

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 06
Series of 2019

TITLE: RESOLUTION NO. 06-2019 – A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT ALLOWING ROCKY MOUNTAIN BOTTLE COMPANY TO PARTICIPATE IN THE WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM FOR THE REBATE OF BUILDING USE TAX EQUAL TO THIRTY PERCENT (30%) OF TOTAL USE TAX PAID IN ASSOCIATION WITH RENOVATIONS TO THE COMPANY’S FACILITY THROUGH 2021

WHEREAS, the City has adopted as a portion of the Wheat Ridge Code of Laws (“Code”) Chapter 22, Article I, Division 5, “Business Development Zone” (the “Program”), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

WHEREAS, Rocky Mountain Bottle Company (RMBC) has applied to participate in the Program and a public hearing was posted and conducted; and

WHEREAS, RMBC is the owner and operator of 17 plus acres of land and improvements thereon within the City and known as the “Owner,” and is the operator of a business that employs residents of Wheat Ridge and surrounding communities; and

WHEREAS, Owner has begun renovations and has submitted use tax payments of \$1,180,200; and

WHEREAS, Owner plans to invest approximately \$120,000,000 in improvements and equipment (the “Project”); and

WHEREAS; the Project currently employs 226 primary jobs and will add an additional 15-18 new jobs paying up to \$100,000 annually; and


WHEREAS; the Project spurs reinvestment through renovation, thus enhancing and preserving its economic viability in the City; and

WHEREAS, cost-sharing at the rate prescribed herein will serve to aid the expansion of Owner in that it will alleviate a portion of the costs associated with the expansion.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

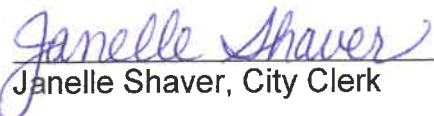
A Business Development Zone Program Agreement is hereby approved with RMBC wherein an amount of 30% of use-tax, at a rate of 3.0%, will be rebated to RMBC for renovations through 2021 in an amount estimated at \$540,000, but not to exceed \$1,080,000.

DONE AND RESOLVED this 28th day of January 2019.



Bud Starker, Mayor

ATTEST:



Janelle Shaver, City Clerk



AGREEMENT TO PARTICIPATE IN THE
CITY OF WHEAT RIDGE BUSINESS DEVELOPMENT ZONE PROGRAM

This Agreement to Participate in the City of Wheat Ridge Business Development Zone Program (this "Agreement") is made and entered into as of the 28th day of January, 2019, by and between Rocky Mountain Bottle Company, hereinafter referred to as the "Owner" and the CITY OF WHEAT RIDGE, COLORADO, 7500 W. 29th Avenue, Wheat Ridge, Colorado 80033 hereinafter referred to as the "City," collectively the "Parties," and each individually, as a "Party."

WHEREAS, the City has adopted as a portion of the Wheat Ridge Code of Laws ("Code") Chapter 22, Article I, Division 5, "Business Development Zone" (the "Program"), to encourage, in part, continued development and expansion of opportunities for employment in the private sector in the City; and

WHEREAS, Owner has applied to participate in the Program; and

WHEREAS, Owner is the owner and operator of leased space and improvements thereon within the City and known as the "Rocky Mountain Bottle Company ("RMBC")," which is a glass container production facility; and

WHEREAS, pursuant to Code Sec. 22-86, the City Council has designated the real property leased by RMBC as a "Wheat Ridge Business Development Zone"; and

WHEREAS, Owner plans to construct new equipment and plant improvements in a 17+ acre site by December 31, 2021; and

WHEREAS, Owner's plans and new equipment and plant improvements will lead to increased employment from their current 226 to 15-18 new employees; and

WHEREAS, while such an increase in employees with an average salary of \$100,000 will indirectly impact City services through increased sales tax opportunities will not directly impact City revenue; and

WHEREAS, the Program allows the City to provide for the sharing of certain categories of fees, taxes and other business development-related charges for new development within the business development district ("Eligible City Fees, Charges and Taxes" as defined in Code Sec. 22-87 (2)) to the extent allowed by an agreement with a business owner; and

WHEREAS, cost-sharing at the rate prescribed herein will serve to aid the expansion of RMBC in that it will alleviate a portion of the costs associated with the expansion.

NOW, THEREFORE, in consideration of the foregoing, and the covenants, promises, and agreements of each of the Parties hereto, to be kept and preformed by each of them, the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated in this Agreement by reference

2. **Term.** The term of this Agreement shall commence on May 1, 2018 and shall terminate upon full refund by the City to Owner of eligible City fees, charges and taxes as set forth in Paragraph 7 or December 31, 2021(the "Term"). Notwithstanding the foregoing, it is an express provision of this Agreement that this Agreement shall expire and be of no further force and effect upon the occurrence of the earlier to occur of: (1) expiration of the Term or (2) payment of the maximum amount to be shared as set forth in Paragraph 7 (whether or not the Term has expired), or (3) determination by the City of Owner's default, as provided in Paragraphs 13 or 15.

3. **The Project.**

The project proposed by the Owner through which it desires to participate in the Program consists of the following, generally shown in **Exhibit A**. The foregoing shall be collectively referred to herein as the "Project," and is more fully described below at Paragraphs 4 and 8.

4. **Representations of Owner.** Pursuant to Code Sec. 22-86, Owner hereby represents to the City the following:

a. **Improvements justifying Project approval.**

i. **Estimated cost.** The cost for the Project including the improvements described above is estimated to be approximately One hundred and twenty million dollars \$(120,000,000) of which use tax shall be remitted to the City.

b. **Expected incremental future tax revenue.** Owner operates a glass container production facility.. Any incremental future use tax revenue will be directly generated by this Project. Benefits to the community which may generate future use tax indirectly have been identified by the Owner as follows:

- i. Short-term positive impact during construction: Prior to the completion of the Project, the tenant improvement phase will employ additional personnel in the construction phase.
- ii. Long-term positive impact by addition of staff: With increased facilities and ability to increase services, Owner will employ more permanent staff. Specifically, it is estimated that permanent staff will be added to the facility. It is anticipated that at the completion of the Project, 15-18 full-time employees will be hired with an average salary of \$100,000.
- iii. The completion of the project will provide for a cleaner environment through the installation of materials which operate cleaner and more efficiently.

5. **Personal agreement; non-transferable; no third party beneficiaries**

The cost-sharing of Eligible City Fees, Charges and Taxes as approved herein shall constitute a personal agreement between the City and Owner. The terms of this Agreement do not run with the land. The obligations, benefits and/or provisions of this Agreement may not be assigned in whole or in any part without the express authorization of the City Council. No third party shall be entitled to rely upon or enforce any provision hereof.

6. Agreement not to constitute debt or obligation of the City

Nothing herein shall be construed to constitute a debt or obligation of the City. Notwithstanding any other provision of this Agreement to the contrary, the Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). This Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the City and other applicable law.

7. Cost-sharing

- a. Estimated Eligible City Fees, Charges and Taxes. The following are estimates of the Eligible City Taxes which are the subject of the cost-sharing herein and attached as **EXHIBIT A**.
- b. Expected Incremental Future Sales and Use Tax Revenue. The Expected Incremental Future Sales and Use Tax Revenue, as such term is defined in Code Sec. 22-87 (2), is estimated to be \$4,200,000.
- c. Cost-sharing. Pursuant to Code Sec. 22-88, cost-sharing of the Eligible City Fees, Charges and Taxes may be granted up to the Expected Incremental Future Use Tax Revenue. However, it is anticipated that the Incremental Use Tax Revenue received from the Project is currently projected to be \$3,980,690. *Notwithstanding the foregoing*, and in reliance upon the representation of Owner of the benefits to the City of the Project, the City and Owner agree to the cost-sharing for the Eligible City Fees, Charges and Taxes as follows:

100% of the Eligible City Use Taxes shall be due and paid to the City by Owner based upon review and approval by the City of properly documented requests for the same. Upon receipt thereof, the City shall refund 25% of such Eligible City Taxes back to the Owner payments to their overall Tax charge described in Paragraph 2 herein. In no event shall the City be obligated to refund more than THIRTY PERCENT (30%) of eligible City Fees, Charges and Taxes received by it. **The amount rebated shall not exceed \$1,080,000 and the use tax rate refund will be set at THREE PERCENT (3%).**

8. Legal challenge

In the event of legal challenge to the Program as applied to Owner, any costs scheduled to be shared-back to Owner shall be escrowed until resolution of the dispute.

9. Waiver of Code requirements

To the extent any requirements of Code Secs. 22-85 through 22-94 have been waived, such waiver has occurred pursuant to Code Sec. 22-91 whereby the City Council has found by a majority vote that such waiver is in the public's interest and will provide a substantial benefit to the City.

10. No joint venture

Pursuant to Code Sec. 22-93, nothing herein shall be construed to create a joint venture between the City and Owner. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in the Program, and the City shall never be liable or responsible for any debt or obligation of any participant, including the Owner, in the Program.

11. Use of funds

Pursuant to Code Sec. 22-89, Owner expressly acknowledges and agrees that any Eligible City Fees, Charges and Taxes refunded to the Owner under this Agreement, up to the amount agreed upon by the City Council pursuant to this Agreement may only be used for the purpose of the Project, as described in Paragraph 12, on Owner's Property within the underlying Business Development Zone.

12. Uses enumerated

Pursuant to Code Sec. 22-90, the uses to which the Eligible City Fees, Charges and Taxes may be put by the Owner shall be strictly limited to those which are approved by the City Council and which relate directly to the Project within the City, which Project is anticipated to indirectly generate more municipal sales and use tax revenues for the City in the future. Uses hereby expressly approved by City Council are as follows:

- a. Investment into new equipment and plant improvements in an amount not to exceed \$120,000,000.

13. No Covenant to construct or to operate

The intent of this Agreement is to provide for Owner's participation in the Program, in the event that Owner completes the Project. Notwithstanding any provision in this Agreement to the contrary, Owner shall have no obligation under this Agreement to complete the Project. In the event Owner fails to complete the Project, this Agreement may be terminated at the option of the City.

14. Remedies

The Owner waives any constitutional claims against the City arising out of a breach of this Agreement. The Owner's remedies against the City under this Agreement are limited to breach of contract claims. In no event shall the City be liable for any form of damages, including without limitation: exemplary, punitive or consequential damages, including economic damages and lost profits.

15. Termination

In the event Owner fails to comply with one or more of the terms of this Agreement, City may, in its sole discretion, terminate this Agreement.

16. Indemnification

To the fullest extent permitted by law, Owner agrees to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by the Owner's negligent acts, errors or omissions in the performance this Agreement and those of its sub-contractors, sub-consultants or anyone for whom the Owner is legally liable. To the extent permitted by the Colorado Constitution and statutes, the City agrees to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions arising from this Agreement. These defense and indemnification obligations shall survive the expiration or termination of this Agreement. The Parties acknowledge that the provisions of this Paragraph are not intended to waive or alter any of the rights and defenses afforded to the City under the common law, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et. seq.* or any other law.

17. Severability

If any part, term or provision of this Agreement or the Program is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid, and the Parties shall cooperate to cure any legal defects in the Agreement or the Program. Should the sharing of Eligible City Fees, Charges and Taxes pursuant to this Agreement be judicially adjudged illegal, invalid or unenforceable under the present or future laws effective during the Term of this Agreement by a court of competent jurisdiction in a final, non-appealable judgment, the Parties shall utilize their best, good faith efforts to restructure this Agreement or enter into a new agreement consistent with the purposes of this Agreement. Should the Parties be unsuccessful in their efforts, the Agreement shall terminate without penalty or recourse to either Party.

18. Governing law; venue

The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal suit or action for enforcement of any

obligation contained herein, it is agreed that venue of such suit or action shall be proper and exclusive in the district court for Jefferson County, Colorado.

19. Notices

All notices required or permitted under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to be addressed to the Parties set forth below. All notices so given shall be considered effective upon the earlier of the actual receipt or seventy-two (72) hours after deposit in the United States Mail with the proper address. Either Party by notice so given may change the address to which future notices shall be sent:

Notice to the City: City Manager
City of Wheat Ridge
7500 W. 29th Ave.
Wheat Ridge, CO 80033

Copy to: City Attorney
City of Wheat Ridge
7500 W. 29th Ave.
Wheat Ridge, CO 80033

Notice to the Owner: _____

Wheat Ridge, CO 80033

Copy to: [INSERT CONTACT]
Address

20. Entire agreement – amendments

This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between the Owner and the City acting pursuant to City Council authorization.

21. Effective date

This Agreement shall be effective and binding upon the Parties upon the date first set forth above.

IN WITNESS WHEREOF, Owner and City have each caused this Agreement to be executed by their authorized representatives.

OWNER

By: _____

Name: _____

Title: _____

State of Colorado)

)

ss.

County of Jefferson)

The foregoing Agreement was acknowledged before me this ___ day of _____, 2011, by _____ as _____ of RMBC, LLC

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____

NOTARY PUBLIC

CITY OF WHEAT RIDGE

By: _____

Name: Bud Starker

Title: Mayor

ATTEST:

Name: Janelle Shaver

Title: City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

EXHIBIT A

**RMBC Project Profile - Revised
December 3, 2018**

Attachment 1

Investment Summary – Potential Plant Investment, 2018-2021

Description	Est. Cost	Sub-Total	Timing
<i>Phase 1 - A/B Furnace Project</i>			2018-2019
Cold End Inspection			
Abatement System			
Batch House			
Furnace Demolition and Misc. Repairs			
Furnace Rebuild			
Building Repairs and Alterations			
Lehr and Surface Treatment			
Forming Machines			
Infrastructure & Utilities			
Gen Contractor Services			
Engineering Services			
Contingency			
		\$91,743,000	
<i>Transformation Project</i>			
Forming machine conversion	\$2,800,000		
Inspection machine guarding	\$1,906,000		
Misc. replacement equipment	\$1,300,000		
		\$6,006,000	
<i>Phase 2 - Quality Project A</i>			2020
New quality equipment	\$3,200,000		
Inspection machine guarding	\$980,000		
Misc. replacement equipment	\$1,300,000		
		\$5,480,000	
<i>Phase 3 – C Furnace Project</i>			2021
C Tank Rebuild	\$8,000,000		
New quality equipment	\$1,290,000		
Misc. replacement equipment	\$1,200,000		
		\$10,505,000	
Total Purchases:		\$113,734,000	2018-2021
Maximum Costs:		\$120,000,000	2018-2021

Notes:

1. Equipment leases entered into as part of the Project are eligible for the BDZ cost-sharing.
2. The Maximum Costs allowance takes into account the potential for increased cost/revised project budgets.