

# **ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO INTERSTATE GAS COMPANY, LLC AND NEW COLORADO SQUARE, LLC**

This Economic Development Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2014, by and between the City of Colorado Springs, Colorado, a Colorado Home Rule City and municipal corporation (hereinafter called the "City"), Colorado Interstate Gas Company, LLC, a Delaware limited liability company (hereinafter called the "Company"), and New Colorado Square, LLC (hereinafter called the "Lessor") under authority of City Council Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2014. The City, the Company and the Lessor are each hereinafter sometimes referred to as a "Party" or collectively as the "Parties".

## **RECITALS**

- A.** Company represents that, subject to availability of certain incentives as hereinafter described, it will retain and expand an existing business facility within the Central Colorado Springs Enterprise Zone which will employ new business facility employees, as defined in C.R.S. § 39-30-105 (2013); and
- B.** In connection therewith, Lessor and/or the Company intends to expend approximately \$11,000,000 in capital expenditures for the business facility in order to retain existing employees and employ new employees.

Now therefore, in consideration of the foregoing recitals and the terms and conditions of this Agreement set forth below, the Parties agree as follows:

## **I. TERMS AND CONDITIONS OF AGREEMENT**

- 1. The Company and the Lessor agree to or have entered into a twenty year lease agreement for approximately 135,000 square feet of office space in the Colorado Square Office Building located at 118 E. Pikes Peak Ave. in Colorado Springs, Colorado (hereinafter called the "Business Facility"). The Company agrees to use best efforts in good faith to employ not less than 350 full time employees in primary jobs at the Business Facility. The Lessor and/or Company agree to invest or have invested approximately \$11 million in the renovation of the Business Facility for the exclusive benefit of the Company.
- 2. The City agrees to provide an economic development incentive to the Company, in an amount equal to:
  - A.** The amount paid by or for the benefit of Lessor and/or the Company for City 2% sales and use tax on building materials and building equipment purchased for the renovation and used between the date of the lease for the Business Facility and \_\_\_\_\_, 2014 in the renovation of the Business Facility. This incentive shall apply only to the initial renovation of the Business Facility for the exclusive benefit of the Company. City sales or use tax paid for materials used in any general renovation to the Colorado Square Office Building which are not for the sole direct

benefit of the Company shall not be included in calculating the economic development incentive to the Company.

- B. For purposes of this incentive, the phrase “building equipment” includes, but is not limited to the electrical and mechanical equipment purchased for and installed as part of the renovation of the Business Facility; specifically electrical switches, generators, transformers, distribution panels and batteries, as well as mechanical equipment such as chillers, cooling towers, and other HVAC components and units, all floor to ceiling demountable wall systems, cabling and permanently affixed items installed for the renovation.
- 3. The Term of this Agreement will be for a period of two (2) years beginning on the date of this Agreement and ending\_\_\_\_\_.

## II. DEFINITIONS

The following terms have the meanings specified:

1. *Sales tax*, as defined by City of Colorado Springs Tax Code 2.7.103, means the tax to be collected from the purchaser and remitted to City by the seller of tangible personal property or taxable services on sales to purchasers located within the City.
2. *Use tax*, as defined by City of Colorado Springs Tax Code 2.7.103, means the tax paid or required to be paid by a purchaser or consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.
3. *Business Personal Property Tax* means the taxes paid by the Company on business personal property as assessed and collected by the El Paso County Assessor’s Office.
4. *Business Personal Property invest, investment, or invested* means the sum, determined after depreciation, of the expenditures for taxable business personal property during the term, as determined by the El Paso County Assessor, but only if the expenditures are subject to business personal property tax levied by the City.
5. *Condition(s) for incentive* means the Company and Lessor actively proceed to fulfill the provisions as noted in the attached City Council-approved Resolution.
6. *Incentive or Incentives* means the amount or amounts of an incentive payment or incentive payments paid by the City to the Company equal in amount to a refund of City sales and use taxes authorized by C.R.S. § 39-30-107.5(2) on the materials, supplies, equipment and tools used in or made a part of the renovation of the Business Facility.
7. *Investment* means the amount of economic benefit to the City of Colorado Springs as a result of the Company maintaining its existing operations and establishing a new or expanded Business Facility. The Company’s investment commitment includes, but is not limited to, Business Facility construction, building renovation, infrastructure improvements, redevelopment, and/or related activities, as well as job creation and/or retention, within the city limits of Colorado Springs.
8. *New jobs* means the number of primary jobs created and held by employees of the Company within the City that exceed the number of jobs held by employees of the

Company within the City prior to the commencement of this agreement or the date the agreement is signed.

9. *Term* means the span of consecutive years specified in this Agreement.
10. *Eligibility year* means the 12 calendar months of company operations prior to the incentive issuance year, beginning January 1 and ending December 31 annually.
11. *Issuance year* means the year the incentive payment is made to the Company during the term of this Agreement.
12. *Primary Jobs* means jobs resulting in the majority of the products or services to the company being ultimately exported to regional, stateside, national, or international markets, infusing new dollars into the local economy.

### **III. CONDITION(S) FOR INCENTIVE AND PROCEDURAL REQUIREMENTS FOR COMPANY TO RECEIVE INCENTIVE**

#### **A. General Conditions for All Incentives:**

1. The Company and the Lessor agree to or have entered into a twenty year lease agreement covering approximately 135,000 square feet of office space in the Colorado Square Office Building located at 118 E. Pikes Peak Ave. in Colorado Springs, Colorado (hereinafter referred to as the "Business Facility").
2. The Company agrees to employ not less than 350 full time employees in primary jobs at the Business Facility.
3. The Lessor and/or Company agree to invest approximately \$11 million in the renovation of the Business Facility for the exclusive benefit of the Company.
4. In accordance with City Council Resolution No.\_\_\_\_\_, the City will pay to the Company the appropriate incentive amount specified by and in accordance with the terms of this Agreement and said Resolution.
5. For each year of this Agreement, the Company and the Lessor must provide the City confidential taxpayer information to the City's satisfaction that allows the City the ability to verify purchases and determine incentive amounts.
6. All incentives provided under this Agreement are related solely to the Company's Business Facility to be located in the Colorado Square Office Building located at 118 E. Pikes Peak Avenue, Colorado Springs, Colorado 80903.
7. For each year of the term of this Agreement, the Company and the Lessor must provide the City authorization to share confidential taxpayer information to allow the City to issue the Company its incentive.
8. The incentive amount will be incorporated into the annual budget for City Council consideration and approval.
9. All incentives are subject to annual appropriation by the City Council of the City of Colorado Springs. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs.

Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure, (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

**B. Sales and Use Tax Incentive:**

1. Company and/or the Lessor will complete Revenue and Collections Division form ST-19, “Claim for Refund of Colorado Springs Sales and/or Use Tax,” and submit along with copies of invoices for eligible purchases made within the City to the City Revenue and Collections Division, including a statement that Company does not seek a tax refund.
2. City Revenue and Collections Division will provide verification of incentive amount for which Company is eligible to City Economic Vitality Division.
3. Upon receipt of incentive verification from the City Revenue and Collections Division, the City Economic Vitality Division will submit request for an incentive check to be issued to Company within 90 days of verification.

**IV. RETURN OF INCENTIVE TO CITY**

Company will return to the City any portion or all incentives received under this Agreement to which Company was not entitled. The return must be made within thirty (30) days after receipt of written notice from the City that an excess payment was made. If Company becomes aware that an excess payment was made and has not received written notice from the City of the excess payment, Company must return the funds not later than thirty (30) days after it becomes aware of the excess payment.

**V. QUALIFIED ADDRESSES**

On the effective date of this agreement, only the Company’s Business Facility located in the Colorado Square Office Building located at 118 E. Pikes Peak Ave. Colorado Springs, Colorado is included in this Agreement.

## VI. INCENTIVES DISPUTES

Any dispute as to the amount of the incentive will be resolved by the Mayor or Mayor's designee, whose decision shall be final and conclusive.

## VII. MISCELLANEOUS.

1. Complete Agreement. This Agreement expresses the entire understanding of the Parties and supersedes and abrogates any and all prior dealings and commitments, whether oral or written, with respect to the subject matter of this Agreement and may not be amended or modified except in writing signed by City, Company and Lessor. Any waiver of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived. No waiver of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement. The failure of either party to enforce or seek enforcement of the terms of this Agreement following any breach shall not be construed as a waiver of such breach.
2. Controlling Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado without regard to conflict of law principles.
3. Notices. Any notices hereunder shall be sufficiently given if given in writing personally or mailed by first class, or certified mail, postage prepaid, or deposited with a national overnight courier service for next business day delivery, addressed:

(a) if to City:

City of Colorado Springs  
Economic Vitality Division  
P.O. Box 1575, MC 640  
Colorado Springs, CO 80901-1575

(b) if to the Company:

Colorado Interstate Gas Company, LLC  
Attention:  
\_\_\_\_\_

(c) if to Lessor:

New Colorado Square, LLC

or to such other person or address as any Party shall specify in written notice given to the other party pursuant to the provisions of this paragraph 3. Notice shall be effective

(i) upon receipt if delivered personally, or (ii) three (3) business days after deposit in the mails, if mailed, or (iii) on the next business day if deposited with an overnight courier service.

4. Time. Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided Company or Lessor may not assign this Agreement or any interest herein without the express written consent of the City which consent may be delayed, conditioned or denied in City's sole and absolute discretion. Any assignment or attempted assignment of this Agreement by Company or Lessor without such consent shall be null and void. No assignment of this Agreement or any interest herein by Company or Lessor shall release or discharge Company or Lessor from any of its obligations under this Agreement unless otherwise agreed by City at the time consent to assignment is given.
5. Execution. The persons signing this Agreement in the name of and on behalf of Company and Lessor represent and warrant that they and Company and Lessor have the requisite power and authority to enter into, execute, and deliver this Agreement, and that this Agreement is a valid and legally binding obligation of Company and Lessor enforceable against Company and Lessor in accordance with its terms.
6. Anti-kickback Prohibition. Company and Lessor represent and warrant that no person, entity, or organization has been employed or retained or will receive or be paid, directly or indirectly, any commission, percentage, contingent fee or any other remuneration payment or receipt of which is contingent upon approval of this Agreement by City or City's payment of incentives to Company hereunder. For breach or violation of this warranty, City shall have the right to terminate this Agreement, or recover the full amount of such commission, percentage, contingent fee or other remuneration, or to seek such other remedies legally available to City, which remedies shall be cumulative.
7. No Damages. In no event shall City, its officers, agents or employees be liable to Company or Lessor for damages, including without limitation, compensatory, punitive, indirect, special or consequential damages, resulting from or arising out of or related to this Agreement or the performance or breach thereof by City or the failure or delay of City in the performance of any covenant or provision under this Agreement on its part to be performed. In consideration of City entering into this Agreement, Company and Lessor hereby waive and discharge City, its officers, agents and employees from all claims for any and all such damages. No breach, default, delay or failure of City under this Agreement shall be or be construed to be a waiver, discharge or release of Company's or Lessor's obligations under section IV hereof with respect to the amount of incentives paid by City to or for the benefit of.
8. No Agency Created. Company and Lessor are entities independent from the City and shall not be deemed agents of the City, nor shall they have the authority to modify this Agreement nor to bind the City to any amendment. It is expressly agreed that the City shall have no liability whatsoever for any breach of any lease or other agreement or obligation between Lessor and Company.

9. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.
10. No Joint Venture Created. No Party shall be, or hold itself out as, agent of any other or as joint ventures under this Agreement.
11. Interpretation. Each Party acknowledges that this Agreement was fully negotiated by the parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such party or its legal representative drafted such provision.
12. No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of, this Agreement.
13. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.

Executed at Colorado Springs, Colorado as of the date first above written.

Colorado Interstate Gas Company, LLC

By: \_\_\_\_\_  
Its' Manager

By: \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

New Colorado Square, LLC

By: \_\_\_\_\_  
Lessor Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

For the City:

By: \_\_\_\_\_  
Steve Bach, Mayor

\_\_\_\_\_  
Date

Approved as to Form:

By: \_\_\_\_\_  
Office of the City Attorney

\_\_\_\_\_  
Date