

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE TOWN OF JOHNSTOWN AND BUC-EE'S COLORADO**

This Economic Incentive Agreement ("Agreement") is made and entered into on this ____ day of _____, 2021 ("Effective Date"), by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado ("Town"), and Buc-ee's Colorado, LLC, a Delaware limited liability company ("Buc-ee's").

RECITALS

1. Buc-ee's is in negotiations to purchase approximately 28.22 acres of property located within the boundaries of the Town at the southwest corner of U.S. Interstate 25 and U.S. Highway 60, described on the map attached hereto and incorporated herein by reference as Exhibit A ("Property").

2. Buc-ee's desires to construct a service station and retail shopping store, known as "Buc-ee's Travel Center," consisting of at least 53,000 square feet on the Property (the "Project").

3. To facilitate the development of the Project, Buc-ee's has requested that the Town expedite review of the Project and provide certain economic incentives.

4. Colorado municipalities are entitled to encourage new and expanded retail 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 extraordinary opportunity presented by the location of the Project in the Town, and based on Buc-ee's commitments outlined herein, the Town desires to accommodate Buc-ee's request and offers, pursuant to the terms and conditions set forth in this Agreement, to provide: (a) an expedited review process for the Project and (b) economic incentives.

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 Buc-ee's agrees as follows:

1. Recitals. The Recitals are incorporated as if set forth fully herein.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

“CDOT Extension” means an extension of time pursuant to Section 13 of this Agreement.

“Derived Taxes” means fifty percent (50%) of the portion of the sales tax revenue generated and collected by the Town from sales transactions at the Project that is eligible to be expended for all municipal purposes and not allocated for specific purposes. For illustrative purposes, the Town’s current sales tax rate is three and one-half percent (3.5%), but one-half percent (0.5%) is a voter approved sales tax that is dedicated specifically to transportation projects. As such, the Derived Taxes, on the Effective Date of this Agreement, would equal fifty percent (50%) of three percent (3%), the eligible portion of the sales tax rate, or one and one-half percent (1.5%) of the sales transactions at the Project.

“Derived Taxes Commencement Date” means the first day of the first Fiscal Quarter following the date on which Buc-ee’s opens the Project to the public for retail business operations.

“Derived Taxes Termination Date” means the date that is the day before the twenty-fifth (25th) anniversary of the Derived Taxes Commencement Date.

“Final Town Payment Date” means the Town Payment Date following the Fiscal Quarter wherein the Derived Taxes Termination Date occurs.

“Fiscal Quarter” means each of the fiscal quarters of the Town and Buc-ee’s. As of the date of this Agreement, the Town and Buc-ee’s operate on a calendar year and its Fiscal Quarters run January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

“Quarterly Derived Taxes” means the Derived Taxes for each Fiscal Quarter.

“Project Building Permit” means the building permit or permits required for the construction of the Project.

“Project Commencement Date” means the later of (a) July 1, 2022, or (b) thirty (30) days after Buc-ee’s receipt of the Project Building Permit, as extended, if at all, by a Force Majeure Event, Town Delay Extension or CDOT Extension.

“Project Completion Date” means the later of (a) January 1, 2024, or (b) eighteen months (18) after Buc-ee’s receipt of the Project Building Permit, as extended, if at all, by a Force Majeure Event, Town Delay Extension or CDOT Extension.

“Project Opening Date” means the earlier of (a) the date on which Buc-ee’s opens the Project to the public for retail business operations or (b) the date two (2) years after the date Buc-ee’s receives the Project Building Permit, as extended, if at all, by a Force Majeure Event, Town Delay Extension or CDOT Extension.

“Town Delay Extension” means an extension pursuant to Section 14 of this Agreement.

“Town Payment Date” means the last day of the second calendar month following the end of each Fiscal Quarter from and after the Derived Taxes Commencement Date.

3. Town’s Commitments. In furtherance of the development, construction and operation of the Project, and based on Buc-ee’s commitments set forth herein, the Town agrees as follows:

(a) To review development, land use and building permit applications for the Project for completeness within three (3) business days of submittal by Buc-ee’s or its representative and, after each complete development, land use or building permit application is submitted, to approve such complete application within four (4) weeks of the date of submission of such completed application on the condition that such application complies with the Johnstown Municipal Code (“Code”) and the Town’s policies, procedures and regulations and that Buc-ee’s participates in pre-submittal meetings with Town staff and appropriate external agencies with jurisdiction and authority over the Project;

(b) On or before each Town Payment Date occurring after the Derived Taxes Commencement Date until payment of the Final Town Payment, to pay the Quarterly Derived Taxes to Buc-ee’s; and

(c) To explore the implementation of a public improvement fee to assist in funding onsite and offsite public improvements.

Notwithstanding anything herein to the contrary, the following is a condition precedent to the effectiveness and enforceability of Section 3(b) and, if applicable, the implementation of a public improvement fee under Section 3(c) of this Agreement: Buc-ee’s shall have opened the Project to the public for retail business operations by the Project Opening Date.

4. Buc-ee’s Commitments. In furtherance of the development, construction and operation of the Project, and based on the Town’s commitments set forth herein, Buc-ee’s agrees as follows:

(a) To commence construction of the Project no later than the Project Commencement Date;

(b) To substantially complete construction of the Project no later than the Project Completion Date;

(c) To open the Project to the public for retail business operations no later than the Project Opening Date;

(d) To submit a master signage plan exhibiting "Johnstown" on the signage, which depiction shall not be counted toward the overall signage square footage calculation. The master signage plan shall be subject to approval of the Town Council. Town staff shall work with Buc-ee's on an administrative level in order that Buc-ee's may submit a signage plan to the Town Council that is agreeable to Town staff;

(e) To install a minimum of two (2) electric vehicle charging stations at the Project provided such stations are permitted by applicable law and all matters of record in the applicable real property records;

(f) To create a minimum of one hundred and fifty (150) full-time jobs within one (1) year of the Project Opening Date ("Job Creation Threshold"). On or shortly after such date, Buc-ee's shall provide a report to the Town evidencing the number of full-time jobs created and maintained and shall provide a supplementary report to the Town within ten (10) calendar days of the end of each Fiscal Quarter until the Derived Taxes Termination Date evidencing the average number of full-time jobs maintained during such Fiscal Quarter. If the average number of full-time jobs maintained by Buc-ee's for any Fiscal Quarter does not meet or exceed the Job Creation Threshold, the Town shall be entitled to reduce the sales tax sharing set forth in Section 3(b) by a proportionate amount for such quarter. For illustrative purposes, if Buc-ee's only maintains one-hundred (100) full-time jobs in any given Fiscal Quarter, then the Town Payment for that Fiscal Quarter shall be reduced proportionately by thirty-three percent (33%); and

(g) To contribute a one-time donation of Two-Hundred and Fifty Thousand Dollars (\$250,000) toward a community project of the Town's choice within thirty (30) days of the Derived Taxes Commencement Date.

Notwithstanding anything herein to the contrary, the following are conditions precedent to the effectiveness and enforceability of Section 4 of this Agreement: (i) Buc-ee's shall purchase and take fee simple ownership of the Property on or before December 31, 2021, or within fifteen (15) days of the approval and recordation of a final plat for the Property, whichever is later; and (ii) the Town and Buc-ee's shall enter into a development agreement, setting forth, among other matters, Buc-ee's development and land-use obligations, including, but not limited to, Buc-ee's commitment to: (a) design, construct and inspect the Project in compliance with all applicable provisions of the law, the Code and the Town's policies, procedures and regulations and, unless subsequently amended, revoked or terminated, all outstanding agreements, covenants, restrictions and similar items that are recorded against or binding upon the Property, and (b) dedicate all public improvements on the Project to the Town pursuant to the Code and the Town's policies, procedures and regulations.

5. Condition Precedent; Project Opening Date. Notwithstanding anything contained herein to the contrary, the Project Opening Date shall occur within four (4) years of the Effective Date of this Agreement or else, absent a written agreement by the Town extending such deadline, the Town shall not be required to provide the incentives set forth in Section 3.

6. Annexation Agreement. The Property is subject to the Annexation Agreement for the Veeman Annexation dated March 17, 2008 ("Annexation Agreement"). Section 29(c) of the Annexation Agreement, entitled "Sales and Use Tax Reimbursements," contains economic incentives in the form of reimbursements related to the public improvements associated with commercial development of the Property. The Town and Buc-ee's recognize and agree that the obligations, commitments and incentives set forth in this Agreement shall wholly replace and supersede Section 29(c) of the Annexation Agreement and the incentives set forth therein. Prior to Buc-ee's receipt of Derived Taxes, as provided in Section 3(b) and, if applicable, the public improvements fee set forth in Section 3(c), if required by the Town, the Town and Buc-ee's agree to execute an amendment to the Annexation Agreement or other form of agreement memorializing the foregoing.

7. Metropolitan District. The parties recognize and agree that the Property may be in, or within the inclusion area boundaries of, a metropolitan district existing under the Special District Act, §§ 32-1-101, *et seq.*, C.R.S. The Town makes no representation or commitment regarding, and the rights and obligations of the parties contained herein shall not be impacted by virtue of, such metropolitan district.

8. Term. The term of this Agreement shall commence on the Effective Date and shall terminate upon the payment of all the Quarterly Derived Taxes due on or before the Final Town Payment Date.

9. Assignment. Buc-ee's may not assign its rights or duties under this Agreement without receiving the prior written consent of the Town, except that Buc-ee's may transfer ownership of the Property to an affiliate of Buc-ee's (any entity directly or indirectly controlling or controlled by or under direct or indirect common control with Buc-ee's, or which directly or indirectly owns voting securities of an entity directly or indirectly controlled by Buc-ee's) that assumes the obligations of Buc-ee's herein so long as Buc-ee's continues to be responsible for the performance of the obligations contained herein unless expressly excused therefrom in writing signed by an authorized officer of the Town.

10. 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.

11. 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 BUC-EE'S:

Buc-ee's Colorado, LLC
Attention: Legal
327 FM 2004
Lake Jackson TX 77566
Email: legal@buc-ees.com

TO TOWN:

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

12. Force Majeure. If either party's performance of its obligations under this Agreement is delayed by a Force Majeure Event, then such party's time of performance shall be extended by a corresponding number of days, provided that a Force Majeure Event shall not excuse timely payments when due under this Agreement and shall not extend the Project Opening Date beyond four (4) years after the Effective Date of this Agreement except by written agreement by the Town extending such deadline. For purposes of this Agreement, a "Force Majeure Event" shall be defined as any event arising from causes which are not reasonably foreseeable, are beyond the control of the affected party, and cannot be overcome by due diligence, such as fires, floods, strikes, wars, riots, acts of God, forces of nature, pandemics, judicial action and similar such causes. The party seeking an extension based on a Force Majeure Event shall promptly notify the other party of the existence of such event and shall bear the burden of proving that the event constitutes a Force Majeure Event for purposes of this Agreement. If an extension of the deadlines contained in this Agreement arises from a Force Majeure Event, the party seeking the extension shall, within thirty (30) days of the end of the Force Majeure Event, provide written notice to the other party of the extension, including the number of additional days, resulting from the Force Majeure Event. If such writing is not provided, an extension shall not be granted.

13. CDOT Extension. If the Colorado Department of Transportation ("CDOT") does not complete improvements to the U.S. Interstate 25 and State Highway 60 interchange on or before December 31, 2022, the Project Commencement Date, the Project Completion Date and the Project Opening Date shall be extended by the number of additional days reasonably required by Buc-ee's to achieve such completion of the Project and opening of the Project following such delay in the completion of the U.S. Interstate 25 and State Highway 60 interchange. If an extension is reasonably required, Buc-ee's shall notify the Town in writing and shall include in such writing the amount of additional time required based on CDOT's delay. Buc-ee's shall bear the burden of proving that CDOT's delay necessitates a CDOT Extension. To the extent known, the Town agrees to notify Buc-ee's of changes to CDOT's anticipated completion schedule in a timely manner.

14. Town Delay. If the Town fails to review and approve the applications in accordance with the deadlines set forth in Section 3(a) of this Agreement, the Project

Commencement Date, the Project Completion Date and the Project Opening Date shall be extended by the number of additional days that it takes the Town to provide such review and approval.

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

16. Town Default and Buc-ee's Remedies. In the event of default by the Town hereunder, Buc-ee's may notify the Town in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and Buc-ee's 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 or if the Town fails to participate in mediation within thirty (30) days after written request from Buc-ee's, Buc-ee's may then commence an action and be entitled to such remedies as are provided by law. Additionally, notwithstanding anything to the contrary in this Agreement, Buc-ee's expressly releases the Town from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

17. Buc-ee's Default and Town Remedies. In the event of default by Buc-ee's hereunder, the Town may notify Buc-ee's in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the Town 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 or if Buc-ee's fails to participate in mediation within thirty (30) days after written request from the Town, the Town may then commence an action and be entitled to such remedies as are provided by law. Notwithstanding anything to the contrary in this Agreement, the Town's sole and exclusive remedy with respect to a default by Buc-ee's under Section 4(a) of this Agreement is to terminate this Agreement on or before thirty (30) days after Project Commencement Date, the Town's sole and exclusive remedy with respect to a default by Buc-ee's under Section 4(f) of this Agreement is to reduce the Quarterly Derived Taxes as provided in Section 4(f), and the Town shall not have a right to specific performance by Buc-ee's under Sections 4(a), 4(b) and 4(c) of this Agreement. Additionally, notwithstanding anything to the contrary in this Agreement, the Town expressly releases Buc-ee's from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

18. 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.

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

20. 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.

21. 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.

[Signatures on the following pages.]

