2018 AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

THIS AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES (Agreement) is made and entered into by and between the City of Longmont (City), a municipal corporation, and the Longmont Area Economic Council, dba Longmont Economic Development Partnership, (LAEC or Contractor), a Colorado non-profit corporation, and shall be effective on January 1, 2018.

WHEREAS on October 14, 1980, the City and the Longmont Area Chamber of Commerce entered into a Document of Understanding declaring the advisability of establishing an economic development association to promote and stimulate economic development within the City, and in furtherance thereof, LAEC has been established to provide the services of implementing the economic growth contemplated in said Document of Understanding; and

WHEREAS such Document of Understanding has been amended and updated as reflected in Article IV of this Agreement; and

WHEREAS the stimulation of economic growth is recognized to serve both the public interest and municipal purposes of the City by enhancing the tax base and creating employment opportunities; and

WHEREAS the City and LAEC deem it advisable for LAEC to provide the services detailed herein, reflecting a mutual benefit to the City and LAEC.

THEREFORE, in consideration of the premises set forth herein, the parties agree as follows:

ARTICLE I DUTIES OF LAEC

- 1. LAEC agrees to provide the following general services on behalf of the City:
 - 1.1 To encourage and stimulate all forms of economic development including primary employers of all sizes local businesses of all sizes, and startup businesses that will be of direct or indirect benefit to the City by providing information and services to existing and prospective businesses and industries.
 - 1.2 To promote the City and market that the City is actively encouraging economic activity, economic development, and the development, recruitment, and retention of new businesses and industries.
 - 1.3 To develop publications, online tools, social media outlets, audio-visual aids, and other marketing materials that will assist in achieving the economic development and growth objectives, and provide copies or links to such publications, online resources, aids, and marketing materials to the City.

- 2. LAEC agrees to provide the following specific services on behalf of the City:
 - 2.1 Economic Development Marketing Services;
 - 2.2 Primary Employer Retention and Support;
 - 2.3 Primary Employer Recruitment;
 - 2.4 Local Business Support;
 - 2.5 Startup Community Support;
 - 2.6 Business Advocacy; and
 - 2.7 Publications, Website and Social Media Development, Maintenance and Distribution.
- 3. LAEC agrees to fully comply with the organizational and procedural matters set forth in Article IV that apply to LAEC and to perform the services detailed in **Exhibit A**.
- 4. FINANCIAL REPORTS AND AUDITS. LAEC agrees to keep and maintain such books of account and records, as may be required by the direction of the City, reflecting all revenues and expenditures by it received or incurred, and shall provide quarterly financial reports in a format mutually agreed upon to include quarterly expenditures and revenues and a balance sheet. Such books and records shall otherwise be made available, at any time during normal business hours to representatives of the City, and the City may request an independent audit at any time. LAEC agrees to fully assist and cooperate in the audits and disclosures requested.
- 5. VOTING POSITIONS. The City shall be entitled to two voting positions on the Board of Directors, and the Mayor of Longmont (or his/her designee), while a non-voting member, will be a member of the Executive Committee.

ARTICLE II

6. DUTIES AND PAYMENTS. LAEC agrees to provide the services described in Article I and **Exhibit A**. Except as otherwise stated in this Agreement, the City will provide \$362,500 to compensate LAEC for the services to be provided under this Agreement. The City shall pay the said amount of \$362,500 in 12 monthly installments of \$30,208. Payments are to be made no later than the 30th day of each month during the term of this Agreement. The City agrees to fully comply with the organizational and procedural matters set forth in Article IV that apply to the City and to perform the services detailed in **Exhibit B**.

ARTICLE III

7. TERM. This Agreement shall be for a term beginning January 1, 2018, and ending December 31, 2018. This Agreement may only be modified or extended by written endorsement of each of the parties hereto.

ARTICLE IV

8. The Council of the City of Longmont (City Council) and the LAEC deem it appropriate and advisable to continue an economic development program to promote economic development

within the City of Longmont in order to stimulate economic activity which will generally benefit the City.

- 9. It is the considered opinion of the City Council that the formal organization of the LAEC be an appropriate vehicle to promote such economic growth.
- 10. LAEC shall be organized and maintained as a non-profit corporation under the applicable laws of the State of Colorado.
- 11. The City contemplates entering into agreements with LAEC for procurement services involving economic development.

ARTICLE V

- 12. UNLAWFUL EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS. LAEC shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. LAEC shall not knowingly contract with a subcontractor that: (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement; or (b) fails to certify to the LAEC that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- 13. DUTY TO TERMINATE A SUBCONTRACT EXCEPTIONS. If LAEC obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien, LAEC shall:
 - (a) notify the subcontractor and the City within three days that LAEC has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (b) terminate the subcontract with the subcontractor if, within three days of receiving notice that LAEC has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien.
- 14. VERIFICATION REGARDING ILLEGAL ALIENS. LAEC has confirmed the employment eligibility of all employees newly hired for employment to perform work under this Agreement through participation in either the E-Verify program, administered jointly by the United States Department of Homeland Security and the Social Security Administration, or the Employment Verification program of the Colorado Department of Labor & Employment.
- 15. LIMITATION REGARDING E-VERIFY PROGRAM. LAEC shall not use either E-Verify or Colorado Department of Labor & Employment program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.
- 16. DUTY TO COMPLY WITH STATE INVESTIGATION. LAEC shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of

an investigation pursuant to Section 8-17.5-102(5), C.R.S.

- 17. DAMAGES FOR BREACH OF CONTRACT. In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Agreement, if the City terminates this Agreement in whole or in part due to LAEC's breach of any provision of this Agreement, LAEC shall be liable for actual and consequential damages to the City. In such case, the City shall give LAEC written notice of such breach and LAEC shall have 30 days to cure said breach. If the City breaches any provision of this agreement, LAEC shall give the City written notice of the breach and the City shall have 30 days to cure said breach.
- 18. STATUS OF CONTRACTOR. The Contractor shall perform all services under this Contract as an independent contractor and not as an agent or employee of the City. It is mutually agreed and understood that nothing contained in this Contract is intended or shall be construed as in any way establishing the relationship of co-partners or joint ventures between the parties hereto, or as construing the Contractor, including its agents and employees, as an agent of the City. The Contractor shall remain an independent and separate entity. The Contractor shall not be supervised by any employee or official of the City, nor will the Contractor exercise supervision over any employee or official of the City. The Contractor shall not represent that Contractor is an employee or agent of the City in any capacity. The Contractor is not entitled to City workers' compensation benefits and is obligated to pay federal and state income tax on money earned pursuant to this Contract, if applicable.
- 19. PERSONNEL. Contractor agrees to provide competent personnel with expertise in the delivery of the scheduled services to achieve and maintain a highly professional and competent level of services.
- 20. INSURANCE & WORKERS' COMPENSATION. The Contractor is solely responsible for providing any insurance including liability, casualty, and workers' compensation for the Contractor's use. Contractor shall provide during the time of this Contract a general liability policy with limits no less than \$1,000,000 per occurrence, and a workers' compensation insurance policy covering all employees and complying with state law. Before the effective date of this Agreement, the Contractor shall present to the City's Risk Manager a certificate showing it has the required policies in effect. The certificate shall require 30 days' notice before termination, cancellation, or modification of any insurance policy. Any variance to these insurance provisions must be approved in writing by the City's Risk Manager and will become incorporated as an addendum to this Agreement.

Contractor shall not cancel, materially change, or fail to renew insurance coverages. Contractor shall notify the City of Longmont, Risk Manager's Office, 350 Kimbark St., Longmont, CO 80501, of any material reduction or exhaustion of aggregate limits. In the event any policy is canceled or has a material reduction of aggregate limits before final payment by the City to the Contractor, the Contractor shall immediately procure other insurance sufficient to maintain the insurance requirements of this Agreement. If any policy lapses or is canceled before final payment by the City to the Contractor, and if the Contractor fails immediately to procure other insurance as specified, the City may deem such failure to be a breach of this Agreement.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from Contractor's operation under this Agreement.

21. CERTIFICATE OF INSURANCE. As evidence of the insurance coverages required by this Agreement, prior to the effective date of this Agreement, the Contractor shall furnish a certificate of insurance to:

City of Longmont Attn: Doug Spight, Risk Manager's Office 350 Kimbark St. Longmont, CO 80501

The liability certificate will name the City, its officers, agents, and employees as additional insureds and must require 30 days' notice to the additional insureds before non-renewal or cancellation. Insurance coverages required under this Agreement shall be obtained from insurance companies authorized to do business in the State of Colorado. If the Contractor is self-insured under the laws of the State of Colorado, Contractor shall provide appropriate declarations of coverage.

- 22. INDEMNITY. The Contractor shall fully indemnify and hold the City harmless from all claims, actions, suits, liability, losses, costs, expenses, and/or damages of any kind, whatsoever, which may occur to or be suffered by any person (including, but not limited to, the Contractor, its agents, employees, contractors, tenants, invitees, licensees, successors or assigns) arising out of, or in connection with, its use and occupation of any City facilities and/or any activities undertaken pursuant this Agreement. Upon commencement of any such suit or action against the City, the Contractor shall provide prompt notice to the City and shall defend the same at its own cost and expense. If a judgment shall be rendered against the City in such an action or suit, Contractor shall fully satisfy the judgment within 90 days after the same has been conclusively determined.
- 23. GOVERNING LAW AND VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, and any action arising out of this Agreement shall be brought in the 20th Judicial District, Boulder County District Court.
- 24. COMPLIANCE WITH ORDINANCES AND REGULATIONS. The Contractor shall perform all obligations under this Agreement in strict compliance with all federal, state, and local laws, rules, statutes, charter provisions, ordinances, and regulations applicable to the performance of the Contractor's services under this Agreement and specifically, shall not discriminate against any person on the basis of age, ancestry, color, creed, sex, race, religion, national origin, disability, sexual orientation, gender status, or as otherwise prohibited by law.
- 25. PROVISIONS CONSTRUED AS TO FAIR MEANING. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question.

- 26. HEADINGS FOR CONVENIENCE. All headings, captions, and titles are for convenience and reference only, and of no meaning in the interpretation or effect of this Agreement.
- 27. TERMINATION. This Agreement may be terminated at the sole discretion of the City for any violation by the Contractor, of any of the terms and conditions of this Agreement, including the reduction or discontinuance of the services listed in **Exhibit A**.
- 28. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit or a payment guarantee by the City to the Contractor. If appropriated funds are not available, both parties shall be relieved of their obligations hereunder.
- 29. NO IMPLIED REPRESENTATIONS. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.
- 30. NO THIRD PARTY BENEFICIARIES. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the Contractor receiving services or benefits under this Agreement shall be only an incidental beneficiary.
- 31. WAIVER. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.
- 32. SEVERABILITY. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.
- 33. AUTHORITY. The parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable laws to authorize their respective signatories to sign this Agreement and to bind them to its terms.

Executed this day of	, 2017.
CITY OF LONGMONT:	LONGMONT AREA ECONOMIC COUNCIL:
MAYOR	PRESIDENT

APPROVED AS TO INSURANCE PROVI	SIONS:	
RISK MANAGER	DATE	
APPROVED AS TO CONTENT:		
ASSISTANT CITY MANAGER	DATE	
APPROVED AS TO FORM:		
ASSISTANT CITY ATTORNEY	DATE	
PROOFREAD	DATE	

CA File: 10458

State of Colorado				
County of Boulder) ss.)			
I attest that the foreg	going instrument was acknowledged	before me this	day of	
	, 2017, by	as the Ma		
Longmont.				
Witness my hand an	d official seal.			
CITY CLERK, Nota	ary Public			
My Commission exp	pires			
State of Colorado)			
County of Boulder)			
The foregoing instru	ment was acknowledged before me	by	as	
	of the Longmont Area Ec	conomic Council, a Co	olorado non-profit	
corporation, on beha	alf of the corporation, this	day of	, 2017	
Witness my hand an	d official seal.			
Notary Public				
My Commission exp	pires			
CA File:				

EXHIBIT A

LONGMONT AREA ECONOMIC COUNCIL, dba Longmont Economic Development Partnership (LAEC) 2018 DELIVERABLES

LAEC agrees to provide the following general services on behalf of the City:

To encourage and stimulate economic development that will be of direct or indirect benefit to the City by providing information and services to existing and prospective businesses and industries.

To engage in activities that market the City of Longmont and advertise that the City is actively encouraging economic activity, economic development and the recruitment, retention and development of new businesses and industries.

To develop marketing and promotional materials that assist in achieving economic development.

LAEC will provide written quarterly reports to the City staff liaison and written and oral quarterly reports and presentations to City Council, noting the following minimum benchmarks:

1. Marketing

- 1.1. Maintain Longmont Area Economic Council website as the area's primary economic development portal and ensure it meets the needs of both external and internal audiences (for example, interactive, current economic and demographic data, detailed sales messages for each target industry, success stories from local businesses, sites and buildings listings, business resources, incentive policies, etc.).
- 1.2. Utilize social media and other media outlets to promote brand awareness.
- 1.3. Highlight the success of local business investors, inventors, and startups through local, regional, and national media outlets.
- 1.4. Create a media kit focused on Longmont's economic development assets, rankings, and success stories highlighting its attractiveness to employers and employees.
- 1.5. Meet with editorial boards of regional and national news outlets to share information about Longmont's economic development assets.

2. Primary Employer Retention

- 2.1. Survey a minimum of 115 primary employers using Synchronist software to assess expansion opportunities, identify problems and address needs. Forward all concerns that may be resolved by City departments to the City staff liaison.
- 2.2. LAEC staff will visit 50 existing primary employers and invite relevant City staff and/or elected officials to a minimum of 25 of these visits on an annual basis.
- 2.3. LAEC staff will coordinate meetings with executive leadership from all major employers (defined as 100+ employees) once per year and on an as-needed basis and invite any relevant staff from partner organizations, as deemed necessary.
- 2.4. Publically recognize, through events or other venues, new and expanding primary

- companies and primary employers that provide additional support for the community.
- 2.5. Maintain a list of economic development partners, industry representatives, and City departmental representatives who can act as a Rapid Response Team under the direction of LAEC in order to respond to prospect requests and opportunities.
- 2.6. Advertise in trade publications/attend trade shows focusing on industries identified in the Target Industry Analysis.

3. Primary Employer Recruitment

- 3.1. Provide assistance to a minimum of 50 prospects.
- 3.2. Participate in a minimum of three Business Recruitment Trips.
- 3.3. Maintain an updated confidentiality agreement with the City and communicate prospect information to City staff liaison regularly.
- 3.4. As needed, bring together relevant City department representatives to provide information and resources for prospect service delivery.
- 3.5. Participate in local, regional, and State efforts to attract primary employers.
- 3.6. Maintain a list of economic development partners, industry representatives, and City departmental representatives who can act as a Rapid Response Team under the direction of LAEC in order to respond to existing industry expansion and potential relocation outside of Longmont.
- 3.7. Coordinate meetings with the appropriate agencies to get all necessary information in a one-stop meeting. LAEC will also appear before City Council when necessary to encourage the attraction and retention of these companies.

4. Small and Local Business Support

- 4.1. Create, market, and process applications for the following grant programs or similar grant programs for businesses located in downtown, designated redevelopment areas, or other areas of the City where documented barriers exist to business development:
 - 4.1.1. Advance Longmont Small Business Grant; and
 - 4.1.2. Retail Conversion Grant.
- 4.2. The source of grant funding will be clearly identified as the City of Longmont in marketing and print materials.
- 4.3. Market and facilitate a small business lending program through the Colorado Enterprise Fund (funded by the City of Longmont).
- 4.4. Publically recognize small and local businesses through events or other venues.
- 4.5. Maintain a list of economic development partners, small business representatives, and City departmental representatives who can act as a Rapid Response Team under the direction of LAEC in order to respond to business requests and opportunities.
- 4.6. Provide, market, and document business assistance services including, but not limited to, the following:
 - 4.6.1. Offer training classes and workshops:
 - 4.6.1.1. LAEC shall maintain a formalized training partnership with the Boulder Small Business Development Center (SBDC) which will continue a robust training schedule in Longmont (SBDC services in the City shall be contracted through and funded by the City).
 - 4.6.1.2. Training provided through the SBDC contract may include such classes as Business Plan Essentials, Marketing Plan Essentials, Tax Issues for Small

- Businesses, and QuickBooks Essentials. Other workshops and programs may be added to respond to market needs.
- 4.6.1.3. LAEC will be responsible for marketing the workshops produced by the SBDC. This may include, but is not limited to, print advertising, broadcast and personally targeted emails, presentations, flyers, website promotion, personal selling (meeting individually with business owners) and comarketing through strategic partners. Generating attendance at these programs will be the responsibility of LAEC.
- 4.6.2. Provide individualized assistance such as the following:
 - 4.6.2.1. Assistance in development of business and/or marketing plans. (Note: the current City-SBDC contract requires SBDC to provide 400 hours of one-on-one consulting assistance for City businesses. These consultation hours may be used by businesses being served by LAEC or businesses seeking direct consultation services from SBDC).
 - 4.6.2.2. Connections to lenders, other financing organizations, attorneys, CPAs, and other business specialists. These connections should be made in coordination with the SBDC and other economic development partners whenever possible.
 - 4.6.2.3. Utilize GeoWize and Access Information or other vendor to provide the following services:
 - 4.6.2.3.1. Provide targeted sales and marketing leads lists for direct marketing;
 - 4.6.2.3.2. Provide profiles of current customers;
 - 4.6.2.3.3. Find new prospects that fit criteria of ideal customers; and
 - 4.6.2.3.4. Competitive intelligence.
 - 4.6.2.4. Provide strategies for business growth.
 - 4.6.2.5. LAEC staff shall market, promote, and actively collaborate with all economic development partners to identify and notify businesses that could benefit from the services noted above.
- 4.6.3. In partnership with the City and other economic development partners, develop strategies to involve and assist minority-owned/serving businesses and their employees in economic development activities and business development. These strategies should build on existing efforts such as the City's Business Outreach Team, the SBDC's Bilingual Bootcamp, and similar efforts.

5. Startup Community

- 5.1. Provide, market, and document training programs and activities that encourage entrepreneurship such as Startup Essentials and The Leading Edge Entrepreneurship Series. Other workshops and programs may be added to respond to market needs.
- 5.2. LAEC will be responsible for marketing the workshops and Leading Edge Entrepreneurship Series produced by the SBDC to the Longmont business community. This may include, but is not limited to, print advertising, broadcast and personally targeted emails, presentations, flyers, website promotion, personal selling (meeting individually with business owners) and co-marketing through strategic partners. Generating attendance at these programs will be the responsibility of LAEC.
- 5.3. Create, market, and process applications for business startup grants in redevelopment

- areas and other focus areas. The source of grant funding will be clearly identified as the City of Longmont in marketing and print materials.
- 5.4. Provide individualized assistance in areas related to entrepreneurship such as business plans and access to capital, as well as other activities, as deemed necessary.
- 5.5. Work with new and existing business incubator-type organizations to provide opportunities for additional entrepreneurship.
- 5.6. In partnership with the City and other economic development partners, LAEC will develop outreach strategies to encourage minority-entrepreneurship. These strategies should build on existing efforts such as the City's Business Outreach Team, the SBDC's Bilingual Bootcamp, and other similar efforts.

6. Advance Longmont Economic Development Plan

- 6.1. Support Project management and activity coordination of the Advance Longmont plan with economic development partners.
- 6.2. Track activities and ensure completion of reporting to City and other economic partner organizations.
- 6.3. Resolve any issues in the plan to ensure execution of the plan.
- 6.4. Provide an annual review/evaluation of the metrics for the Implementation Plan.

7. Information

- 7.1. Prepare annual prospect disposition report detailing prospect activity throughout the year.
- 7.2. Prepare and distribute 45 weekly updates on Economic Council activities.
- 7.3. Prepare and distribute quarterly economic updates and real estate reports.
- 7.4. Maintain a comprehensive real estate database on space available for primary employers, local businesses, and startups.
- 7.5. Prepare and distribute year-end net primary job and real estate activity reports.
- 7.6. Prepare and distribute quarterly newsletter on economic activity in Longmont.
- 7.7. Prepare a biannual labor migration study in conjunction with regional counterparts to determine where Longmont workforces live.
- 7.8. Provide accounting of staff involvement in prospect meetings.

8. Collaboration

- 8.1. The senior staff of the LAEC will coordinate and lead the monthly meetings of the Advance Longmont Partners group in partnership with City leadership staff.
- 8.2. Senior City staff members will meet with and/or communicate weekly with LAEC senior staff members.

9. Enterprise Zone Administration

- 9.1. LAEC will serve as the State designated Enterprise Zone Administrator for the North Metro Enterprise Zone.
- 9.2. LAEC will be responsible for marketing the Enterprise Zone program as an incentive for new business investment, and re-investment by existing business and property owners located in the Enterprise Zone designation area.
- 9.3. Serve as the signatory for Enterprise Zone pre-certifications and tax credit certifications.
- 9.4. Serve as the primary source of information on the Enterprise Zone program for businesses, tax preparers, and non-profit organizations.

- 9.5. Prepare and submit reports to the State of Colorado and City of Longmont of zone activity data collected in pre-certification and certification documents.
- 9.6. Prepare reports, as required by state statute, of Enterprise Zone contribution tax credits on a quarterly basis.
- 9.7. Prepare and submit an annual report to the State of Colorado and City of Longmont which includes economic data for the zone, efforts within the zone to improve economic conditions, and status update on Enterprise Zone goals and objectives.
- 9.8. Provide the matching funds required by the State of Colorado in order to receive the State's matching grant to fund the Enterprise Zone Administrator position.
- 9.9. Work with project organizations to complete applications and present to the Colorado Economic Development Commission for designation as a contribution project.
- 9.10. Annually submit to the Colorado Economic Development Commission for recertification of contribution projects.
- 9.11. Serve as the custodians of Enterprise Zone records as required by state statute.

EXHIBIT B

<u>CITY OF LONGMONT (CITY)</u> 2018 DELIVERABLES

- 1. Provide funding and accounting services for small business grants.
- 2. Provide auditing services for City held funds.
- 3. Be responsive to requests from LAEC to attend and participate in discussions and meetings with primary employers.
- 4. Review and consider modifying City incentive policies as needed and requested by LAEC.
- 5. Review and consider modifying procedures, policies and ordinances related to the City's development services as needed and as requested by LAEC.
- 6. Solicit and consider incorporating input from LAEC regarding the Longmont Area Comprehensive Plan and ongoing land use decisions.
- 7. Attend and participate in monthly meetings of the Advance Longmont Partners as coordinated by LAEC; coordinate with LAEC staff regarding agenda and any necessary meeting resources.
- 8. Senior City staff members will meet with and/or communicate weekly with LAEC senior staff members.