

INCENTIVE AGREEMENT
(Real and Personal Property Tax)

THIS AGREEMENT made and entered into this 6th day of January, 2017, by and between **McLane Foodservice**, located at 2085 Midway Road, Carrollton, TX 75006 (hereinafter referred to as "**Taxpayer**"), and Adams County, Colorado, a body politic and corporate under the laws of the State of Colorado (hereinafter "County").

WITNESSETH:

WHEREAS, **Taxpayer** intends to purchase twenty acres of land in Commerce City and to build a 230,000 square foot facility on said land in Adams County, Colorado (the "Facility"). **Taxpayer** further plans on retaining two-hundred thirty five employees at the Facility at the commencement of this Agreement and to add five employees for each of the first three years of this Agreement, employing at least two hundred fifty employees for each of the last three years of this Agreement to work at the Facility; and,

WHEREAS, the County deems it to be in its best interests to have **Taxpayer** expand the Facility in Adams County and to receive revenues from the development occurring thereon upon the terms and conditions contained herein; and,

WHEREAS, **Taxpayer** has established a new business facility as defined in C.R.S. § 39-30-105(7)(e); and,

WHEREAS, the County finds that that the Facility is in an Enterprise Zone and that expansion of the Facility will substantially benefit the public, through the retention of employees, the generation of new jobs and the increase in tax base in the County; and,

WHEREAS, §30-11-123, C.R.S., provides for incentive payment based on personal property taxes to any taxpayer who qualifies under C.R.S. § 39-30-105(7)(e).

NOW, THEREFORE, in consideration of the foregoing promises and covenants, to be kept and performed by each of them, the parties agree as follows:

1. Incentive payment. The County agrees to make six (6) annual incentive payments to **Taxpayer**. The amount of each incentive payment shall be the lesser of: (1) \$39,799 for assessment year 2018; \$38,784 for assessment year

2019; \$37,768 for assessment year 2020; \$29,402 for assessment year 2021; \$28,589 for assessment year 2022; \$27,777 for assessment year 2023; OR (2) fifty percent (50%) of the amount of the taxes levied by the County¹ upon the taxable real and personal property directly attributable to the Facility, located at or within such Facility, and used in connection with the operation of such Facility for the applicable property tax year. In no event shall the total amount of the incentive payments exceed \$202,119.

Proof of payment of the taxes to the County Treasurer for the Facility must be submitted each year by **Taxpayer** to the Director of the Adams County Department of Fiscal Affairs before any incentive payment is due. Proof of payment of taxes for each incentive year must be submitted by **Taxpayer** no later than December 31 of the year taxes are due. **Taxpayer understands and agrees that failure to submit proof of payment of taxes to the Adams County Department of Fiscal Affairs by December 31 of the year taxes are due shall result in a waiver of the incentive payment due on the tax payment not presented by the December 31 deadline, and the County shall be released from its obligation to pay the incentive payment for that tax year.**

Each incentive payment shall be due and payable within sixty days of receipt of proof of payment of taxes. Taxpayer waives the right to file a protest or seek an abatement or refund with respect to the tax years enumerated in the first paragraph of this Section 1.

2. Condition Precedent. The County has appropriated sufficient funds for this Agreement for the current fiscal year. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event that funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.

3. Attorney's Fees and Costs of Suit. The parties agree that in the event any suit is brought under this Agreement, each party shall pay its own attorney's fees, costs and expenses.

4. Assignment. None of the rights, duties and obligations of **Taxpayer** hereunder may be assigned.

¹ Taxes levied by other taxing entities such as school districts, municipalities, special districts, etc., are not County funds and are, therefore, not included in this calculation.

5. Term of Agreement. The term of this Agreement shall not exceed six (6) years of assessments.

6. 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. This Agreement may be amended only by written agreement between **Taxpayer** and the County acting pursuant to Board authorization.

7. Remedies. This Agreement shall be interpreted according to, and shall be governed by, the laws of the State of Colorado, whose courts shall have exclusive jurisdiction over any claim or cause of action arising hereunder. Venue for any suit arising under this Agreement shall be in Adams County, Colorado.

8. Severability. The parties agree that if any part, term or provision of this Agreement 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, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be invalid.

9. Effective Date. This Agreement shall become effective and binding upon the parties immediately upon execution by all parties hereto.

10. Jobs for Adams County Residents. **Taxpayer** has represented that it plans to retain two hundred thirty-five employees at the Facility at the commencement of this Agreement and to add five employees for each of the first three years of this Agreement, employing at least two hundred fifty employees for each of the last three years of this Agreement. The obligations of the County under this Agreement are conditioned upon compliance by **Taxpayer** with this representation. **Taxpayer** agrees to make available to the County sufficient records of employment to establish compliance, at the request of the County.

11. Warranty. **Taxpayer** represents and warrants that the Facility expansion that is contemplated herein qualifies for tax incentives under applicable Colorado law.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement on their behalf.

Dated this ____ day of _____, 2017.

COUNTY OF ADAMS
STATE OF COLORADO

ATTEST:
STAN MARTIN, CLERK

By: Chair, Board of County Commissioners

Erica Hannah, Deputy Clerk

Approved as to form:

McLane Foodservice

By: Tom Anderson, CPA
Title: Senior Tax Manager

Subscribed and sworn to before me this 6th day of January,
2017, by Tom Anderson.

Notary Public

My commission expires: June 13, 2019

