

**PARTNERSHIP INDUSTRIAL CENTER WEST
SPRINGFIELD, MISSOURI**

DEVELOPMENT AGREEMENT

Approved: July 2, 2001
Amended: April 17, 2003



**PARTNERSHIP INDUSTRIAL CENTER WEST
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this 2 day of July, 2001, among the City of Springfield, Missouri (hereinafter, "City"), the Board of Public Utilities of Springfield, Missouri (hereinafter, "CU"), the Springfield Area Chamber of Commerce (hereinafter, "Chamber"), and the Springfield Business & Industrial Development Corporation, a Missouri not-for-profit cooperation (hereinafter, "SBDC"), collectively sometimes called "parties" or "party."

WITNESSETH:

WHEREAS, the parties desire to promote the prosperity, economic betterment, general interest and welfare of the community according to their powers granted by law; and

WHEREAS, City and CU have agreed that the use of public funds in the development of a high quality industrial center designed to attract desirable manufacturing enterprises will serve the public interest in the retention and creation of quality jobs, provide markets for the services of skilled workers in the area, and provide markets for the sale of utilities; and

WHEREAS, Chamber, whose primary goal is the economic development of the Springfield area market, wants to assist in the marketing of the industrial center and to assist in the general support and guidance of the project; and

WHEREAS, SBDC, formed for the purpose of promoting industrial growth in the Springfield area, desires to participate to enhance the economic well-being of the greater Ozarks area and believes its participation will involve the private sector in accomplishing the overall purpose of the project; and

WHEREAS, the parties have developed a public/private partnership to promote quality job creation and promote the overall economic development of the community.

29 NOW, THEREFORE, the parties, pursuant to sections 70.210 RSMo. et seq, have
30 determined that it is in the public interest to formalize a development agreement to govern the
31 process of development and management of the proposed industrial center generally located east of
32 the Springfield Municipal Airport and north of I-44 (PIC West), which land is described on Exhibit
33 A, to ensure the long-term stability and understanding of the venture and to carry out the purposes
34 as stated herein and therefore agree as follows:

35
36 **ARTICLE I**

37 **PURPOSE**

38 The purpose of this agreement is to govern the process of development, management, and
39 selling of property within PIC West. The property controlled by the partnership shall be used for
40 industrial projects providing quality manufacturing and industrial jobs for the Springfield area,
41 provide markets for the services of skilled workers in the area, and increase the electrical load factor
42 for increased efficiency of CU.

43
44 **ARTICLE II**

45 **RESPONSIBILITIES OF PARTIES**

46 A. It is agreed that each party shall have its specific responsibilities for the development and that
47 all shall have a joint responsibility for control of the sale of individual parcels in the center;
48 provided, however, the specific responsibilities shall be undertaken cooperatively with the
49 other parties as directed by the Administrative Council. The specific responsibilities are
50 generally described as follows:

51 1. **CU'S RESPONSIBILITIES.**

- 52 a. CU shall be responsible for keeping consolidated books and records and
53 doing all accounting work according to Article V of this Agreement.
54 b. CU will make available to every parcel within PIC West appropriate utility
55 services consisting of natural gas, water, electricity, and fiber optic
56 telecommunication.
57

- 58 c. CU will arrange and initially pay for the services of a competent consultant to
59 prepare a design and overall concept for the industrial center, to include parcel
60 division, appropriate land use, transportation access, and all related matters.
61

62 2. CITY'S RESPONSIBILITIES.

- 63 a. City will provide appropriate municipal improvements, including street
64 improvements, sewer service, drainage and infrastructure engineering (City
65 Infrastructure) in cooperation with CU to ensure efficient location of both
66 utility and municipal services.
- 67 b. City will take the necessary steps to see that the center is properly zoned for
68 activities of the type contemplated.
- 69 c. City will consider use of its power of eminent domain to acquire such
70 additional lands as the parties agree necessary to encourage the quality of
71 development contemplated by this partnership.
- 72 d. The City owns land described in Exhibit B (Airport Land) which was acquired
73 by the City for the use and benefit of the City's airport. The City will transfer
74 the Airport Land, upon approval from the FAA and the Planning and Zoning
75 Commission and/or the City Council, to the City for use and sale to buyers as
76 part of PIC West. The City hereby authorizes a duly appointed officer of the
77 Administrative Council to convey the Airport Land on behalf of the City when
78 authorized by the Administrative Council as needed for development to the
79 purchaser of the land by executing a special warranty deed on behalf of the
80 City. The Airport Land will be conveyed subject to covenants required by the
81 FAA and the Airport Board which covenants shall run with the land so long
82 as there is an airport adjacent to the Airport Land. Access from the airport
83 to PIC West will be retained by the Airport Board as shown on the recorded
84 preliminary and final plats of PIC West. None of the costs for constructing,
85 operating, or maintaining said access to PIC West shall be borne by the
86 Administrative Council.
87
88

89 3. CHAMBER'S RESPONSIBILITIES

- 90 a. Chamber shall provide general marketing guidance, services and expertise in
91 promoting the development locally, regionally, nationally, and internationally.
92 To that end, Chamber shall develop a profile of prospective tenants or
93 purchasers and shall target its marketing to attract tenants or purchasers that
94 will provide the types of jobs contemplated by the project.
95

96 4. SBDC'S RESPONSIBILITIES

- 97 a. SBDC may acquire from private sources all funds necessary to construct a
98 shell facility, or facilities as may be needed, which are suitable for general
99 manufacturing or industrial purposes located within the center and will be
100 responsible for the design and construction thereof, including necessary site
101 preparation, which design, construction and site preparation shall be approved
102 by the Administrative Council as set forth herein.
- 103 b. In cooperation with the Chamber, SBDC shall provide marketing services
104 support and guidance in promoting the development.
- 105 c. The SBDC has acquired lands which are subject to financing liens. SBDC will
106 have these liens released so as not to prevent final lease or conveyance to end
107 users for development purposes.
- 108 d. SBDC, by approval of this agreement, has delegated to the Administrative
109 Council the sole authority to convey the property in accordance with the
110 terms of this Agreement. The sole action by the SBDC to convey or
111 otherwise dispose of the property subject to the terms of this agreement shall
112 be the ministerial action of signing a deed and other necessary documents.
113

114 **ARTICLE III**

115 **ADMINISTRATION OF INDUSTRIAL CENTER**

- 116 A. The Industrial Center shall be managed in consultation with a board called the Partnership
117 Industrial Center West Administrative Council (the "Administrative Council"). None of the
118 parties to this agreement shall have authority to act for or to assume any obligation or

119 responsibility on behalf of the Industrial Center, except with the prior approval of the
120 Administrative Council.

121
122 1. COMPOSITION OF ADMINISTRATIVE COUNCIL; APPOINTMENTS AND
123 REMOVALS.

124 a. A ten (10) member Partnership Industrial Center Administrative Council (the
125 “Administrative Council”) shall establish Industrial Center policy and
126 procedure and supervise the management of PIC West. The Administrative
127 Council shall consist of:

- 128 – one member from the City Council appointed by the Mayor of Springfield,
- 129 – one member from the Board of Public Utilities appointed by the Chairman
130 of its Board,
- 131 – one member of the Board of Directors of the Springfield Business &
132 Development Corporation appointed by its President,
- 133 – one member from the Board of Directors from the Springfield Area
134 Chamber of Commerce appointed by its Chairman,
- 135 – the City Manager of Springfield or designee selected from senior city staff
136 officials,
- 137 – the General Manager of City Utilities or designee selected from senior
138 utility staff officials,
- 139 – the President of the Springfield Area Chamber of Commerce or designee
140 selected from senior chamber staff officials, and
- 141 – the Director of Aviation of the Springfield Municipal Airport or designee
142 selected from senior Airport staff, and
- 143 – One member of the Greene County Commission appointed by the
144 Presiding Commissioner of Greene County, and
- 145 - One member of the CU Citizens’ Advisory Council or a designee selected
146 from the membership of the Citizens’ Advisory Council

147 Respective members of the Administrative Council shall serve by virtue of
148 their office or at the pleasure of the appointing authority.

149 b. Each entity with authority to appoint a representative to the Administrative
150 Council may at any time, by written notice, remove its representative, with or
151 without cause, and appoint a substitute representative to serve in their stead
152 provided the substitute representative meets the qualifications set forth above
153 in the preceding paragraph. Each such designation shall be revocable any time
154 by the entity represented but shall survive the death or resignation of the
155 regular representative until appointment of a substitute representative. Such
156 designation shall be in writing and a copy thereof shall be provided to the
157 Administrative Council at or prior to the date set for any meeting at which
158 such alternate is to act. The removal of a representative or of an alternate
159 shall not invalidate any act of such person taken prior to the giving of written
160 notice of his removal.

161
162 2. **POWERS OF ADMINISTRATIVE COUNCIL**

163 a. Without limiting the generality of the Administrative Council's powers, the
164 powers specifically shall include:

165 i. **Promulgation of rules, regulations, and bylaws for the conduct,**
166 management and control of the affairs and business of the Industrial
167 Center which study and experience dictate as necessary for successful
168 and harmonious operation of the center as it develops and are not
169 inconsistent with law or with the provisions of this Agreement
170 including, but not limited to, the appointment or election of officers as
171 required for the orderly conduct of the Administrative Council's
172 business;

173 ii. Review and approve a site plan, develop covenants regarding use and
174 development within the center, limitations or restrictions on industry
175 types, sizes, development requirements, changes in use, restrictions on
176 transfers, sales and pricing policies on land;

177 iii. Recommend to the parties, the purchase, lease or sublease from others
178 or other acquisition or construction of assets, properties (real or
179 personal) and rights of any kind determined by the Administrative

180 Council to be necessary or desirable in connection with the conduct
181 of furtherance of the Industrial Center objectives;

182 iv. Sale, conveyance, transfer, lease or sublease to others or other
183 disposition of portions of the assets, rights and properties of the
184 Industrial Center and execution and delivery of contracts, documents
185 and instruments necessary to effect the same, provided, however, sales
186 or lease prices (or a formula for their computation) shall have been
187 determined with costs allocated on a per parcel, per square foot, or
188 other equitable basis, suitable guarantees shall have been made by
189 purchasers regarding compliance with all center restrictions and
190 requirements, all sales or leases shall be consistent with constitutional
191 and statutory restrictions on public bodies, and the contributing
192 entities receive pro rata shares of sales proceeds in reimbursement of
193 expenses advanced for the project, as provided herein;

194 v. It is anticipated and intended that property in the center will be sold
195 to final users as opposed to developers on speculation. The
196 Administrative Council shall consider restrictions on sales of property
197 which give the Administrative Council or any of the parties an option
198 to purchase the property at an agreed price or pricing formula if
199 construction consistent with the purpose of the partnership has not
200 been substantially completed on the conveyed tract within two (2)
201 years following the date the property is conveyed to final user. In
202 addition, the Administrative Council should consider restrictions on
203 sales of property which give the Administrative Council or any of the
204 parties a first right of refusal on the future sale of any conveyed tract
205 by a purchaser from the partnership.

206 vi. Create an owners association to which will ultimately be transferred
207 responsibility for the governance of operations within PIC West
208 including authority to levy assessments upon center industries for its
209 operation. No such property owners association shall be given power
210 to alter the basic purpose of PIC West until after the last tract of land

211 has been sold. Any alteration of the basic purpose of PIC West shall
212 be consistent with the covenants required by the City for the
213 protection of its airport as set forth in the covenants which run with
214 the Airport Land.

- 215 vii. Selection and removal of all agents and employees of the Industrial
216 Center and prescription of powers and duties for such agents and
217 employees, and fixing of their compensation.

218
219 3. ADMINISTRATIVE COUNCIL MEETINGS

- 220 a. Within forty five days after all of the parties have signed this agreement the
221 duly appointed members of the Administrative Council shall meet, elect
222 officers and establish procedures for conducting its business. The
223 Administrative Council shall hold regular meetings as such time and place as
224 established by the Administrative Council. Special meetings of the
225 Administrative Council may be called any time by any two representatives on
226 the Administrative Council.

227
228 4. QUORUM AND VOTING AT BOARD MEETINGS

- 229 a. **Each representative shall have one vote** in all matters presented to the
230 Administrative Council for decision or approval. A simple majority of the
231 Administrative Council shall constitute a quorum. The affirmative votes of a
232 majority of the Administrative Council shall be required for any act or decision
233 of the Administrative Council.
- 234 b. Notice shall be required with respect to any meeting of the Administrative
235 Council. At least forty-eight (48) hours' prior notice of any special meeting
236 shall be given.
- 237 c. The Administrative Council shall cause to be kept a book of minutes of all of
238 its meetings in which shall be recorded the time and place of such meeting,
239 whether regular or special and, if special, how called, the notice thereof given,
240 and the names of those present and a summary of the proceedings.

- 241 d. If permitted by law any action required or permitted to be taken by the
242 Administrative Council may be taken without a meeting if a simple majority
243 of the representatives, including at least one representative appointed by each
244 party to this Agreement, consent in writing to such action.
- 245 e. Expenses incurred by the representatives incident to their duties and
246 responsibilities as representatives under this Agreement shall not be paid by
247 or charged to the partnership unless reimbursement specifically is authorized
248 in each case by the Administrative Council.
- 249 f. No representative shall receive compensation for his time or services provided
250 as a member of the Administrative Council.
251

252 **ARTICLE IV**

253 **CONTRIBUTIONS COVERING DEVELOPMENT COSTS** 254 **ALLOCATION AND DISTRIBUTION OF PROCEEDS** 255

256 **A. INITIAL ACCOUNTING.**

- 257 1. Upon execution of this agreement, each party shall provide the Administrative Council
258 with a detailed accounting of all fees and expenses incurred by such party relating to
259 the development of a second industrial park prior to the date the Agreement is
260 executed for use by the Administrative Council in establishing capital accounts for
261 each of the parties. After execution of this Agreement, no significant funds shall be
262 expended by any party for project expenses without prior consent of the
263 Administrative Council unless such payments are made on commitments made prior
264 to the date of this Agreement or are made in accordance with commitments approved
265 as required by this Agreement. In computing such expenses, no allocation shall be
266 made for personnel costs incurred. Interest attributable to funds advanced by the
267 SBDC for the acquisition of land shall be recoverable
268

269 B. CONTRIBUTIONS FOR DEVELOPMENT COSTS.

270 1. Except as otherwise provided herein, it is anticipated that each party will advance
271 funds required to fulfill its obligation as set forth in Article II of this Agreement,
272 subject to being reimbursed upon the sale of parcels in the center.
273

274 C. ALLOCATION OF PROCEEDS.

275 1. The net profits or net losses of the partnership shall be credited or charged among the
276 parties and gains and losses realized upon the sale, lease, exchange or other
277 conversion of any part or all of the real estate controlled under the terms of this
278 Agreement shall be allocated among the parties in the percentages of the partnership's
279 capital accounts belonging to each party. It is anticipated that funds received upon
280 the sale or lease of an individual parcel will be distributed first to the SBDC to recover
281 its raw land costs including interest, then to the City to recover its raw land costs.
282 Subsequent to the reimbursement of these costs, the costs of infrastructure, industrial
283 park development costs incurred by the SBDC and CU, and all other costs approved
284 by the Administrative Council shall be reimbursed from the sale or lease of the land
285 to the respective partners on a prorated basis.
286

287 **ARTICLE V**

288 **BOOKS, RECORDS, ACCOUNTS, AND REPORTS**

289
290 A. BOOKS AND RECORDS.

291 1. Books and records of the project shall be maintained according to generally accepted
292 accounting principles, showing all costs, expenditures, sales, receipts, assets and
293 liabilities, and profits and losses, as determined by provisions herein, and all other
294 records necessary, convenient or incidental to recording the partnership's businesses
295 and affairs and sufficient to record the allocation of profits, losses, and distributions
296 as provided for herein. Each party shall have the right at all reasonable times during
297 usual business hours to examine and make copies of the books and records of the
298 partnership. Such right may be exercised by any agent or employee of such party as
299 designated.

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B. REPORTS.

1. **At the end of each calendar quarter, there shall be prepared a statement showing the results of operations during the preceding quarter and for the fiscal period then ended. At the time any distribution for reimbursement for expenses is made, there shall be delivered to each party a statement showing how the distribution was calculated and made. Upon the request of a simple majority of the Administrative Council, the partnership shall have an annual accounting of its books. Each party shall be furnished with a copy of such annual accounting, as soon as reasonably practicable after the close of the calendar year.**

**ARTICLE VI
EVENTS OF TERMINATION
DISTRIBUTIONS ON TERMINATION**

A. EVENTS OF TERMINATION.

1. **It is anticipated and intended that this Agreement will continue for such time as may be required to dispose of all properties within the center. If a party finds it necessary to withdraw from this Agreement prior to disposition of all properties within the center, said party shall make every effort to acquire a substitute acceptable to the other parties that is willing to assume all its responsibilities. Notwithstanding the above statement of purpose and intent, the partnership shall terminate upon the first to occur of the following events:**
 - a. **Upon notice by any two (2) parties that another party has failed to perform its obligations hereunder and such failure shall continue for a least three months after written notice from the parties claiming the default. The parties wanting to terminate under this provision shall, after the expiration of the three-month period, give one month's notice of their intention to terminate.**
 - b. **Upon three months' written notice by any two (2) parties that such parties elect to terminate the partnership because of the failure of the parties to agree upon any proposed action or non-action by the partnership resulting in the**

331 inability to carry on the business of the partnership under normal standards of
332 commercial reasonableness, if at the end of the three-month period the parties
333 still fail to agree.

334 c. Upon the sale and conveyance of all the PIC West property and its
335 improvements.

336 d. By mutual agreement of the parties.
337

338 B DISTRIBUTIONS ON TERMINATION.

339 1. Upon termination of the partnership, a final audit shall be made by a firm of certified
340 public accountant selected by a simple majority of the Administrative Council and all
341 of the property and assets of the partnership shall be distributed in the following
342 order:

343 a. All of the debts and obligations of the partnership due to entities other than
344 a party, shall be paid in full.

345 b. All debts and obligations of the partnership due to the parties for funds
346 advanced to the partnership for center projects shall be paid in full. No party
347 shall be liable to any other party for any deficiency in any unpaid amounts due
348 to a party for contributions to center expenses, it being expressly understood
349 that each party's contribution is made at its sole risk.

350 c. If no amounts are due to third parties at the time of termination, then the
351 property of the partnership need not be sold but instead, may be transferred
352 or delivered to the parties on a pro rata basis commensurate with their
353 advances to the purchase of assets and payment of development costs. No
354 party shall be liable to any other party for any deficiency in any unpaid
355 amounts due to a party for contributions to center expenses, it being expressly
356 understood that each party's contribution is made at its sole risk.
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ARTICLE VII
AMENDMENT OF AGREEMENT

A. AMENDMENT OF AGREEMENT.

1. This Agreement shall not be amended without the unanimous consent of the partners.
WITNESS the execution of this agreement by the parties through their duly authorized agents
and representatives the day and year first above written.

Approved as to form
[Signature]
[Signature]
[Signature]

CITY OF SPRINGFIELD, MISSOURI
BY: *[Signature]*
TITLE: Assistant City Manager

BOARD OF PUBLIC UTILITIES OF
SPRINGFIELD, MISSOURI
BY: *[Signature]*
TITLE: General Manager

SPRINGFIELD AREA CHAMBER OF
COMMERCE
BY: *[Signature]*
TITLE: Chairman B/D

SPRINGFIELD BUSINESS & INDUSTRIAL
DEVELOPMENT CORPORATION
BY: *[Signature]*
TITLE: President

**FIRST AMENDMENT TO
PARTNERSHIP INDUSTRIAL CENTER WEST
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT AGREEMENT, made and entered into this 17th day of April, 2003, among the City of Springfield, Missouri (hereinafter, "City"), the Board of Public Utilities of Springfield, Missouri (hereinafter, "CU"), the Springfield Area Chamber of Commerce (hereinafter, "Chamber"), the Springfield Business & Industrial Corporation, a Missouri not-for-profit corporation (hereinafter, "SBDC") and Greene County, Missouri, (hereinafter, "County") collectively sometimes called "parties" or "party."

WITNESSETH:

WHEREAS, on July 2, 2001, City, CU, Chamber and SBDC entered into the Partnership Industrial Center West Development Agreement (hereinafter "Agreement") providing for a public/private partnership to promote quality job creation and to promote the overall economic development of the Springfield, Missouri regional area by providing for the development and management of the Partnership Industrial Center West (hereinafter, "PIC West"), generally located east of the Springfield Municipal Airport and north of I-44, and

WHEREAS, County is supportive of the goals and objectives set forth in the Agreement, finds that the development of PIC West is in the best economic interests of Greene County, and desires to become a partner in the private/public partnership created by the Agreement, and to make a financial contribution toward the costs of infrastructure for PIC West in consideration of admission to the private/public partnership, and

WHEREAS, City, CU, Chamber and SBDC, desire County's participation in the private/partnership on the terms and conditions set forth herein,

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. That the Agreement is hereby generally amended to include the County a party thereto and to amend certain terms as set forth.

2. That ARTICLE II, RESPONSIBILITIES OF PARTIES, paragraph 2a., is hereby amended as follows:

2. CITY'S RESPONSIBILITIES

- a. City, with contribution by the County in accordance with their intergovernmental cost-share agreement, shall provide appropriate municipal improvements, including street improvements, sewer service, drainage and infrastructure engineering (City Infrastructure) in cooperation with CU to ensure efficient location of both utility and municipal services.

3. That ARTICLE II, RESPONSIBILITIES OF PARTIES, is hereby amended by adding the following paragraph:

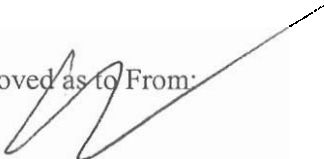
5. COUNTY'S RESPONSIBILITIES

- a. In consideration for its admission into the partnership, County has entered into an intergovernmental cost-share agreement with the City. County agrees to share in costs of development and for the reimbursement of certain costs incurred, all in accordance with the cost-share agreement, County agrees that the intergovernmental agreement with the City shall not be modified, terminated or changed in any way without prior written notice and written consent of all parties.


4. That ARTICLE III, ADMINISTRATION OF INDUSTRIAL CENTER, section A.1.a is hereby amended so as to provide that the number of members of the Partnership Industrial Center Administrative Council shall be increased from ten (10) to eleven (11), with the additional member appointed by the Presiding Commissioner of Greene County, the additional member being either a Greene County Commissioner or senior county staff official.

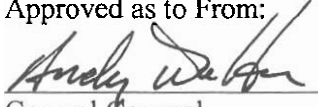
5. That all other terms and conditions of the Agreement, except as amended herein, shall remain in full force and effect.

WITNESS the execution of this agreement by the parties through their duly authorized agents and representatives the day and year first above written.

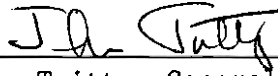
Approved as to Form: 


City Attorney

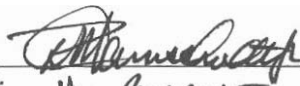
CITY OF SPRINGFIELD, MISSOURI
By: 
Title: _____

Approved as to Form: 

General Counsel

BOARD OF PUBLIC UTILITIES OF
SPRINGFIELD, MISSOURI
By: 
Title: John Twitty, General Manager

SPRINGFIELD AREA CHAMBER OF COMMERCE
By: 
Title: Chairman

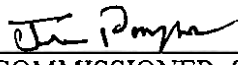
SPRINGFIELD BUSINESS & INDUSTRIAL
DEVELOPMENT CORPORATION
By: 
Title: Vice President

GREENE COUNTY, MISSOURI
By: 

PRESIDING COMMISSIONER

By: 

COMMISSIONER, FIRST DISTRICT


By: 

COMMISSIONER, SECOND DISTRICT

Auditor Certification

I certify that the expenditure contemplated by this document is within the purpose of an appropriation for which it is to be charged and that there is an unencumbered balance of anticipated revenue appropriated for the payment of same.


Auditor Certification _____ Date 4/17/03

Approved as to Form: 

Greene County Counselor