participate in good faith in such defense, but shall not be obligated to contribute towards any defense costs, it being acknowledged that the Company shall bear sole responsibility for such costs (subject to the provisions of subsection 12(D) below). No claim shall be settled or compromised without the express, written consent of the City.

C. Indemnification: Company shall indemnify and hold harmless the City (and its elected officials and employees) from any Covered Claim or any other claim arising out of or relating to the performance of this Agreement or any subsequent agreement between the City, Company and Client.

D. Joint and Several Liability: Any subsequent agreement entered into by the City with Company and an approved Client shall require that the Company and Client jointly and severally undertake the defense and indemnification obligations contemplated herein, without limitation, setoff, or restriction.

SECTION 13. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of the State of Illinois.

SECTION 14. AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

SECTION 15. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or
delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may by notice designate:

If to the City: City of DeKalb
Attention: City Manager
200 S. Fourth Street
DeKalb, Illinois 60115

With copy to: City of DeKalb
Attention: Finance Director
200 S. Fourth Street
DeKalb, Illinois 60115

And:

City of DeKalb
Attention: City Clerk
200 S. Fourth Street
DeKalb, Illinois 60115

And

If Company: Great Lakes Economic Development, LLC
Attention: President
3475 Lenox Road, Suite 650
Atlanta, Georgia 30326

Notices shall be deemed received on the fourth business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

SECTION 16. EFFECTIVE DATE

This Agreement shall be effective as of the date last of Parties signs.

SECTION 17. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provision of this Agreement and to aid and assist each other in carrying out the terms of this Agreement. In the event that any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

SECTION 18. SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.
SECTION 19. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the Parties.

SECTION 20. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without the consent of the City, which shall not be unreasonably withheld, Company may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part other than in connection with a transfer of all or part of the business of Company to which it pertains.

SECTION 21. APPROVALS

The City hereby represents that it has obtained all authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, which are necessary to enable the City to comply with the terms and provisions of this Agreement and perform its obligations hereunder.

(SIGNATURE PAGE FOLOWS)
IN WITNESS WHEREOF, the Parties have executed this Agreement this 12th day of January 2015.

City of DeKalb, an Illinois Home Rule Municipal Corporation

By: John A. Rey

City Clerk

ATTEST:

City of DeKalb, an Illinois Home Rule Municipal Corporation

Great Lakes Economic Development, LLC, a Delaware Limited Liability Company

By: 

Member

By: 

Member