

**DEVELOPMENT AGREEMENT**  
**Innovative Investors, LLC**

**THIS AGREEMENT** is made and entered into this 20th day of April, 2021.

**1. Parties.**

The parties to this Agreement are the City of Evans, a Colorado home rule municipality (“the City”) and Innovative Investors, LLC, a Colorado limited liability company (“Developer”).

**2. Recitals.**

- a. Developer is the owner of certain real property located in the City of Evans, Colorado, described on Exhibit A (Legal Description) attached hereto and incorporated herein (the “Property”).
- b. Developer submitted to the City an application for approval of a Site Plan to be known as Innovative Foods Site Plan and shown on the Site Plan map recorded with Weld County Clerk and Recorder at Reception 4705236, (“Site Plan”).
- c. The Development subject to this Agreement shall be titled Innovative Foods Site Plan. The Development is an approximately 1.55+/- -acre site located in the area depicted on Exhibit B. The Developer contemplates the Development will be used for a meat processing facility and retail sales.
- d. Developer acknowledges that development of the Property will necessitate providing infrastructure improvements and public services, will contribute to the economic growth of the City, and will increase future tax revenues received by the City, and falls within a general class of development projects for which economic incentives will serve a lawful public purpose.
- e. This Development Agreement is specifically applicable only to the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C.

**NOW THEREFORE**, in consideration of the premises, mutual covenants and obligations contained herein, the sufficiency of which is acknowledged, the parties mutually agree as follows:

**3. Definitions.**

As used in this Agreement, unless specifically stated otherwise, the words and phrases used shall have the meaning as defined in the City Code. For the purpose of this Agreement the following words and phrases shall have the definitions provided for below:

- a. The term “Agreement” refers to this Development Agreement.
- b. The term “City Code” refers to the Municipal Code of the City of Evans, as adopted and as amended from time to time by the City Council., but not after issuance of the building permit and prior to issuance of Certificate of Occupancy.
- c. The term “City Official” refers to and includes the City Manager, Assistant City Manager, City Attorney, City Treasurer, Public Works Director, Community Development Director, and their designated representatives.
- d. The term “Developer” initially refers to Innovative Investors, LLC, its agents, representatives, or any other party authorized by the City of Evans to provide services, construction, or maintenance of any Improvements, as well as any entity that subsequently acquires a fee simple interest of record in any portion of the Property as a transferee, grantee, assignee or successor of Innovative Foods. “Developer” shall collectively include all of the foregoing persons or entities, all of whom shall be jointly and severally liable for the obligations and liabilities of the Developer to the extent such liability relates to the portion of the Property they purchase or otherwise obtain.

Notwithstanding the foregoing, the term “Developer” shall not include (1) purchasers of individual subdivided lots or individual residential lots or units or individual non-residential space in an approved Final Plan or Final Plat, or (2) holders of a security interest in the Property or a portion thereof.

- e. The term “Development” refers to the Site Plan.
- f. The Term “Improvements” refers to the improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C., that the Developer is obligated to design, construct, and install at Developer’s sole cost in connection with the development of the Property.
- g. The term “Plans and Specifications” shall refer to the Site Plan, civil engineering and construction Plans that have been reviewed and approved by the City in connection with Section 9 (Development Standards) which are included in Exhibit C. The Site Plan has been recorded and referenced in Section 2.b. of this Agreement. The Civil Engineering and Construction Plans will be approved by the City prior to construction commencement on site.

#### **4. Effect of Agreement.**

- a. Effective date. The effective date of this Agreement shall be the Agreement date found on page 1.
- b. This Agreement and the other provisions incorporated as part of the Site Plan approval process are intended to prescribe a general plan for the use and development of the Property. However, except as expressly provided herein, they

do not supplant the City's land use regulations and other ordinances and regulations as they relate to the Property.

- c. Once the Plans and Specifications are accepted by the City as evidenced by the issuance of a construction permit:
  - 1) Such Plans and Specifications shall not be subject to ordinances, resolutions, regulations, rules, policies or codes subsequently adopted by the City that would otherwise require alteration or modification of the Plans and Specifications, such as subsequently adopted building codes, for example;
  - 2) Developer shall be entitled to construct the Development according to such Plans and Specifications, provided such construction is completed within three years of the date of this Agreement;
  - 3) All fees associated with the Development, such as, by way of example and not limitation, grading permit fees, shall be assessed based on the fee in effect on the date the fee is paid.
- d. The provisions of this Agreement, the improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C, the Site Plan, and the Plans and Specifications reflect the requirements of the City's utilities as of the effective date of the Agreement. Once the Plans and Specifications are accepted by the City as evidenced by the issuance of a construction permit, such provisions related to Section 9 and Exhibit C shall not be changed.
- e. Fees and other charges for utility services applicable to the Development may only be changed if such changes apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system.
- f. Nothing in this Agreement alters the obligation of the Developer to enter into a mutually acceptable agreement with the City addressing pre-treatment prior to discharge of materials from the Development into the City's wastewater system.
- g. Except as otherwise expressly provided in this Agreement or the Site Plan approval process, the establishment of vested property rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes) as all of such regulations exist on the date of this Agreement. The Developer does not waive its right to oppose the enactment or amendment of any such ordinance, resolution or regulation on the same basis that any other member of the public could present such opposition.

## **5. Term of Agreement.**

The term of this Agreement shall be the earlier of three (3) years from the effective date or upon completion and initial acceptance of the Improvements. After the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect (a) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (b) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

## **6. Vested Rights.**

- a. Sections 24-68-101, et seq., C.R.S. (Vol. 7, 2002), “the Vested Rights Statute,” provides for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Rights Statute has been implemented by the City through the procedures set forth in Sections 18.01.100 et seq., of the City Code.
- b. Pursuant to the provisions of the Vested Rights Statute and Sections 18.01.100 et seq., of the City Code, the parties find that the development is a site specific development plan for the purposes of developing the Property, vesting in the Developer the right to develop the Property in the manner depicted in the site specific development plan.
- c. The vested rights associated with the Development, as set forth in this Section 6, expressly and by reference, shall run with the land and shall remain in effect throughout the term of this Agreement. No other vested rights are created or intended to be created by this Agreement or any of the other documents relating to the Property. Upon expiration or termination of this Agreement all vested rights shall expire, except as otherwise specifically provided by Section 5 above.
- d. Any provisions of this Agreement to the contrary notwithstanding, the City reserves the right to declare a moratorium upon a reasonable finding by the City Council that such moratorium is necessary to protect the public health, safety or welfare, but a moratorium cannot be declared with respect to the Development for planning purposes.
- e. The City finds the three (3) year duration of such vested property rights to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the Development, economic cycles, and market conditions.

## **7. Improvements.**

The improvements are more particularly described in Section 9 (Development Standards) which are included in Exhibit C. Exhibit C is limited to (1) description of Improvements, (2) Engineer's estimate of probable costs of Improvements, and (3) Schedule of completion of Improvements. Developer agrees to use its best effort to keep the City informed of any delays of its work and provide a projection of when Improvements will be installed.

## **8. Developer's Obligations to Construct Improvements.**

Developer shall design, construct and install at its own expense, the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C on or before the Estimated Completion Date, subject to extension as provided for delays due to Force Majeure. Construction of the Improvements shall be in substantial and material conformance with the Plans and Specifications, as reviewed and approved by the Public Works Director or a designated representative, and shall be in compliance with all policies, ordinances, standards and specifications adopted by the City relating thereto in effect at the issuance of the construction permit based solely on the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C. The City's review and approval of the Plans and Specifications shall not impose any liability on the City and shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Improvements. Developer agrees to save and hold the City harmless from any claims, fault or negligence attributable to such design, construction and installation. Nothing in this Agreement shall obligate the Developer to violate any health and safety measures or building codes. Nothing in this Agreement shall obligate the Developer to repair existing damage to City-owned improvements. Prior to commencement of construction, Developer and City shall meet on site to memorialize any existing damage and allocate responsibility for repairs.

### **a. Operation Standards during construction.**

- 1) Hours of operation of construction equipment. Hours of Operation of Construction Equipment: The operation of construction equipment outside an enclosed structure (i.e. grading, other surface improvements, underground utilities, either public or private) shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. In situations of need, and upon written request, the hours of operation may be altered by the Public Works Director or their designated representative.
- 2) Debris in public rights-of-way. The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material or rubbish caused by its operation. Developer shall remove such rubbish no less than weekly and, at the completion of its work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way caused by its operation.

- 3) Erosion control requirements. Developer shall install temporary and permanent erosion control in the Development to control erosion by both wind and water. Developer shall maintain said erosion controls on a routine basis. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions and/or other devices. In the event that the Developer fails to perform erosion control maintenance, Developer shall have 20 days upon receiving written notice to bring the Development into compliance.
- 4) Other nuisance mitigation. Developer shall mitigate any nuisance caused by construction activities in connection with development of the Property, including but not limited to noxious odors, excessive dust, particularly on days with high winds, and artificial light intrusion.
- 5) Standards for subcontractors. Developer hereby agrees that it shall require its subcontractors to comply with the Operations Standards as set forth in this Section, including but not limited to cooperating with the City's construction inspectors, and ceasing operations when winds are of sufficient velocity to create blowing dust which, in the inspector's opinion, is hazardous to the public health and welfare.
- 6) Remedies for failure to comply with Operation Standards. Failure to comply with the Operation Standards set forth in this Section shall be sufficient cause for the City to withhold building permits and/or certificates of occupancy or other approvals or permits until corrected to the satisfaction of the Public Works Director or designee.

## **9. Development Standards.**

Developer shall comply with all applicable standards related to the improvements as more particularly described in Exhibit C.

## **10. Security for Construction of Improvements.**

The Developer's construction and completion of the Improvements other than landscaping and irrigation shall be assured by Developer providing a Performance Guarantee in the amount of 115% of the estimated cost of the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C prior to commencement of work on the Property. The Performance Guarantee shall be in the amount of 115% of the estimated cost. But, the amount of the Performance Guarantee will not equal the full value of the whole cost of all improvements in Section 9. Development Standards at one time. The Performance Guarantee shall be in an amount equal to 115% of the estimated cost of the Improvement or Improvements being completed at a particular time. In other words, the Performance Guarantee shall be "phased in – phased out" as the work of a particular improvement described in Section 9 (Development Standards) which are included in Exhibit C are under construction and completed. The Performance Guarantee shall consist of a Letter of Credit in a form deemed acceptable by the

City Attorney and issuer of the Letter of Credit or its attorney. The Developer shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

In the event that prior to the City's initial acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying then the City shall furnish the Developer with written notice of such condition, and within thirty (30) days of receipt of such notice the Developer shall provide the City with an extension to the existing Performance Guarantee or substituted qualifying Performance Guarantee or augment the deficient security to achieve 115% of the cost of the Improvements.

If such Performance Guarantee is not timely furnished, then development activities, including but not limited to the issuance of building permits and certificates of occupancy, may be suspended by the City pending compliance with the provisions of this Section.

With regard to landscaping and irrigation, Developer need not initially provide a Performance Guarantee to ensure the cost of their construction or installation. The parties agree that no Certificate of Occupancy or similar authorization by the City will be issued until the landscaping and irrigation has been completed and initially accepted. However, in the event Developer has not installed and completed the landscaping at the time the Developer requests a Certificate of Occupancy, and the Developer is not reasonably able complete and install the landscaping at that time due to the season of the year and the anticipation of adverse weather conditions, then and in that event, the Developer may receive a Certificate of Occupancy if the Developer has completed all other matters required for such Certificate and Developer provides a Performance Guarantee in the amount of 115% of the engineer's estimated cost of constructing and installing the landscaping and irrigation. The Performance Guarantee for landscaping and irrigation shall be subject to the same requirements and provisions as set forth above in connection with the Performance Guarantee for the other Improvements.

## **11. Testing and Inspection.**

As it relates to Section 9 (Development Standards) which are included in Exhibit C, Developer shall employ (at its own expense) a qualified independent testing company to be approved by the Public Works Director, or their designated representative, to perform all testing of materials or construction limited to concrete testing. Developer shall furnish certified copies of test results to the Public Works Director and, upon request by the Public Works Director, release and authorize full access to the Public Works Director of all work-up materials, procedures and documents used in preparing the test results.

At all times during construction of the Improvements and until final acceptance by the City, the City shall have the right, but not the duty, to inspect materials and workmanship utilized for the Improvements at Developer's cost, provided the City's inspector is accompanied by Developer or its designated representative. All materials and work must conform to the approved Plans and Specifications and all applicable regulations. Any material or work not conforming to the Plans and Specifications or other applicable regulations shall be promptly removed, repaired or replaced, at Developer's expense and to the reasonable satisfaction of the Public Works Director.

## **12. Initial Acceptance of Improvements.**

Developer shall make written application to the Public Works Director or their designated representative, for initial acceptance (“Initial Acceptance”) of the Improvements more particularly described in Section 9 ( Development Standards), which are included in Exhibit C within 30 days of their completion, or if not within 30-days, at the option of the developer. Such Improvements will be based upon Section 9 (Development Standards), which are included in Exhibit C. The Developer shall be responsible for the accuracy and completeness of all information provided. The affidavit or lien waivers and other materials may be reviewed by the City, but the City assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided. Developer’s application for initial acceptance shall be accompanied by the following information and materials:

- a. As Built Drawings upon completion of all the improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C: One (1) set of surveyed Mylar and one digital/CAD file of the “as built” drawings, certified as to accuracy by the Developer or its architect or Engineer;
- b. Engineer's Certification: Written certification by the Developer’s Engineer that the Improvements for such Phase of development have been fully constructed and installed in substantial conformance with the Plans and Specifications;
- c. Improvements Affidavit: Developer shall provide a signed affidavit that the Improvements have been paid for in full;
- d. Lien Waivers. Developer shall provide lien waivers from its general contractor and from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the Improvements described in Section 9 and Exhibit C. In lieu of providing lien waivers for any of the above individuals, Developer may provide security in a form satisfactory to the City to protect the City against any lien that might otherwise be filed against such Improvements.

After the receipt of Developer’s written application for initial acceptance, the Public Works Director, or their designated representative, will promptly inspect the Improvements within five (5) business days of application and prepare a detailed written description, which shall occur within 72-hours of inspection, of all Improvements that are, if any, not in compliance with the requirements of the City or the Plans and Specifications and deliver that description to the Developer. After curing such defects, if any, as are noted on the written statement provided by the Public Works Director to the Developer, the Developer shall make written application to the City for re-inspection of the Improvements, and the Public Works Director will use reasonable efforts to promptly re-inspect such Improvements. No Improvements shall be deemed to be initially accepted by the City until the Public Works Director has certified, in writing, which shall occur within five (5) business days after inspection or re-inspection, that the Improvements appear to have been completed in accordance with the applicable Plans and Specifications. This shall then constitute Initial Acceptance.



### **13. Warranty Period for Improvements Following Initial Acceptance.**

Developer shall remain fully responsible for construction defects of all Public Improvements itemized on Exhibit C for a period of two (2) years after their Initial Acceptance by the City. If any of the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C fail within the two (2) year period after their Initial Acceptance by the City, portions shall be replaced with the same development standards. All roads and public spaces must be kept free of debris during construction and shall be properly cleaned following any required repair or replacement of Improvements. The Warranty Period and the Maintenance Guarantee shall survive the Term of the Agreement if necessary in order to complete the required two (2) year period.

### **14. Maintenance Guarantee During Warranty Period.**

Developer's application for Initial Acceptance shall be accompanied by a Maintenance Guarantee in a form deemed acceptable to the City in the amount of fifteen percent (15%) of the total costs of the Improvements. The Maintenance Guarantee shall be subject to the same conditions as those set forth for the Performance Guarantee.

Until Final Acceptance of the Improvements by a Certificate of Completion reviewed and approved by the Public Works Director or their designated representative, Developer agrees that (a) the Maintenance Guarantee shall not be released; and (b) the Developer shall bear all risks and liability related to any loss, damage, or claims due to defects or failures of any of the Improvements; and (c) the Developer shall perform all maintenance and make all repairs and replacements of all defects or failure of Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C at Developer's expense.

If, within thirty (30) days after the Developer's receipt of written notice from a City Official requesting such reasonably required maintenance, repairs, and/or replacements of the Improvements, the Developer shall not have undertaken with due diligence to make same, the City, after providing written notice to Developer, may make such maintenance, repairs, and/or replacements at the Developer's expense. The City shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the City may charge the Developer for the costs thereof if such charges are not paid by the Maintenance Guarantee.

### **15. Final Acceptance of Improvements.**

The Developer shall make a written request to the Public Works Director, or their designated representative, for a final inspection of the Improvements no sooner than two (2) years after the City's Initial Acceptance of all of the Improvements for such Phase of Development. Upon receipt of such request the City shall be obligated to conduct a final inspection of the Improvements. Public Works Director shall inspect the Improvements within thirty (30) days upon receipt of such request. If the Developer fails to have the Improvements finally accepted as provided in this Section within two (2) years after the City's Initial Acceptance, the City shall have the right, but not the obligation, at any time thereafter to conduct a Final Inspection of the Improvements.

If, pursuant to a final inspection requested by the Developer or initiated by the City, any Improvement more particularly described in Section 9, Development Standards, and Exhibit C is found to not conform to this Agreement, then the City shall have the rights set forth in Section 14 of this Agreement (Maintenance Guarantee During Warranty Period) to remedy such defects. Nothing herein shall be construed or deemed as requiring the City to finally accept and release from the Maintenance Guarantee any Improvement that is defective or damaged.

After receipt of satisfactory evidence that the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C fully conform to this Agreement, and that all of the maintenance, repairs, and replacements requested by City Officials pursuant to the terms of this Agreement have been completed to the reasonable satisfaction of the City, the Public Works Director shall issue a Certificate of Completion, evidencing completion and Final Acceptance of such Improvements. The Maintenance Guarantee provided by the Developer shall be released after the Final Acceptance of all of the Improvements has been granted and the Certificate of Completion has been issued by the City.

#### **16. Completion of Improvements by City**

In the event the Developer does not complete any of the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C in accordance with the provisions of the Agreement within the time permitted by this Agreement, the City shall deliver written notice thereof to Developer, and if required, to the issuer of the Performance Guarantee. If Developer does not undertake and diligently pursue completion of the applicable Improvements within thirty (30) days following its receipt of such notice, the City may, but shall not be obligated to, proceed with restoring or completing some or all of the remaining portions of the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C to a condition satisfactory, in the reasonable discretion of the City, to the health, safety and welfare of the City. The City shall be entitled to draw on the Performance Guarantee in order to accomplish such restoration and/or completion.

#### **17. Impact Fees.**

The following language from the City of Evans Building Code 3.20.030 reads in part “Such fees shall not apply to or be imposed in connection with the reconstruction of a Development which was in existence prior to the enactment of this Chapter that is destroyed in whole or in substantial part by a cataclysmic natural disaster or act of God such as flood, fire, tornado, or earthquake, provided that the application for reconstruction or rebuilding of the Development has been submitted to the City within twenty-four (24) months from the date of such natural disaster affecting the property or the declaration of an emergency and diligently pursued to completion to the same or less impact as it existed immediately prior to the natural disaster.” Therefore, the City will not impose City fees at the time of building permit that were not collected with the first building permit.

## **18. Additional Developer Liabilities.**

a. Indemnification. To the extent permitted by law, Developer hereby agrees to indemnify and hold the City, City Officials, its employees, agents, representatives, and insurers (collectively, "City Parties") harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees, and expenses (including reasonable attorney's fees) resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of the Developer, its employees, agents, consultants, representatives, or subcontractors except to the extent caused by negligence, gross negligence or willful misconduct of the City or one or more City Parties. Developer shall promptly investigate, handle, respond to and provide defense for and defend against any such liability, claims, or demands at the sole expense of Developer. Developer also agrees to bear all reasonable costs, expenses, and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent unless they are caused by negligence, gross negligence or willful misconduct of the City or one or more of its officers, agents or employees.

b. Insurance. Developer shall (for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements) maintain such liability insurance, or require its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements to maintain such liability insurance, including general liability, contractors liability, professional liability, comprehensive automobile liability, worker's compensation insurance and sufficient public liability insurance as will protect the City, City Officials, City's employees, agents and representatives against any and all potential liability, claims, damage, demands, losses and expenses, that may be incurred or asserted. Liability insurance shall be in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, as it may be amended. Whenever reasonably requested by City or City Officials, the Developer agrees to submit or require its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements, certificates of insurance evidencing sufficient amounts as described herein, types and duration of insurance and which show the City, City Officials, its employees, agents, and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

c. Drainage Liability. Drainage Liability: To the extent permitted by law, Developer shall indemnify and hold the City harmless from any liability the City may have on account of any change in the nature, direction, quantity or quality of drainage flow, resulting from the Improvements more particularly described in Section 9. Development Standards, and Exhibit C .

d. Tax Liability. Developer shall pay any outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the City prior to or at the time of such dedication or conveyance, and shall indemnify and hold the City harmless from any and all encumbrances, obligations, or tax liability incurred prior to the dedication or conveyance to the City. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

e. Use Tax. Any and all use tax due on construction and building materials for public facilities shall be paid as provided under Municipal Code including but not limited to Section 3.04.200.

f. Cost Reimbursement to City. Developer shall reimburse City for all reasonable costs incurred for professional consultants including but not limited to engineers, testing companies, contractors, and attorneys reasonably used by the City in connection with the preparation or implementation of this Agreement and in the review and processing of the Application, as well as the design, construction, review, testing, completion, repair, replacement, and approval of the Development.

## **19. Breach and Remedies**

a. Breach of Agreement by Developer. If at any time this Agreement (or any part hereof) has been materially breached by Developer or if satisfactory progress substantially in accordance with the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C, has not been made on the design, construction, installation, repair, replacement or maintenance of the Improvements the City may, after 30 days' prior written notice to Developer or such additional period as may reasonably be agreed to by the City in writing in light of the nature of the alleged breach, draw on the Performance Guarantee or Maintenance Guarantee and the City may suspend of any or all building permits, certificates of occupancy, water meters, or tap hook-ups for any area within the Improvements more particularly described in Section 9, Development Standards, which are part of Exhibit C, or other approvals or permits, if Developer then fails to make reasonable progress as reasonably determined by the City, unless such failure is caused by circumstances which are outside the Developer's reasonable control, meaning that such circumstance is a result of an act of God (including fire, flood, earthquake, or other natural disaster) regionally recognized shortage of materials, strike, lockout or interruption of utility service or Force Majeure, then the City may pursue specific enforcement of the Agreement, but in no event shall other monetary remedies be authorized by this Agreement or pursued by the City.

b. Breach of Agreement by City. If at any time the Developer believes the City is in breach of this Agreement, the Developer shall provide the City with 20 days' written notice. In the event the City fails to remedy the alleged breach within 20 days or such additional period as may be necessary in light of the nature of the alleged breach, then the Developer may pursue specific enforcement of the Agreement, but in no event shall monetary remedies be authorized by this Agreement or pursued by the Developer.

## **20. Miscellaneous.**

a. No Waiver. Delays by the City in enforcement or the waiver of any one or more breaches of this Development Agreement shall not constitute a waiver of any of the remaining terms or obligations or any future breaches.

b. Severability. If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair, or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

c. Recording of Agreement and Encumbrance on the Property. This Agreement shall be recorded with the Weld County Clerk and Recorder at Developer's expense and shall be a covenant running with and against all the Property, property rights, and improvements contained within the Development in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the Property on notice as to the terms and obligations herein.

d. Binding Effect. unless otherwise provided herein, this Development Agreement shall be binding upon Developer's heirs, successors, assigns, transferees, and any other person or entity acquiring or purchasing any interest in any part of the Property.

e. Transfer or assignment. In the event of a sale or transfer of any portion of the Property, the purchaser or transferee shall be liable for the performance of each of the obligations contained in this Development Agreement for the Improvements more particularly described in Section 9. Development Standards, which a part of Exhibit C. Notwithstanding anything herein to the contrary, Developer shall have the right to transfer and/or assign its rights and interests in this Agreement to any entity that controls, is controlled by, or is under common control with Developer without the approval of the City or City Council, provided the City is given written notice within 10 days of such transfer.

f. Title and Authority. Developer expressly warrants and represents to the City that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Development Agreement. Developer understands that the City is relying on the representations and warranties contained herein, in its consideration of the application and in entering into this Agreement.

g. Notices. Any notice to Developer or the City, which may be given under the terms of this Agreement, shall be in writing and shall be deemed sufficiently given on the third (3<sup>rd</sup>) business day following the date such notice is sent by certified or registered U.S. Mail, postage prepaid, return receipt requested, or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

TO CITY:  
Attention: City Manager  
1100 37<sup>th</sup> Street  
Evans, CO 80620-2036

TO DEVELOPER:  
Attention: Jay D. Belk, Manager  
823 S. Perry Street, Ste. 110  
Castle Rock, CO 80104

With a copy to

With a copy to:

Scotty P. Krob  
Krob Law Office LLC  
8400 E. Prentice Ave, Penthouse  
Greenwood Village, CO 80111Denver,  
Colorado 80203

Dave and Tami Ellicott  
Innovative Foods, LLC  
4320 Industrial Parkway  
Evans, CO 80620

Any party may change its notice address by providing the other party(ies) notice as set forth in this section.

h. Force Majeure. Whenever a period of time is herein prescribed for an action to be taken or performed by any Party, that Party will not be liable to so perform within such time period due to, and there will be excluded from the computation of such period of time, any delays due to, strikes, riots, acts of God, shortages of labor and materials, war, governmental

laws, regulations or restriction or any other cause of any kind whatsoever which are beyond the reasonable control of the Party required to take or perform such action.

i. Cooperative drafting. This Agreement is the product of a cooperative drafting effort by the Town and the Developer and shall not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it.

j. Amendment. This Agreement cannot be modified or revoked except by an instrument approved by the City Council and signed by the Mayor and the Developer or the then owner of the Property or any portion thereof if there has been an assignment as it relates to the specific Property.

k. No third party beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.



Exhibits

A – Legal Description

B – Site Plan

C – Developer Improvements

C-1 – Description of Improvements to be made pursuant to the Development Agreement

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

D – Performance Guarantee



## **EXHIBIT A: LEGAL DESCRIPTION**

Lots 8, 9, and 10, Block 4 of the Evans Industrial Park, Located in part of the Southeast Quarter of Section 30, Township 5 North, Range 65 West of the 6<sup>th</sup> P.M., City of Evans, Weld County, Colorado.

**EXHIBIT B: SITE PLAN**

The Site Plan for Innovative Foods has been approved by the City of Evans and recorded at Reception 4705236 with the Weld County Clerk and Recorder. A copy of the recorded Site Plan is on file with the City of Evans.

## **EXHIBIT C: DEVELOPER IMPROVEMENTS**

C-1 – Description of Improvements to be made pursuant to the Development Agreement

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

D – Performance Guarantee

- a. Culverts
- b. Access and egress requirements
- c. Sewer lines and points of connection to City Sewer
- d. Water lines and points of connection to City Water
- e. Storm water and drainage ditch management systems and piping systems
- f. Landscape improvements, irrigation and maintenance
- g. As-built drawings

Exhibit C-1:

DESCRIPTION OF IMPROVEMENTS TO BE MADE PURSUANT TO THE DEVELOPMENT AGREEMENT: Development Agreement between City of Evans, CO and Innovative Investors, LLC  
Dated April 20, 2021

1. Complete the sidewalk along the western side of the site along the lot frontage with Industrial Parkway. The proposed plan includes 165 linear feet of 5' wide attached sidewalk.
2. A small portion of the sidewalk intended for pedestrian access to the retail portion of the proposed building is also within Industrial Parkway ROW. A total of 12 linear feet of the 5' wide detached sidewalk is included.
3. A fully improved site access is proposed on the west side of the site onto Industrial Parkway. The west access including;
  - a. 84.2 linear feet of curb & gutter,
  - b. 40 linear feet of 5' sidewalk directional ramps with ADA detectable warnings, and
  - c. 1,288 square feet of 10" thick concrete pavement.
4. A partially improved site access is proposed at the southwest corner of the subject property. The access point will serve as an exit for the on-site parking lot. A small portion of sidewalk, curb & gutter, and concrete pavement will extend into ROW at this location however since 44<sup>th</sup> Street is unpaved at this time the improvements will not fully extend to the assumed future location of the improved roadway section. Instead, an interim condition is proposed until such a time as 44<sup>th</sup> Street is fully constructed. The temporary elements of the interim condition are not included in the improvements list.
  - a. 14 linear feet of curb & gutter
  - b. 7 linear feet of sidewalk
  - c. 148 square feet of 10" thick concrete pavement
5. A loading dock is proposed on the southeast corner of the proposed new building. The portion of the loading dock entrance within ROW is included in this list per City direction, even though a practical look at the maintenance of these improvements would suggest that the property owner is responsible regardless of the location of the improvements.
  - a. 87.5 linear feet of curb & gutter
  - b. 15 linear feet of sidewalk
  - c. 7 linear feet of 4' wide concrete stairs (3 steps)
6. A rectangular concrete discharge channel is proposed for the detention pond outlet. The portion of the channel within ROW is included in this list.
  - a. 16.5 linear feet of 4.5' wide concrete channel
7. The public improvement for water/sewer includes any change to the public road, sidewalk and connection for water/sewer provision. The only City utilities proposed for the project are a new fire service and re-tapping the sanitary sewer service in order to relocate it on-site. The portions of the two service within ROW is included in this list.
  - a. 50 linear feet of 6" Ductile Iron Pipe for the fire service. The tap will include an 8"x8"x6" tapping sleeve and 6" gate valve.
  - b. 32 linear feet of 6" SDR 35 Poly-vinyl Chloride pipe for the sanitary sewer service. The tap will include a 12"x12"x6" tapping sleeve.

Exhibit C-2:

ENGINEER'S ESTIMATE OF PROBABLE COST OF IMPROVEMENTS  
Development Agreement between City of Evans, CO and Innovative Investors, LLC

Dated April 20, 2021

Item	Quantity	Unit Cost	Total Cost
5' Wide Sidewalk	200 lf	\$20/lf	\$4,000
Curb & Gutter	186 lf	\$15/lf	\$2,790
ADA Detectable Warning	2-ramps, 4 pads	\$1,500/pad	\$3,000
Concrete Flatwork/Paving	2,020 ft <sup>3</sup>	\$25/ft <sup>3</sup>	\$50,000
3-Concrete Stairs	1	\$1,000	\$1,000
4' Wide Concrete Channel (rectangular)	16.5 lf	\$35/lf	\$578
6" Ductile Iron Pipe	50 lf	\$30/lf	\$1,500
8"x 8"x 6" Tapping Sleeve	1	\$1,000	\$1,000
6" Gate Valve	1	\$1,500	\$1,500
6" PVC Pipe	32 lf	\$30/lf	\$960
12"x 12"x 6" Tapping Sleeve	1	\$1,200	\$1,200
1" Type K Copper Pipe	14.5 lf	\$15/lf	\$218
1" Tapping Saddle	1	\$1,000	\$1,000
Landscaping	Per Plans		\$20,000
<b>Total Engineering Estimate of Costs</b>			<b>\$89,245</b>

Exhibit C-3 Schedule of Improvements

EXHIBIT C-3; SCHEDULE OF IMPROVEMENTS  
 Development Agreement between City of Evans, CO and Innovative Investors, LLC

Dated April 20, 2021

INNOVATIVE INVESTORS, LLC

Construction Schedule for Development Agreement

Estimated Cost Description	2021						2022			Total			
	June	July	August	September	October	November	December	January	February		March	April	May
<b>Project Construction Costs (Hard Costs)</b>													
Division 1, General Requirements													\$0.00
Division 2, Site Work													\$0.00
Division 3, Concrete					\$5,930	\$24,240							\$30,170.00
Division 4, Masonry													\$0.00
Division 5, Metal													\$0.00
Division 6, Wood & Plastic													\$0.00
Division 7, Thermal & Moisture Protection													\$0.00
Division 8, Openings													\$0.00
Division 9, Finishes													\$0.00
Division 10, Specialties													\$0.00
Division 11, Utilities		\$4,140											\$4,140.00
Division 12, Mechanical													\$0.00
Division 13, Electrical													\$0.00
Division 14, Parking/Striping													\$0.00
Division 15, Landscaping											\$20,000		\$20,000.00
Tenant Improvements (if applicable)													\$0.00
<b>Total Project Construction Costs (Hard Costs)</b>	\$0.00	\$4,140	\$0.00	\$0.00	\$5,930	\$24,240	\$0.00	\$0.00	\$0.00	\$0.00	\$20,000	\$0.00	\$54,310.00
<b>PLUS 15% per Development Agreement:</b>	\$0.00	\$621	\$0.00	\$0.00	\$889	\$3,636	\$0.00	\$0.00	\$0.00	\$0.00	\$3,000	\$0.00	\$8,146.50
<b>TOTALS:</b>	\$0.00	\$4,761	\$0.00	\$0.00	\$6,819	\$27,876	\$0.00	\$0.00	\$0.00	\$0.00	\$23,000	\$0.00	\$62,456.50

Be advised that the costs and schedule herein are estimates. This is subject to time, weather, financing and other delays. It is also subject to increase (or decrease) in costs at the time of construction. BE ADVISED THAT THE LANDSCAPING BUDGET AND ITEMS WILL NOT BE INCLUDED IN THE "SECURITY FOR CONSTRUCTION IMPROVEMENTS LETTER OF CREDIT" EXCEPT IN ACCORDANCE WITH THE TERMS OF THE DEVELOPMENT AGREEMENT.

## **EXHIBIT D: PERFORMANCE GUARANTEE**

In accordance with Section 10 of this Development Agreement, the Developer's construction and completion of the Improvements other than landscaping and irrigation shall be assured by Developer providing a Performance Guarantee in the amount of 115% of the estimated cost of the Improvements more particularly described in Section 9 (Development Standards) which are included in Exhibit C prior to commencement of work on the Property.

With regard to landscaping and irrigation, Developer need not initially provide a Performance Guarantee to ensure the cost of their construction or installation. The parties agree that no Certificate of Occupancy or similar authorization by the City will be issued until the landscaping and irrigation has been completed and initially accepted. However, in the event Developer has not installed and completed the landscaping at the time the Developer requests a Certificate of Occupancy, and the Developer is not reasonably able complete and install the landscaping at that time due to the season of the year and the anticipation of adverse weather conditions, then and in that event, the Developer may receive a Certificate of Occupancy if the Developer has completed all other matters required for such Certificate and Developer provides a Performance Guarantee in the amount of 115% of the engineer's estimated cost of constructing and installing the landscaping and irrigation. The Performance Guarantee for landscaping and irrigation shall be subject to the same requirements and provisions as set forth above in connection with the Performance Guarantee for the other Improvements.