

BUSINESS INCENTIVE AGREEMENT FOR MURRAY FARMS, INC.

THIS BUSINESS INCENTIVE Agreement (the "Agreement") is made and entered into effective this 1st day of January, 2008, 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 Murray Farms, Inc., a Colorado corporation, doing business as Murray Implement, Inc., whose principal address is 11010 Havana Street, Brighton, CO 80601 ("Murray Farms"), sometimes collectively referred to herein as "the Parties".

WHEREAS, Murray Farms is an existing Commerce City business currently located at 11010 Havana Street, Brighton, CO 80601; and

WHEREAS, Murray Farms is engaged in agricultural activities in the City of Commerce City and has requested that Commerce City grant business incentives to enable the continuation of its agricultural business in Commerce City that includes the planting, growing, and production of agricultural products; and

WHEREAS, Commerce City has established various business incentive programs to support and encourage business in Commerce City; and

WHEREAS, Murray Farms has applied for one or more incentives under the business incentive programs; and

WHEREAS, Commerce City recognizes that the encouragement of an agricultural business in Commerce City is desirable in that the development of agricultural provides needed benefits to society in general.

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

I. INCENTIVES.

Subject to the provisions, terms and conditions of this agreement, Commerce City shall provide the following economic incentives (collectively the "Incentives") to Murray Farms in accordance with the Commerce City business incentive program(s):

- A. Commerce City shall not require payment by Murray Farms of sales and use taxes that would otherwise be payable by Murray Farms in the operation of its agricultural business to include the following transactions:
 - 1. The purchase, lease, rental or use of non-registered farm vehicles, towed equipment, trailers, attachments to vehicles, and irrigation equipment.

2. The purchase or use of parts for repair and maintenance for that equipment described in item 1 above.
3. The purchase or use of baling wire, binder twine, surface wrap, pallets, and crates.
4. The purchase or use of insecticides, herbicides, pesticides, and fertilizers.
5. The purchase or use of red diesel fuel.
6. The purchase or use of seeds.
7. The purchase or use of straw, soil, sand, peat moss, limestone, mulches, manure, and similar agricultural materials.
8. The purchase or use of irrigation water used for agricultural purposes and non-domestic use.
9. Franchise tax on electricity and natural gas used for the operation of dryers and irrigation pumps in the agricultural business.
10. Sales tax on electricity and natural gas used for the operation of dryers and irrigation pumps in the agricultural business.

II. FORM OF INCENTIVES.

The incentives given Murray Farms pursuant to this agreement shall be in the form of recognition by Commerce City that no sales or use taxes have to be paid for the items related to the agricultural business itemized in paragraph I above.

III. PROCESS FOR TAX BENEFITS.

- A. Commerce City agrees that when a retailer does not collect Commerce City sales tax from Murray Farms, then Murray Farms does not need to remit use tax since 100% of the use tax is considered an incentive benefit pursuant to this Agreement.
- B. When a Commerce City retailer collects Commerce City sales tax from Murray Farms, then Murray Farms must request a refund from Commerce City and provide proof of payment of the sales tax. A refund will not include the 2% fee kept by the vendor for collection of the sales tax.
- C. In the case of the franchise tax on electricity and natural gas, when the franchisor does not collect the franchise tax from Murray Farms, then Murray Farms does not need to remit any tax on the Murray Farms agricultural operation since 100%

of such franchise tax is considered an incentive benefit pursuant to this Agreement.

IV. SUMMARY OF INCENTIVE BENEFITS.

Attached to this Business Incentive Agreement is a chart dated June 8, 2012 which is incorporated herein by reference and which summaries the incentive benefits conferred by this Agreement.

V. TERMINATION OF AGREEMENT.

Subject to the provisions of paragraph IV, this Business Incentive Agreement shall remain in full force and effect as long as Murray Farms functions as a crop producing farm under the ownership of Glen and Lyle Murray or may be extended by mutual agreement of the Parties.

VI. BENEFICIARY OF AGREEMENT.

This Business Incentive Agreement shall only apply and inure to the benefit of Murray Farms and not to any successors or assigns.

VII. 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:

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

To Murray Farms:

Murray Farms, Inc.
11010 Havana Street
Brighton, CO 80601

VIII. GENERAL TERMS AND CONDITIONS.

- 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 Murray Farms shall be deemed or constituted a partner or joint venture of the other. Neither the City nor Murray Farms 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 Murray Farms 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 not inure to the benefit of and be binding upon the successors or assigns of the Parties without the written consent of the other party to this agreement.
- 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.

IN WITNESS WHEREOF, Commerce City and Murray Farms 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:

Robert R. Gehler, City Attorney

Recommended for approval:

Roger Tinklenberg, Director of Finance

Murray Farms, Inc. d/b/a Murray Implement, Inc.

BY: _____
Signature

Printed name and title