

ECONOMIC INCENTIVE AGREEMENT CONCERNING KROGER FULFILLMENT NETWORK

This Economic Incentive Agreement Concerning Kroger Fulfillment Network (“Agreement”) is made and entered into on this ____ day of _____, 2023, by and between the Town of Johnstown, a Colorado home rule municipality (“Town”), and Kroger Fulfillment Network, LLC, an Ohio limited liability company (“Developer”).

RECITALS

1. Developer is leasing, or intends to lease, real property located in the Trade@2534 Industrial Park at 4151 Ronald Reagan Boulevard, Johnstown, Colorado 80534 (“Property”).
2. Developer desires to operate a business establishment known as the “Kroger Fulfillment Network” at the Property (the “Project”).
3. To facilitate the development of the Project, Developer has requested that the Town provide certain economic incentives.
4. Colorado municipalities are entitled to encourage new and expanded business development through inducements and incentives.
5. The Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town.
6. Based on the foregoing, including the anticipated economic benefits, the additional employment opportunities and the opportunity presented by the location of the Project in the Town, and based on Developer commitments outlined herein, the Town desires to accommodate Developer’s request and offers to provide economic incentives pursuant to the terms and conditions set forth in this Agreement.
7. The Town finds that this Agreement is in the best interests of the citizens of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Developer agrees as follows:

1. Recitals. The Recitals are incorporated as if set forth fully herein.
2. Town’s Commitments. In furtherance of the development, construction and operation of the Project, and based on Developer’s commitments set forth herein, the Town agrees as follows:

(a) To provide a fifty percent (50%) personal property tax rebate for a ten (10) year term, commencing after the first year that new personal property subject to taxation (equipment and machinery) is put into operation. After payment of such tax, Developer may make an annual written request to the Town for the rebate and provide documentation verifying Developer's payment. Upon receipt of the request and proper documentation, the Town shall, within thirty (30) days, provide the rebate to Developer; and

(b) To provide a one-time seventy-five percent (75%) rebate of the building permit fees paid to the Town for the construction of the Project. When the construction of the Project is complete, Developer may provide a written request to the Town for the rebate and, assuming the Town agrees that the construction is complete, the Town shall, within thirty (30) days, provide the rebate to Developer.

3. Developer Commitments. In furtherance of the development, construction and operation of the Project, and based on the Town's commitments set forth herein, Developer agrees that:

(a) The Project shall be located at the Trade@2534 Industrial Park in the Town of Johnstown, State of Colorado;

(b) The Project shall be open for business operations, and the corresponding ability to deliver products to the public, at the Property no later than June 30, 2023; and

(c) The Project shall create a minimum of one hundred (100) jobs on or before June 30, 2024.

4. Term. The term of this Agreement shall begin on the day and year first written above and, unless extended by written agreement of the parties, shall continue until the cessation of the personal property tax rebate set forth in Paragraph 2(a) above. Notwithstanding the foregoing, if any of the conditions set forth in Paragraph 3 are not satisfied, unless otherwise provided by written agreement of the parties, the Agreement shall terminate and neither party shall have any further obligation hereunder.

5. Assignment. Developer may not assign its rights or obligations under this Agreement without receiving the prior written consent of the Town.

6. No Third-Party Beneficiaries. This Agreement, including the incentives provided herein, is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.

7. Notices. All notices, consents or other instruments provided for under this Agreement shall be deemed properly given when: (1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (3) sent by electronic mail return receipt requested and received. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO DEVELOPER:

Kroger Fulfillment Network
Attention: _____
1014 Vine Street
Cincinnati, OH 45202
Email: _____

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@johnstownco.gov

8. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado.

9. Dispute Resolution. In the event of default by either party hereunder, the non-defaulting party shall notify the defaulting party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting party desires to seek recourse, the parties shall participate in mediation, the costs of which shall be shared equally by the parties. If mediation is not successful after ninety (90) days, either party may then commence an action and be entitled to such remedies as are provided by law.

10. No Presumption. Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

11. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the parties related to the subject matter hereof and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

12. Severability. If any provision or part of this Agreement is 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.

13. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF JOHNSTOWN, COLORADO

By: _____
Gary Lebsack, Mayor

Attest:

Hannah Hill, Town Clerk

KROGER FULFILLMENT NETWORK, LLC

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____ 2023, by _____ as the _____ of Kroger Fulfillment Network, LLC.

Witness my hand and official seal.

My commission expires: _____

Notary Public