


ADMINISTRATION MEMORANDUM

12-14

DATE: May 14, 2012

TO: Honorable Mayor Joyce Downing & City Council Members

FROM: William Simmons, City Manager
Debbie Tuttle, Economic Development Manager 

SUBJECT: CR-28 - Business Assistance Incentive Agreement for Boondocks Fun Center

RECOMMENDATION

Staff recommends approval of Resolution CR-28, which, if approved, would authorize the City Council to approve the attached Business Assistance Incentive Agreement as described in **Exhibit 1** to assist in the purchase and installation of a new LED billboard sign for Boondocks Fun Center. In compliance with the provisions of Articles 12 and 13 of Chapter 5 of the Northglenn Municipal Code, and the Business and Development Assistance and Incentive Policy staff recommends entering into an Agreement with Boondocks for an incentive not to exceed a total of \$91,468. The Agreement maintains the current sales and use tax base, and will terminate by February 28, 2015, or when the maximum reimbursement amount of the ESTIP of \$43,450 is met – whichever comes first.

BACKGROUND

Boondocks recently completed a \$5 million expansion of its current Northglenn facility. The company made a formal request to Council on January 19, 2012 for a business incentive to assist in the purchase and installation of a new electronic LED Billboard sign to market their business. Council requested two formal contractor bids be sought for the sign, and that the staff review the specifications to ensure that they were in compliance with the PUD zoning regulations.

In mid-March Boondocks revised their annual revenue projections, sign specifications, and evaluated other vendors and pricing for this project. These have been incorporated in this request, and the sign specifications as described in **Exhibit A** are in compliance with Northglenn's Municipal Code.

SCOPE OF WORK

Boondocks plans to purchase and install a LED billboard sign estimated to cost \$159,669 as described in **Exhibit C**. If this incentive is approved, Boondocks' has agreed to also market the City and its events on the sign for the next ten years as described in **Exhibit B**.

BUDGET IMPLICATIONS

Based on the cost of the sign, and sales tax projections supplied by Boondocks Fun Center, the staff recommendation is for a combined BIZ and ESTIP not to exceed \$91,468. The Agreement maintains the current sales and use tax base, and will terminate by February 28, 2015, or when the maximum reimbursement amount of the ESTIP of \$43,450 is met – whichever comes first. It would include:

1. 25% abatement of building permit, plan check, and electrical fees for the new sign (not to exceed \$623);
2. 3% abatement of use tax on the new sign and associated construction materials (not to exceed \$2,395);
3. 3% reimbursement on use tax on business expenses and FF&E (above the base) from March 1, 2012 – February 23, 2013 (not to exceed \$45,000); and
4. 75% reimbursement of qualified (3%) enhanced sales tax (above the base) to expire February 28, 2015 or \$43,450 – whichever comes first.

Note: These are estimated figures based on the sign cost and sales/use tax projections provided by Boondocks. They could vary based on actual expenses and revenues. They will not exceed the agreed upon amounts indicated in the Agreement.

STAFF REFERENCE

If Council members have any comments or questions, they may contact Bill Simmons at 303.450.8709 or wsimmons@northglenn.org or Debbie Tuttle at 303.450.8743 or dtuttle@northglenn.org.

Attachments:

- Exhibit 1 – Incentive Agreement
- Exhibit A – LED Sign Specifications
- Exhibit B – City Sign Usage
- Exhibit C – LED Sign Cost Proposal

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-28
Series of 2012

Series of 2012

A RESOLUTION APPROVING AN INCENTIVE AGREEMENT WITH BOONDOCKS FUN CENTER – NORTHGLENN, LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Incentive Agreement between Boondocks Fun Center – Northglenn LLC and the City of Northglenn (the “Incentive Agreement”), attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute the same on behalf of the City.

Section 2. Because the Incentive Agreement includes a component pursuant to Article 12 of Chapter 5 of the Northglenn Municipal Code, the City Council further finds and determines that the enhanced sales tax component of the Incentive Agreement is necessary and appropriate based on the following criteria pursuant to 5-12-9 of the City of Northglenn Municipal Code:

- (a) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the City through the expanded or retail sales tax generating business;
- (b) The public benefits which are provided by the applicant through public works, public or public-related improvements, additional employment for City residents, etc;
- (c) The amount of expenditures which may be deferred by the City based upon public or public-related improvements to be completed by the applicant at the applicant's expense;
- (d) The conformance of the applicant's property or project with the comprehensive plan, zoning ordinances and building codes of the City; and
- (e) The agreement required by Section 5-12-10 having been reached, which agreement shall contain and conform to all requirements of Section 5-12-10 of the Northglenn Municipal Code.

DATED at Northglenn, Colorado, this _____ day of _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

EXHIBIT 1

**INCENTIVE AGREEMENT
(BOONDOCKS)**

THIS INCENTIVE AGREEMENT (the "Agreement") is made and executed effective this _____ day of May, 2012, by and between the CITY OF NORTHGLENN, COLORADO, a Colorado home rule municipal corporation (hereafter referred to as the "City") and BOONDOCKS FUN CENTER – NORTHGLENN, LLC, a Colorado limited liability company (hereafter referred to as "Boondocks").

W I T N E S S E T H

WHEREAS, Boondocks is the owner of property located generally at 11425 Community Center Drive, Northglenn, Colorado (the "Property");

WHEREAS, Boondocks proposes to purchase and install a new electronic LED billboard sign on the Property as more specifically set forth in the attached **Exhibit A** (the "LED Sign");

WHEREAS, in entering into this Agreement, the City Council of the City specifically finds that entering into this Agreement will encourage the substantial expansion of a tax generating business within the City; thereby stimulating the economy of and within the City; thereby providing employment for residents of the City and others; thereby expanding the goods available for purchase and consumption by residents of the City; and further increasing the taxes collected by the City;

WHEREAS, the City Council finds that the redevelopment of the Property is necessary to promote the public welfare including the expansion of a tax generating business and expanded employment opportunities;

WHEREAS, the City Council further finds that entering into this Agreement shall provide a mechanism for the provision to the residents of the City of necessary public and private improvements at no cost or reduced cost to the residents and the government of the City;

WHEREAS, the parties hereto wish to set forth in full their agreement as to the general nature and extent of the LED Sign to be constructed and installed by Boondocks within and upon the Property, and the manner for and extent of the reimbursement to Boondocks for such construction and installation; and

WHEREAS, Boondocks agrees to provide city-related advertising and promotional opportunities as described in **Exhibit B** on the LED Sign.

WHEREAS, the parties wish to memorialize all aspects of their agreement as to the terms and conditions of such reimbursement, fee waivers, certain use tax abatements and sales tax reimbursement in this Agreement.

NOW THEREFORE, the parties hereto, for themselves, their successors and assigns (to the extent this Agreement is assignable, as specified hereinafter), in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

1. Authority. This Agreement is entered into in compliance with the provisions of Articles 12 and 13 of Chapter 5 of the Northglenn Municipal Code.

2. Improvements. Boondocks shall have the right to construct, or cause to be constructed the LED Sign in compliance with the specifications set forth in **Exhibit A**. Failure to construct the LED Sign shall result in the termination of this Agreement pursuant to Section 6.

3. Business Incentive Zone (BIZ). In accordance with the goals and purposes of Articles 13 of Chapter 5 of the Northglenn Municipal Code, the City shall provide the following incentives described below. In calculating the specific use tax incentives, the total amount of the City's four percent (4%) use tax is restricted by one-half percent (1/2%) use tax devoted to water acquisition and one-half percent (1/2%) use tax devoted to capital improvements, which results in a three percent (3%) use tax to be used in determining the below described abatements. The total BIZ incentives are as follows:

a. The City shall abate twenty-five percent (25%) of the applicable building permit, plan check, and electrical fees at time of submittal otherwise due and owing to the City on the LED Sign and LED Sign construction materials;

b. The City shall abate three percent (3%) use tax at the time of submittal otherwise due and owing to the City on the LED Sign and LED Sign-related construction materials; and

c. Upon completion and city approval of the LED sign, the City shall further reimburse the three-percent (3%) use tax otherwise due and owing to the City on new business expenses and fixtures, furniture and equipment (FF&E) at the Property in excess of the Use Tax Base defined below during the period of March 1, 2012 through February 28, 2013.

The parties agree that the Use Tax Base (the "Use Tax Base") during the 12 month period ending December 31, 2011 shall be thirteen thousand six hundred and nineteen Dollars (\$13,619.00) in 2012. In addition, the maximum amount of BIZ incentives under this Section 3 (sign and new business expenses and FF&E) shall not exceed the total amount of Forty-Seven Thousand Three Hundred and ninety-five Dollars (\$47,395.00).

4. Enhanced Sales Tax Incentive Program (ESTIP). In addition to the BIZ incentives provided in Section 3 above, in accordance with the goals and purposes of Articles 12 of Chapter 5 of the Northglenn Municipal Code, the parties hereby mutually to the following ESTIP provisions. For purposes of this Section 4, the total amount of the City's four percent (4%) sales tax is restricted by one-half percent (1/2%) sales tax devoted to water acquisition, and the one-half percent (1/2%) sales tax devoted to capital improvements, which results in a three percent (3%) sales tax to be used in determining this reimbursement. All sales tax revenues collected from any and all businesses on the Property above the Sales Tax Base described herein shall constitute the Enhanced Sales Tax and shall be subject to division and reimbursement as specified herein. The parties agree that the Sales Tax Base during the 12 month periods ending December 31, 2011 shall be ninety-seven thousand three hundred and five Dollars (\$97,305.00) in 2012; and ninety-nine thousand two hundred and fifty-one Dollars (\$99,251.00) in 2013; and one-hundred and one thousand two hundred and thirty-six dollars (\$101,236.00) in 2014. Such Sales Tax Base amounts include a 2% annual inflation adjustment from the previous twelve (12) month period. Thus, subject to the above, the parties hereby agree that the Enhanced Sales Tax as defined herein shall be subject to sharing by the City and Boondocks on a 75/25 basis, with twenty five (25%) of said Enhanced Sales Tax being available to the City for use in its discretion, and seventy five percent (75%) to be reimbursed by the City to Boondocks.

The parties agree that the maximum reimbursement (the "Maximum Reimbursement") of Enhanced Sales Tax revenue subject to distribution to Boondocks hereunder shall be Forty-Three Thousand Four Hundred and fifty Dollars (\$43,450.00) and that the "Enhanced Sales Tax" shall be shared commencing with sales taxes generated on the Property after the installation and city approval of the LED sign and shall terminate on or before February 28, 2015. The parties specifically acknowledge and agree that whether or not the entire Maximum Reimbursement has been earned by Boondocks, the Enhanced Sales Tax Portion ("ESTIP") reimbursement obligation of this Agreement shall terminate following division and payment to Boondocks of its portion of the Enhanced Sales Tax that has accrued as of February 28, 2015. Likewise, the parties acknowledge and agree that receipt by Boondocks of the Maximum Reimbursement amount of Forty-Three Thousand Four Hundred and fifty Dollars (\$43,450.00) shall terminate the ESTIP reimbursement obligations of this Agreement. The City's right to use the LED Sign for city-related advertising and promotional efforts as defined in **Exhibit B**.

5. It shall be the duty of the City to undertake collection of all sales tax generated within the Property, and thereafter to administer division and sharing thereof, in accordance with the provisions of Sections 5-12-7 and 5-12-8 of the City's Municipal Code and this Agreement. The parties agree that, for purposes of administration of this Agreement, reimbursement to Boondocks shall occur on a quarterly basis (i.e., January - March, April - June, July - September, and October - December). Reimbursements to Boondocks shall be made within forty-five (45) days following the last day of each quarter and shall be calculated based upon all sales taxes paid to the City from businesses within the Property in the preceding quarter.

6. The obligations of the City under this Agreement are specifically conditioned upon and made subject to the following contingency:

- a. Boondocks' completion of the construction of the LED Sign contemplated by this Agreement no later than December 31, 2012.

Should this contingency not be satisfied on or before the date specified, Boondocks shall pay to the City all amounts abated or reimbursed by the City under this Agreement, and this Agreement shall terminate and be of no further force and effect.

Nonappropriation/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation of sufficient funds to pay Enhanced Sales Taxes as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year, resulting in the inability of the City to pay Enhanced Sales Tax hereunder, the City shall not be obligated to make payment of the non-appropriated amounts in such year.

7. Subordination. Notwithstanding anything in this Agreement to the contrary, Boondocks shall have no right, claim, lien, or priority in or to the City's sales tax revenue superior to or on parity with the rights, claims, or liens of the holders of any sales tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes, existing or hereafter issued by the City, and that all rights of Boondocks are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any sales taxes.

8. Remedies. Boondocks waives any constitutional claims against the City arising out of a breach of this Agreement. Boondocks remedies against the City under this Agreement are limited to breach of contract claims.

9. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts 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 this Agreement or the ESTIP.

10. Governing Law. 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 in Adams County, Colorado.

11. Legal Challenges. Any and all undisbursed "Enhanced Sales Tax" increment subject to sharing hereunder shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program in general or to this Agreement. In the event of such a legal challenge, Boondocks may continue to receive reimbursements under this Agreement if it posts a bond or other security, in a form acceptable to the City, for the full amount of such reimbursements. The City shall actively defend against any such legal challenge, and Boondocks may participate in such defense at its own cost and expense.

12. Assignment. None of the obligations, benefits, and provisions of this Agreement shall be assigned in whole or in any part without the express written authorization of the Northglenn City Council. The City shall not be allowed to assign its obligations under this Agreement. In addition, no third party may rely upon or enforce any provision of this Agreement, the same being an agreement solely between the City and Boondocks, and which agreement is made for the benefit of no other person or entity. The preceding sentence notwithstanding, this Agreement and Boondocks' rights hereunder may be assigned to a company under substantially the same ownership and/or to a lender who holds a first deed of trust against the Property.

13. Modifications. This Agreement shall be subject to amendment only by a written instrument executed by each party. Any such amendment shall require the approval by the City Council of the City of Northglenn at a regular or special meeting of the City Council, and execution thereof by the Mayor and attestation by the City Clerk.

14. Notices. Any written notices provided for or required in this Agreement shall be deemed delivered when either personally delivered or mailed, postage fully prepaid, certified or registered mail, return-receipt requested, to the parties at the following addresses:

To the City:	City Manager City of Northglenn 11701 Community Center Drive Northglenn, CO 80233
With a copy to:	Hayes, Phillips, Hoffmann & Carberry, P.C. 1530 Sixteenth Street, Suite 200 Denver, CO 80202
To Boondocks:	Boondocks Fun Center Northglenn, LLC 660 E. Franklin, Suite 270 P.O. Box 1030 Meridian, ID 83642 Attn: Randy Fullmer

With a copy to: Givens Pursley LLP
601 W. Bannock
Boise, ID 83701
Attn: William Cole

DATED this day and date first above set forth.

BOONDOCKS FUN CENTER-NORTHGLENN, LLC

By: Select Investment Management Co., Its Manager

By: _____
Randy L. Fullmer, Its President

THE CITY OF NORTHGLENN, COLORADO

Joyce Downing, Mayor

ATTEST:

Johanna Small, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

Subscribed, sworn to and acknowledged before me this ____ day of _____, 2012,
by Joyce Downing as Mayor of the City of Northglenn.

My commission expires: _____

(SEAL)

Notary Public

STATE OF Idaho)

COUNTY OF) ss.

Subscribed, sworn to and acknowledged before me this ____ day of _____, 2012 by _____ as _____ of _____, a _____.

My commission expires:

(SEAL)

Notary Public

EXHIBIT A LED SIGN SPECIFICATIONS

The existing 50' pylon freeway sign will be removed and reused at the new location depicted on the most recent PUD. The new sign will be approximately 40' overall height, with flags extending above the cabinet. A new 13'-6" x 17'-7" double faced cabinet that will accommodate an 8'-11" x 17'-7" full color LED message center will be installed. The message center will be a 20mm 128 x 256 RGB full color LED display in a Non-Structural Unibody cabinet style. The active area of the LED display will be 8'-8" x 17'-4" with a maximum capacity of 16 lines of copy with 51 characters each. The LED cabinet will be front serviceable with an internal compact PC computer, which will be controlled by a wireless RF signal from a supplied desktop computer with PrismView software and a 19" monitor. There will also be a cabinet with individual letters at the top of the display reading: "Boondocks" and vinyl copy below the letters reading: "Fun Center" with the two steel flags at the top of the display. All sizes and descriptions are approximate and not meant to portray exactly what will be erected. Actual drawings will be submitted to the City for review during the permit application process. Please see the example sign rendering below.



EXHIBIT B

BOONDOCKS

LED Sign – CITY RELATED ADVERTISING & PROMOTION

The new electronic LED billboard sign on the Property defined as the “LED Sign” pursuant to Sections 2 and 6 of the Incentive Agreement shall be subject to the following use provisions regarding the City’s use of the LED Sign:

1. The City shall be allowed one promotional slide per month. Said slide shall be 10 seconds and shall run approximately 1,000 time per day so long as the LED sign is operating within the reasonable control of Boondocks
2. The City will provide the artwork for the City’s slide no later than ten (10) days prior to the beginning of the next calendar month; and
3. The City’s use of the LED sign hereunder is intended to continue for ten (10) years from completion and city approval of the LED sign or so long as Boondocks or a company under substantially the same ownership owns the LED Sign.

EXHIBIT C



May 11, 2012

Boondock's Fun Center
Attn: Randy Fullmer
11425 Community Center Dr.
Northglenn, Colorado

The following is Young Electric Sign Company's proposal to remodel the pole sign at the Boondocks in Northglenn. All work and specifications will be as per YESCO print #700417-1R2, dated 2/23/12.

We propose to remove the existing 50' two pole freeway sign from its' existing location. We will cut off the existing supporting structure at grade and reuse it at the new location so that the new sign is 40'- 7 1/4" overall height, with the flags extending above the cabinet. We will manufacture and install a new 13'-6 1/2" x 17'-7 5/8" double faced cabinet that will accommodate an 8'-11 1/4" x 17'-7 5/8" full color LED message center. The message center will be a 20mm 128 x 256 RGB full color LED display in a Structural Unibody cabinet style. The active area of the LED display will be 8'-8" x 17'-4" with a maximum capacity of 16 lines of copy with 51 characters each. The LED cabinet will be front serviceable with an internal compact PC computer, which will be controlled by a wireless RF signal from a supplied desktop computer with PrismView software and a 19" monitor. The display can be controlled off site, if you wish, if broadband is brought to the display. Please see the attached 20mm specification sheet for additional information on the LED. In addition, there will be a cabinet with individual letters at the top of the display reading: "Boondocks" and vinyl copy below the letters reading: "Fun Center" with the two steel flags at the top of the display.

The cost of this work and display will be \$159,669.00, plus applicable Sales Taxes. This proposal also does not include primary or final electrical hook up, which must be provided by an Electrical Contractor. This proposal assumes that the existing structure will Engineer out for the new cabinets and height. Should it become necessary to use new steel structure, the pricing will be revised.

All sizes are approximate and are meant to be as accurate as possible. Due to the rapid increase of labor and material costs, YESCO reserves the right to revise this proposal 45 days from this date. All materials will be of the highest quality and all work will be completed according to standard practices. Any alteration from specifications must be in written order and with charges adjusted. All agreements are subject to strikes, delays, accidents, etc. beyond our control. Our workmen are fully covered by Workman's Compensation Insurance.

Thank you for your time, interest in YESCO and for the opportunity to present this proposal.

Sincerely,

Rick Bellefeuille
Sales Manager
3770 Joliet Street
Denver, CO 80239
303-375-9933, x237