

**AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES BETWEEN
THE LAKEWOOD REINVESTMENT AUTHORITY AND
THE LAKEWOOD-WEST COLFAX BUSINESS IMPROVEMENT DISTRICT**

THIS AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES BETWEEN THE LAKEWOOD REINVESTMENT AUTHORITY AND THE LAKEWOOD-WEST COLFAX BUSINESS IMPROVEMENT DISTRICT (the "Agreement") is entered into by and between the Lakewood Reinvestment Authority, a body corporate and politic of the State of Colorado (the "LRA"), the Lakewood-West Colfax Business Improvement District ("the BID"), and West Colfax Facilities Corporation ("WCFC"), effective as of the latest date set forth in the signature blocks below (the "Effective Date").

WHEREAS, the LRA is a Colorado urban renewal authority existing under the laws of the State of Colorado and duly created by the City of Lakewood, Colorado (the "City");

WHEREAS, the BID, a Colorado business improvement district existing under the laws of the State of Colorado and duly created by the City, has brought to the LRA a proposal for a project, as further defined below, and has requested certain economic development incentives from the City;

WHEREAS, the BID has established WCFC, a Colorado nonprofit corporation, for the purpose of acquiring and owning, on behalf of the BID, a 11,200 square foot building (the "Structure") on approximately one (1) acre of land located at 6501 West Colfax Avenue, Lakewood, CO 80214 (the "Property," as further defined below);

WHEREAS, the BID intends to rehabilitate the Structure and create gathering spaces, artist spaces, and businesses that generate City sales tax (the "Project," as further defined below);

WHEREAS, the Project is located in an "Enterprise Zone" as defined in C.R.S. § 39-30-101, *et seq.*, and within an Urban Renewal Area known as the West Colfax Avenue Corridor Reinvestment Area, and is, therefore, eligible for certain incentives; and

WHEREAS, the LRA desires to offer an economic development incentives grant to the BID as an inducement to bring the Project to the City to eliminate blight at the Property.

NOW, THEREFORE, for and in consideration of the recitals, premises, mutual covenants and agreements herein contained, together with other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the City, the BID and WCFC agree as follows:

SECTION 1. DEFINITIONS

Unless the context otherwise clearly indicates, the following words and phrases, as used in the Agreement, shall be defined as follows:

- 1.1 "Certificate of Occupancy" shall have the meaning as provided in the most recently adopted International Building Code, as adopted and amended by the City.
- 1.2 "Economic Development Incentive Package" or "Incentives" is a one-time financial incentive reimbursing Eligible Expenses incurred by the BID for the revitalization of the Property in facilitating the public benefits described herein. In no event shall the total Economic

Development Incentive Package exceed **One Hundred Thousand Dollars (\$100,000)** (the “Maximum Allowable Amount”).

- 1.3 “Eligible Expenses” means and includes expenditures by the BID for improvements and renovations to the exterior, interior and physical infrastructure of the Structure to prepare the Property for the public benefits described herein.
- 1.4 “Incentive Period” shall mean the time period that begins on the Opening Date and ends five (5) years thereafter.
- 1.5 “Opening Date” shall mean the first day of the first calendar month following issuance of a Certificate of Occupancy for the Project, which is anticipated to be July 1, 2022.
- 1.6 “Project” shall mean the purchase of the Structure by WCFC and rehabilitation thereof by the BID to include construction, any necessary public improvements, and each of the requirements set forth in subsections 4.3 through 4.6 below.
- 1.7 “Property” shall mean the subdivided parcel located within the JCRS Commercial Plaza Flg NO 4, City of Lakewood, County of Jefferson, identified by ID#39-363-05-138, to include the approximately 11,200 s.f. Structure and adjacent land sufficient for parking, located at 6501 W. Colfax Ave.

SECTION 2. PUBLIC PURPOSE

The LRA hereby finds and declares that the following are public purposes served by the Incentives that overcome any incidental individual interests, and as such, the Incentives are not a special aid, grant or privilege:

- The BID’s development of the Project will provide public benefits to the residents of the City through infrastructure improvements, elimination of blight, long-term tax base growth, expansion of new employment, and other related economic development benefits.
- The Incentives will permit the BID to redevelop, open and operate the Project, which will contribute to the development of new businesses within the City;
- The Incentives will provide direct and indirect benefits to the City’s commercial markets.

SECTION 3. OPENING DATE

The BID will begin and continuously pursue the construction, rehabilitation and installation of improvements on, at or to the Structure such that the Opening Date may occur on or near July 1, 2022. In no event shall the Opening Date be later than December 31, 2022.

SECTION 4. ECONOMIC DEVELOPMENT INCENTIVES PACKAGE; CONDITIONS

The Economic Development Incentives Package is provided subject to the conditions set forth herein.

- 4.1 Subject to subsection 4.2 hereof, the LRA will begin to provide the Incentives to the BID within sixty (60) days after: (a) the BID has provided proof acceptable to the LRA that a deed establishing WCFC’s ownership of the Property has been duly recorded with the Office of

the Clerk and Recorder of Jefferson County, Colorado; and (b) the BID has provided proof acceptable to the LRA that WCFC and the BID have executed a rental, lease or similar agreement authorizing the BID to occupy the Structure and to engage in the Project. The BID shall provide such proof to the LRA not more than sixty (60) days after the date of recording, unless extended by the City at its reasonable discretion.

- 4.2 The BID may request reimbursements, on a monthly basis, for Eligible Expenses during the entirety of the construction period until the Maximum Allowable Amount has been reached.
- 4.3 The Opening Date is no later than December 31, 2022.
- 4.4 The BID will occupy and continuously operate within the Structure, as set forth herein, during Incentive Period.
- 4.5 Continuously throughout the Incentive Period, the BID and WCFC will cause a substantial portion of the Structure to be available for public access during reasonable business hours. For the purposes of this Agreement, "substantial portion" shall mean not less than twenty percent (20%) of the usable floor space of the Structure. "Usable floor space" shall not include common areas such as restrooms and entryways; provided, however, that restrooms and entryways shall also be accessible by the public.
- 4.6 The BID or other entity will continuously operate, throughout the Incentive Period, one or more businesses within the Structure that generate City sales tax.
- 4.7 No interest shall accrue on any sum payable to the Lakewood-West Colfax BID.
- 4.8 The right to the Incentives shall be personal to the BID and shall not run with the land.
- 4.9 The BID shall keep accurate books and records of all sales records of all business transactions from the Opening Date. During regular business hours and upon reasonable advance notice to the BID, the LRA or designee is hereby authorized to review the BID's books and records related to the Incentives and the Project. Such review will be conducted at the LRA's expense.
- 4.10 Subject to the provisions of subsections 8.2 through 8.4 below, the BID shall reimburse and pay to the LRA twenty thousand dollars (\$20,000) per year, or pro-rated portion thereof, during which:
 - The BID does not continuously occupy or operate within the Structure throughout the Incentive Period; or
 - The Structure is not continuously available for public access during reasonable business hours throughout the Incentive Period; provided, however, that the Structure may be closed to public access in the event of scheduled or emergency maintenance, inclement weather, or *force majeure* as set forth in Section 9 below; or
 - There is not at least one (1) business operating within the Structure that generates City sales tax throughout the Incentive Period.

SECTION 5. SUBORDINATION TO TAX BONDS; APPROPRIATION – NO MULTIPLE-FISCAL-YEAR OBLIGATION

- 5.1 Nothing herein shall be construed to grant to, or create in the BID, any right, claim, lien or priority in or to the LRA's tax revenue superior to or on parity with the rights, claims, or liens of the holders of tax revenue bonds, notes, certificates or debentures payable from or secured by any taxes, existing or hereafter issued by the LRA. Moreover, nothing herein shall be construed to deny or limit the LRA's full authority to issue such tax bonds. Accordingly, the BID specifically acknowledges and agrees that all rights to the Economic Development Incentives Package from taxes contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such tax revenue bonds, notes, certificates or debentures payable from or secured by any use taxes existing or hereafter issued by the LRA.
- 5.2 Notwithstanding anything herein to the contrary, the LRA is not obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated or to make payments from any funds of the LRA other than funds appropriated for the payment of current expenditures. All payment obligations of the LRA under this Agreement are from year-to-year only and do not constitute a multiple-fiscal-year direct or indirect debt or other financial obligation of the LRA.

SECTION 6. BID GENERAL OBLIGATIONS

- 6.1 The BID shall comply with all City Codes, ordinances, resolutions and regulations, and pay all taxes, fees and expenses required by the City in connection with development and construction of the Project in the amounts in effect at the time payment is due. The BID acknowledges that it is responsible for compliance with the obligations and responsibilities identified in this Agreement.
- 6.2 During the term of this Agreement, the BID shall not seek administrative or judicial review of the constitutionality or applicability of any tax statute or ordinance lawfully determined by any tax official to be applicable to the Property or the Project, or raise the unconstitutionality or inapplicability of any such tax statute or ordinance as a defense in any proceedings, including delinquent tax proceedings. The forgoing shall not however, restrict or preclude any person from challenging by way of protest the real estate tax valuation, assessment or classification, in accordance with proceedings available under applicable laws.

SECTION 7. NO VESTED PROPERTY RIGHTS

It is understood and agreed by the parties that no vested property rights are granted by this Agreement. The BID represents that the Property has acquired no vested rights from Jefferson County or any other governmental entity, and the BID hereby waives and releases any such rights that may have been granted.

SECTION 8. EVENTS OF DEFAULT; REMEDIES – LIEN

- 8.1 "Default" or "Event of Default" under the Agreement shall mean that one or more of the following events shall have occurred during the term hereof.
- a. The BID assigns or attempts to assign this Agreement or the Project to another;
 - b. After WCFC acquires ownership of the Property as contemplated herein, and prior to completion of the Project as set forth in subsection 1.5 and 4.3 hereof, such ownership is transferred, by any means whatsoever, to any entity other than the BID or WCFC, except as the LRA, in its sole discretion, may approve in writing;

- c. The BID fails to commence, diligently pursue, or complete the Project as required herein;
 - d. The BID fails to substantially observe or perform any other covenant, obligation or agreement required hereunder (including any amendments hereto);
 - e. Any one or more of the instances identified in section 4.10 occur;
 - f. Any of the facts, representations, promises or agreements made by the BID in regard to the Project as justification for the Incentives are not substantiated or completed; or
 - g. The BID files for protection under the United States Bankruptcy Code during the term of this Agreement.
- 8.2 The parties authorize the LRA, upon execution of this Agreement, to place a lien on the Property in the amount of \$100,000, which amount the LRA shall reduce by \$20,000 annually, consistent with the provisions of this agreement. The purpose of such lien is to protect the LRA's investment in the Project and, in the event of a Default, to recover outstanding economic development incentives grant funds.
- 8.3 Upon the occurrence of any Event of Default, the LRA shall provide written notice to the BID, which shall immediately proceed to cure or remedy such Default within thirty (30) days after receipt of the notice. If, in the sole discretion and judgment of the LRA, the BID has commenced to cure such default within said 30-day period and if, in the LRA's sole discretion and judgment, the BID thereafter diligently proceeds in good faith with efforts to cure the same, the LRA may, but is not required to, grant the BID additional time to cure such default.
- 8.4 If an Event of Default occurs and is not cured pursuant to subsection 8.3 hereof, the LRA may cease Incentives payments or, if all Incentives have been paid, the BID shall reimburse the LRA at the rate \$20,000 per year, pro-rated for the period of the Event of Default, subject to Section 10 below.
- 8.5 The LRA may take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including without limitation, specific performance, lien foreclosure, or to seek any other right or remedy at law or in equity, including damages.
- 8.6 The rights and remedies of the parties herein are cumulative except as otherwise expressly limited hereby, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by other party. No action or inaction on the part of the LRA shall be deemed a waiver of the right of the LRA to declare a breach of this Agreement in the event of default by the BID, except pursuant to an express written waiver, and no such express written waiver by the LRA shall be deemed a waiver of the LRA's right to declare a breach of this Agreement in the event of further or subsequent default by the BID, even if such default is of the same kind or character as the waived default.

SECTION 9. FORCE MAJEURE

Any delay in or failure of performance by any party of its obligations under this Agreement shall be excused if such delay or failure are a result of acts of God, fires, floods, strikes, orders of civil or military authorities, failure to obtain permits, approvals or consents (including building

permits and certificates of occupancy) from local, state, or federal agencies, or other causes, which are beyond the normal control of such parties.

SECTION 10. TERMINATION

This Agreement, and the terms and provisions hereof, shall terminate upon the earlier of the following to occur: (a) an Event of Default that is not cured pursuant to section 8.2 hereof; or (b) the last day of the fifth (5th) year following the Opening Date. If this Agreement is terminated for the reason set forth in clause (a) hereof, and all Incentives have previously been paid to the BID, the BID shall reimburse the LRA \$20,000 for each year, or pro-rated portion thereof, remaining in the Incentive Period beginning from the Event of Default.

SECTION 11. NOTICES; GENERAL CORRESPONDENCE

11.1 All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in U.S. First Class mail, postage prepaid, and addressed to the intended recipient as follows. Any party may change its address by written notice to the other given in accordance with this subsection.

If to LRA:

LRA Executive Director
Lakewood Reinvestment Authority
480 S. Allison Pkwy
Lakewood, CO 80226

If to BID:

William Marino, Executive Director
Lakewood-West Colfax BID
1560 Teller Street
Lakewood, Colorado 80214

With a copy to:

LRA General Counsel
480 S. Allison Pkwy
Lakewood, CO 80226

11.2 General correspondence among the parties may be sent via email to the following:

If to LRA:

LRA Executive Director
rsmith@lakewood.org

If to BID:

Executive Director
billmarino@westcolfax.org

SECTION 12. GENERAL PROVISIONS

12.1 Integration; Amendment; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

12.2 Controlling Terms. In the event of any conflict between the provisions of this Agreement and those contained in any attachments or exhibits hereto, or any document referenced therein, the terms and conditions of this Agreement shall prevail, and as such, shall supersede the conflicting provisions of such attachments, exhibits or referenced document.

- 12.3 No Waiver. Except as otherwise provided herein, the waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement.
- 12.4 No Assignment. The BID shall not assign this Agreement.
- 12.5 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the LRA and the BID shall be deemed to be only an incidental beneficiary under this Agreement.
- 12.6 Good Faith. Each party shall exercise good faith in the performance and enforcement of this agreement. The BID acknowledges the benefits of this Agreement and agrees to use good faith in interviewing and hiring qualified Lakewood residents for positions and the Project, subject to restrictions in existing labor contracts.
- 12.7 Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue shall be in Jefferson County, Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable court costs and attorney fees.
- 12.8 Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- 12.9 Confidentiality; Public Document. The parties hereby acknowledge that the other is a public entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, *et seq.* (the "Act"), and as such, this Agreement may be subject to public disclosure thereunder.
- 12.10 No Binding Dispute Resolution. Any exhibit or attachment hereto, or any other document governing the provision of the Services, including any electronic document, which requires binding arbitration or any other binding extra-judicial dispute resolution process, shall be void and unenforceable.
- 12.11 Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- 12.12 Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- 12.13 Counterparts; Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately

represent the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

- 12.14 Additional Documents or Actions. The parties agree to negotiate and execute any additional Documents and to take any additional actions necessary to carry out this Agreement.
- 12.15 Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

[Remainder of page intentionally blank – signatures follow.]

IN WITNESS WHEREOF, the LRA and the Lakewood-West Colfax Business Improvement District have executed this Agreement as of the Effective Date.

LAKEWOOD REINVESTMENT AUTHORITY

Robert Smith, LRA Executive Director

ATTEST:

Bruce Roome, LRA Clerk

Attestation Date

Approved as to form:

Gregory D. Graham, Asst. General Counsel

**LAKEWOOD-WEST COLFAX
BUSINESS IMPROVEMENT DISTRICT
A Colorado business improvement district**

By: _____
William Marino, Executive Director

ATTEST:

Signature

Attestation Date

Printed Name, Title