

A RESOLUTION AUTHORIZING A LODGING TAX REBATE INCENTIVE FOR 96TH AND TOWER ROAD INC

NO. 2022-105

WHEREAS, the City Council of the City of Commerce City (“City Council”), by Resolution No. 2022-48, adopted the Commerce City Accommodations Lodging Tax Rebate Program (“Lodging Tax Program”), effective May 2, 2022;

WHEREAS, the City Council of the City of Commerce City (“City”) desires to attract new hotel developments to the City in order to improve the quality of life of the City’s residents, support local employer needs, create new employment opportunities, and attract a variety of other commercial development;

WHEREAS, 96th AND TOWER ROAD INC. (“Business”) seeks to locate a new 93-room limited service hotel on the SWC of E. 96th Avenue and Tower Road, bringing an estimated room sales revenue of \$12.5 million, and estimated city tax revenue of \$1,062,500 over the first five years, and capital improvements of \$13.4 million (“Capital Improvements”); and

WHEREAS, the location of a hotel will help to generate additional retail growth in the area and provide much needed lodging options in the City of Commerce City and the region.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

The City Council further finds and determines that granting incentives to the Business, subject to conditions to be established by an Incentive Agreement consistent with this Resolution and applicable law, will serve a public purpose and a public need.

SECTION 2. Authorization. The City Manager is authorized to take all such actions, and direct City staff with regard to the same, to facilitate rebates to the Business in the following amounts as incentives related for the Capital Improvements:

A graduated percent rebate, as set forth herein, of the City’s 4 percent Lodging Tax over a five-year period, not to exceed \$250,000:

- Year 1: 90 percent (estimated rebate \$90,000)
- Year 2: 50 percent (estimated rebate \$50,000)
- Year 3: 35 percent (estimated rebate \$35,000)
- Year 4: 35 percent (estimated rebate \$35,000)
- Year 5: 35 percent (estimated rebate \$35,000)

No other fees or amounts will be subject to any incentives.

SECTION 3. Conditions. Incentives provided to Business are subject to the following conditions and any additional conditions established in an Incentive Agreement:

All construction and improvements (other than equipment and hardware for business operations) must be completed by March 31, 2025 (“Completion Date”) as supported by the issuance of a Certificate of Occupancy on or before that date.

SECTION 4. Incentive Agreement. The City Manager is authorized to negotiate and execute an Incentive Agreement with the Business consistent with the Incentive Program and this Resolution to establish any additional conditions that the City Manager deems necessary and in the City’s best interests, which conditions shall govern and be conditions to the payment of any incentives. Such conditions shall address, without limitation, timing of payments, procedure for requesting rebates, and provisions deemed necessary by the City Manager for reimbursement to the City for the failure to meet any conditions and overpayments. Nothing in this resolution shall be construed to obligate the City to provide any incentives except as provided in an Incentive Agreement in a form acceptable to the City Manager and approved as to form by the City Attorney.

SECTION 5. Limitation. The City’s obligation to pay any incentive is subject to all commitments to pay any City bonds and any restrictions in such bonds. Nothing in this resolution or any Incentive Agreement shall be construed to create a multiple year fiscal debt or financial obligations to pay the incentive or reimburse taxes to any person or entity without prior City-wide voter approval. Any incentive payable in accordance with this resolution shall be subject to annual appropriations that are a legislative decision of the City Council for the City. No portion of the 1.0%: sales and use tax approved by voters on November 5, 2013, or any future increase will be used to provide any incentive under this resolution. All lodging, sales and use taxes must be remitted to the City at the current rate, as amended. All incentives provided to Businesses shall be conditioned on verification of the payment of all City lodging taxes, sales tax, use tax, and fee payments received by the City and shall be payable solely from lodging taxes.

RESOLVED AND PASSED THIS 5TH DAY OF DECEMBER 2022.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk