

Exhibit A

**ECONOMIC INCENTIVE
AND PERFORMANCE AGREEMENT**

This Economic Incentive and Performance Agreement (“Agreement”) is made and entered into this _____ day of _____, 2018, by and between the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic established pursuant to C.R.S. §31-25-101, et seq. (“LURA”) and _____ company (LURA and _____ are individually referred to herein as a “party” and collectively as the “parties”).

WHEREAS, _____ company, is _____ with headquarters and operational facilities in _____; and

WHEREAS, _____ will expand by purchasing the County Office (defined below) and leasing the Parking Lot (defined below); and

WHEREAS, _____ currently employs approximately _____ full time employees (“FTEs”) and presently anticipates continuous and significant growth in the number of employment positions, employing up to _____ FTEs over the next ten years; and

WHEREAS, _____ wishes to expand operations within the City of Loveland (“City”) which will include hiring additional employees with anticipated annual salaries of \$70,000 to \$ _____; and

WHEREAS, _____ currently intends to grow and wishes to centralize and consolidate its administrative offices by acquiring from LURA that certain real property legally described in **Exhibit “A”** attached hereto and incorporated by reference, also known by the mailing address of 205 East 6th Street, Loveland, Colorado (the “County Lot”), including the building structure (referred to herein individually as the “Building,” and together with the County Lot, as the “County Office”); and

WHEREAS, _____ also intends to lease from LURA that certain real property used as a parking lot and legally described in **Exhibit “B”** attached hereto and incorporated by reference, also known by the mailing address of 100 East 6th Street, Loveland, Colorado (the “Parking Lot”); and

WHEREAS, in order to move into the County Office, _____ anticipates expenditures of at least _____, excluding the purchase price of the County Office, to complete public and private improvements that support use of the County Office for the relocation and expansion of _____’s administrative office; and

WHEREAS, _____ requests from LURA economic incentives of up to _____ to defray costs of certain public improvements to the County Office; and

WHEREAS, by the adoption of Resolution #R-____-2018, the LURA Board made a finding that the economic incentive provided to _____ by this Agreement provides significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues and, therefore, that the provisions of the Agreement are in the best interests of the public, the City and LURA.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Condition Precedent The parties agree that _____’s purchase of the County Office from LURA and execution of a lease with LURA for the Parking Lot shall be conditions precedent to any obligations set forth in this Agreement and that failure to complete one or more of such conditions shall terminate this Agreement with no consequence to or obligation by any party.

2. Economic Incentive Payment

As an economic incentive for _____expanding and relocating to the County Office, LURA shall reimburse _____, in accordance with this Agreement, for costs for certain improvements to the County Office in a total amount not to exceed \$_____ (the “Incentive”). The Incentive shall be subject to all of the following terms and conditions:

- A. LURA shall match _____’s financial contribution toward any improvements to the County Office on a 1:1 basis, where for every one dollar (\$1.00) expended by _____, LURA will provide an economic incentive of one dollar (\$1.00) to reimburse costs incurred and paid for Eligible Public Improvements (defined in Section 3), up to \$_____.
- B. _____ shall invest no less than seven hundred fifty thousand dollars (\$750,000) (the “Minimum Investment”) in improvements to the County Office
- C. The Minimum Investment shall not include any reimbursement from LURA to _____ for Eligible Public Improvements pursuant to this Agreement. Improvements to the County Office funded by the Minimum Investment and Eligible Public Improvements reimbursed by LURA pursuant to this Agreement must be installed by no later than eighteen (18) months after the Closing Date (as defined in the Purchase and Sale Agreement between LURA and _____) for the County Office (the “Deadline”), provided the Deadline shall be extended on a day-for-day basis for delays relating to the issuance of permits needed for the Eligible Public Improvements or for Force Majeure. “Force Majeure” means any acts of God, strikes, lockouts, labor disputes, material shortages, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other cause not within the reasonable control of _____. Any costs incurred for Eligible Public Improvements completed after the Deadline shall not be subject to reimbursement under this Agreement.

- D. _____ shall occupy the County Office within the Deadline, as extended.
- E. Before LURA shall be obligated to reimburse _____ for its Eligible Public Improvements costs under this Agreement, _____ must submit to the Loveland City Manager or designee such documentation as may be required by the Loveland City Manager to determine that _____ has incurred and paid costs for improvements to the County Office, including costs for Eligible Public Improvements.
- F. LURA shall have the right to have its representatives periodically, but not more often than reasonably necessary, during normal business hours and upon not less than 48 hours' notice: (i) review and audit contracts, invoices, expenditures and other financial transactions and documents related to improvements to the County Office; and (ii) physically inspect the County Offices to confirm that reimbursement amounts paid to _____ were used as required under this Agreement. This right shall extend until no later than thirty-six (36) months after the Closing Date (as defined in the Purchase and Sale Agreement between LURA and _____) for the County office.

3. Eligible Public Improvements

The following improvements shall be considered “Eligible Public Improvements” for the purpose of reimbursement under this Agreement:

- A. Environmental-related abatement, including the cost of repairing or replacing systems adversely impacted by such abatement;
- B. Investments in energy efficiency;
- C. Building façade and those portions of the Building’s exterior that are visible from a public right-of way;
- D. City-required improvements to adjacent streets, curbs and gutters;
- E. Adjacent sidewalks;
- F. Landscaping;
- G. Street name, traffic control and permanent traffic control signs;
- H. Water and electric distribution systems;
- I. Stormwater control facilities; and
- J. Sewer collection improvements.

4. Repayment Upon Sale of County Office

In consideration of LURA’s Incentive, upon the sale or other conveyance of the County Office to a person or entity who is not a permitted assignee under Paragraph 8 below within 10 years from the Closing Date, LURA shall receive the following payment from _____ before or at the closing of such sale or conveyance pursuant to the schedule below.

<u>Sale or Sale within Year</u>	<u>Amount Due to LURA</u>
1	\$750,000
2	\$675,000
3	\$600,000
4	\$525,000
5	\$450,000
6	\$375,000
7	\$300,800
8	\$225,000
9	\$150,000
10	\$75,000
11	\$0

Any partial year shall be rounded to the next year where payment is due.

5. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

6. Headings

Paragraph headings used in this Agreement are used for convenience of reference only and shall in no way define, control or affect the meaning or interpretation of any provision of this Agreement.

7. City Council Approval

This Agreement shall be subject to approval by the City Council of the City of Loveland.

8. Assignment

_____ shall not assign or transfer any or all of its interests, rights or obligations under this Agreement other than to an entity that controls, or is controlled by, under common control with, _____ (such entity being a “permitted assignee”) without the prior written consent of LURA. Any other assignment of this Agreement by _____ without LURA’s prior written consent shall be deemed void and of no effect.

9. Construction

This Agreement shall be construed according to its fair meaning and as if it was prepared by all of the parties and shall be deemed to be and contain the entire Agreement between the parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by the parties.

10. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

11. Notices

Any written notice provided under this Agreement and all other correspondence between the parties shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, as follows:

If to LURA:	Stephen C. Adams City Manager City of Loveland 500 East Third Street, Suite 330 Loveland, CO 80537
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If to _____:	CEO
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Any party hereto may at any time designate a different address or individual receiving notice by informing the other parties in writing; provided, however, that after _____ occupies the County Office, its address shall automatically be updated to reflect the address of the County Office.

12. Binding Effect

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the personal representatives, estates, heirs, successors and assigns of the parties.

13. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, the parties agree that no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of LURA’s immunities, rights, benefits, protections, defenses, limitations of liability, or any other provisions under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or under any other law.

14. Multi-Year Fiscal Obligation

To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of LURA, it shall be subject to annual appropriation pursuant to Article X, Section 20 of

the Colorado Constitution. LURA shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

15. Waiver

No waiver by the parties of any of the terms and conditions of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition, nor shall such a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

(End of text on page.)

_____, [a Colorado limited liability company]

By: _____

Print Name: _____

Print Title: _____

STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____ as _____ of _____, [a Colorado limited liability company].

Witness my hand and official seal. My commission expires: _____

Notary Public

(S E A L)

**LOVELAND URBAN RENEWAL
AUTHORITY**

By: _____
Stephen C. Adams, Loveland City Manager
On behalf of the LURA Board

ATTEST:

Acting City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A
Legal Description of Property (County Lot)

Lots 13 through Lots 16, Block 7, City of Loveland, Larimer County, Colorado; Also portion of vacated alley per book 1712 page 733. Also known as 205 E. 6th Street, Loveland, Colorado.

EXHIBIT B
Legal Description of Property (Parking Lot)

Lots 9 through 13 & North 10 Feet Lot 14, Block 11, City of Loveland, Larimer County
Colorado less east 16 feet as in 787-238