

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the "Agreement") is made and entered into effective this ____ day of _____, 20__ (the "Effective Date"), by and between the CITY OF COMMERCE CITY, COLORADO, a home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022 (the "City"), and STANDARD ALCOHOL COMPANY OF AMERICA, LLC, a Colorado corporation whose principal address is 495 Uinta Way, #210, Denver, CO 80230 ("Business").

WHEREAS, Business has committed to the acquisition of property located at 4150 E 60th Avenue within the City (the "Property"), the construction and installation of capital improvements on the Property, including associated labor and fees (the "Capital Improvements"), and the purchase of new equipment associated therewith;

WHEREAS, the Property acquisition, Capital Improvements and associated new equipment purchases shall be referred to collectively hereinafter as the "Capital Investment";

WHEREAS, Business estimates that the Capital Investment will equal approximately Fifty-four Million dollars (\$54,000,000.00); and

WHEREAS, the City has agreed to provide to Business economic development financial incentives as set forth herein (the "Incentives") subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **INCENTIVES.** The City shall provide Incentives to Business not in excess of the lesser of: (i) Six Hundred Thousand dollars (\$600,000.00); or (ii) the combination of fifty percent (50%) of the sales and use taxes remitted to the City in relation to the Capital Investment, calculated on a sales and use tax rate of 3.5%¹, and fifty percent (50%) of the building permit and plan check fees remitted to the City in relation to the Capital Investment.
 - a. The fees and taxes identified above may be remitted either directly by Business or indirectly through its vendors/contractors in conjunction with the Capital Investment; provided, however, that only Capital Investment expenditures made subsequent to the Effective Date shall qualify for Incentives.
 - b. In no event shall the amount of Incentives paid to Business exceed the combination of fees paid and taxes remitted to the City in conjunction with the Capital Investment.
 - c. Building permit and plan check fees shall not include development or "impact" fees assessed pursuant to Article IX of the City's Land Development Code or successor provision.
2. **PAYMENT OF INCENTIVES – CONDITIONS PRECEDENT.** The City shall pay the Incentive to Business within thirty (30) days after satisfaction of all of the following conditions (including any and all appeals thereof); provided, however that the City may pay certain incentives, such as building permit and plan check fees, upon payment thereof by Business:

¹ In 2013, the City's voters approved an increase in the City's sales and use tax rate from 3.5% to 4.5%, which increase would be dedicated to the construction of identified parks, recreation amenities and roads. Thus, while Business must remit taxes to the City at the current 4.5% tax rate, only the original 3.5% tax rate is subject to rebate.

- a. If required by the City, final approval of the Capital Improvements has been made by the City confirming installation thereof is in compliance with all City building and other applicable codes;
 - b. Business and its vendors/contractors have timely remitted to the City all applicable taxes and fees related to the Capital Investment, and a final determination thereof, including amount, has been made by the City's Finance Department through one or more tax audits or such other means as it determines; and
 - e. Business has fulfilled or satisfied all other obligations and/or debts owed to the City, whether monetary or otherwise, including, but not limited to, any and all fees, fines, taxes, judgments, liens and dedications, whether or not related to the Capital Investment.
3. FAILURE TO COMPLY WITH TERMS AND CONDITIONS; NO OBLIGATION BY BUSINESS.
- a. The failure by Business to meet or comply with any of the terms or conditions herein shall relieve the City of its obligation to pay Incentives related to such failure. Incentives the City remains obligated to pay shall be referred to hereinafter as "Eligible Incentives."
 - b. This Agreement sets forth only the terms and conditions by and under which Eligible Incentives will be paid. Notwithstanding anything herein to the contrary, nothing in this Agreement shall constitute or be deemed an agreement by or obligation of Business to meet or comply with the terms and conditions set forth herein.
4. TERM. The term of this Agreement shall begin on the Effective Date and shall expire upon payment of all Eligible Incentives or upon forty-eight (48) months after the Effective Date.
5. NOTICES. A notice, demand or other communication under this Agreement by either party to the other shall be in writing and sufficiently given if delivered in person or if it is delivered by Certified Mail, Return Receipt Requested, postage prepaid, or by facsimile transmission with a confirmation thereof as follows:

To the City:

Economic Development Director
City of Commerce City
7887 E. 60th Avenue
Commerce City, Colorado 80022

To Business:

Michael E. Pardun
Chief Executive Officer
Standard Alcohol Company of
America, LLC
495 Uinta Way, #210
Denver, CO 80230

6. GENERAL PROVISIONS.
- a. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in Adams 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 reasonable court costs and attorney fees from the non-prevailing party.
 - b. Governmental Immunity Act. 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.*

- c. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the City nor Business shall be deemed or constituted a partner or joint venture of the other. Neither the City nor Business shall be the agent of the other, and any actions taken pursuant to this Agreement shall be deemed actions as an independent contractor of the other.
- d. 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 no person other than the City and Business shall be deemed to be a beneficiary under this Agreement.
- e. No Waiver. No waiver by either party of any covenant, term, condition or agreement contained herein shall be deemed or construed as a waiver of any other covenant, term, condition or agreement nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach whether of the same or of a different provision of this Agreement.
- f. Integrated Contract; Amendments. This Agreement is intended as the complete integration of all understandings among the parties concerning the subject matter hereof. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever unless in writing and signed by both parties.
- g. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.
- h. Authority. Each party represents and warrants that it has taken all actions that are necessary or required by its procedures, bylaws or applicable law to legally authorize the undersigned signatory to execute this Agreement on behalf of the parties and to bind the parties to its terms.
- i. Counterparts. This Agreement may be executed in any number of 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.
- j. 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.
- k. 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.
- l. Acknowledgement of Open Records Act – Public Document. Business hereby acknowledges that the City 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 and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, are subject to public disclosure under the Act.

IN WITNESS WHEREOF, the City and Business have caused this Agreement to be duly executed as of the day first above written.

CITY OF COMMERCE CITY

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

_____, Deputy/Assistant City
Attorney

Recommended for approval:

Michelle Claymore, Economic Development Director

**STANDARD ALCOHOL COMPANY OF
AMERICA, LLC**

Signature [must be notarized]

Printed Name & Title

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014,
by _____, _____ of Standard Alcohol Company of America,
LLC.

Witness my hand and official seal.

My Commission Expires _____.

Notary Public