

BY AUTHORITY

ORDINANCE NO. **4254**

COUNCILLOR'S BILL NO. **20**

SERIES OF 2024

INTRODUCED BY COUNCILLORS

DeMott, Carmelia

A BILL

FOR AN ORDINANCE AUTHORIZING ECONOMIC DEVELOPMENT AGREEMENT WITH TRISALUS LIFE SCIENCES

WHEREAS, the City wishes to aid in the business expansion and redevelopment of a building within the City located at 6272 West 91st Avenue (the "Site"); and

WHEREAS, the objective of economic development is to improve the economic vitality of the City by attracting and retaining high-paying jobs and supporting existing local economic and industry bases; and

WHEREAS, TriSalus Life Sciences plans to hire 20 new, full-time employees and invest \$1,500,000 split between tenant finishes and equipment to the Site; and

WHEREAS, a proposed Economic Development Agreement between the City and TriSalus Life Sciences is attached hereto as Exhibit "A" (the "Agreement"); and

WHEREAS, City Council finds the execution of the Agreement will provide benefit and advance the public interest and welfare of the City and its residents.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager is hereby authorized to enter into the Agreement with TriSalus Life Sciences in substantially the form attached hereto and, upon execution of the Agreement, to fund and implement the Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of June, 2024.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of July, 2024.

ATTEST:



City Clerk

Nancy McNally

Mayor

APPROVED AS TO LEGAL FORM:

David Frankel

City Attorney's Office

**ECONOMIC DEVELOPMENT AGREEMENT
WITH
TRISALUS LIFE SCIENCES**

THIS ECONOMIC DEVELOPMENT AGREEMENT WITH TRISALUS LIFE SCIENCES (“Agreement”) is made and entered into this ____ day of June, 2024 (“Effective Date”), between the CITY OF WESTMINSTER (the “City”) and TRISALUS LIFE SCIENCES, INC., a Delaware corporation doing business in Colorado, or its assignee (the “Company”). The City and the Company may be referred to collectively hereinafter as the “Parties.”

WHEREAS the Company plans to invest \$1,494,000 of private funds in the City for the purpose of expanding their operations and retaining employees (“Project”); and

WHEREAS, the objective of economic development is to improve the economic vitality of the City and provide a public benefit for its residents by creating jobs, attracting additional business investment, and increasing property values in the City; and

WHEREAS, City Council finds the execution of this Agreement will provide benefit and advance the public interest and welfare of the City and its residents.

WHEREAS, the terms listed below are used throughout this Agreement and are defined as follows:

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is expressly acknowledged, the City and the Company hereby agree to the following:

1. Definitions. The terms below are used throughout this Agreement and are defined as follows:

a. “Building Permit Fees” means all building permit and plan review and inspection fees, including, without limitation, all general building permit and plan review fees and all subcontractor building permit and plan review fees collected by the City for the Project, if any. For the purposes of this Agreement, water and sewer tap fees, fire permit fees and construction use tax are excluded from Building Permit Fees.

b. “Building Permit Fee Rebates” means a percentage or amount of the Building Permit Fees collected by the City for the Project that will be rebated to the Company pursuant to this

c. “General Building Use Tax” means the 3% general tax portion of the 3.85% Westminster Sales and Use Tax imposed on construction materials by Title IV, Chapter 2, Section 3 and 9 of the Municipal Code. For the Purposes of this Agreement, the City’s 0.25% Open Space Tax and 0.6% Public Safety Tax are not included in the definition of General Building Use Tax.

d. “Rebate Period” means the period commencing on the Effective Date and ending on the date(s) specified herein.

e. “Sales and Use Tax Rebate” means a percentage or amount of the General Sales and Use Tax generated by purchases of furniture, fixtures, and equipment that will be rebated to the Company.

f. “W.M.C.” or “Code” means, collectively, the Westminster Municipal Code and the City’s home rule Charter, as amended from time to time.

2. Building Permit Fee Rebates. The City shall rebate to the Company 100% of the Building Permit Fees that are otherwise required under W.M.C. Section 11-9-3(E) for the Project. The Building Permit Fee Rebates shall apply to all Building Permit Fees paid to the City during the Rebate Period in connection with the Project, whether paid directly by the Company or by contractors or other third parties conducting work at the Project on behalf of the Company. The “Building Rebate Period” shall be the time period commencing six months prior to the Effective Date and ending on **December 31, 2025**. Based on the Company’s construction estimates, the Building Permit Fee Rebates will be approximately \$8,642.

3. Construction Materials Use Tax Rebate. This section 3 is applicable only if the Parties choose not to use, or the Company fails to provide, the SUTA described in Section 4 below. In such instance, the City shall rebate to the Company 100% of the General Building Use Tax payable as a result of the Project.

a. The Construction Materials Use Tax Rebate shall apply to all General Building Use Tax on construction materials paid to the City during the Rebate Period in connection with the Project, whether paid directly by the Company, the facility landlord, contractors, or other third parties conducting work on the Project on behalf of the Company. Based on the Company’s construction estimates, the Construction Materials Use Tax Rebate Amount would be approximately \$11,025.

b. The amount of the Construction Materials Use Tax Rebate shall be calculated on the actual amount of the General Building Use Tax due and paid to the City based upon the approved Construction Project Cost Report as required by Sections 4-1-7 and 4-2-9, W.M.C. and referenced in Section 8(c)(iv) of this Agreement.

4. Construction Materials Use Tax Rebate. Per the attached fully signed and executed Agreement Stipulating to Building Use Tax Payment and Waiver of Reconciliation Requirement (collectively, “SUTA”), the Parties agree to a specific Construction Materials Use Tax amount and rebate as follows:

a. The “Stipulated Construction Materials Use Tax” shall be \$14,148.75.

b. The “Stipulated Construction Materials Use Tax Rebate Amount” shall be \$11,025.

c. Neither the Stipulated Construction Materials Use Tax nor the Stipulated Construction Materials Use Tax Rebate Amount will be subject to review by the City, the Company, any developer, the general contractor or any subcontractor for reconciliation purposes as contemplated by Section 4-2-9, W.M.C. The Company and any developer, general contractor or any other parties involved in this Agreement agree to hold the City harmless for any claims by their general contractor or any subcontractor for refund of any use taxes paid by such general contractor or any subcontractor.

d. The Company shall be required to obtain a signed SUTA, attached hereto as Attachment A, from its general contractor or third party providing the work on the Project for execution by the City prior to the payment of the Stipulated Construction Materials Use Tax Rebate Amount.

e. In the event a fully signed and executed SUTA is not received by the City, the Company shall be required to submit a Construction Project report, and the Construction Materials Use Tax Rebate will be calculated on the actual amount of the General Building Use Tax due and paid to the City based upon an approved Construction Project Cost Reconciliation Report as outlined in Section 3 above.

5. Sales and Use Tax Rebate. The City currently imposes a total sales tax and use tax rate of 3.85% upon taxable tangible personal property or taxable services sold, stored, used or consumed within the City. For the period of 6 months prior and 12 months after a Certificate of Occupancy (“CO”) is issued or a final inspection is passed for the Project (“Sales and Use Tax Rebate Period”), the City will rebate 100% of the Westminster 3% General Sales and Use Tax on furniture, fixtures and equipment purchased by the Company for the Project (the “Sales and Use Tax Rebate”). The City’s 0.25% open space tax and 0.6% public safety tax are excluded from the Sales and Use Tax Rebate and will be retained by the City. Based on the Company’s investment estimates, the Sales and Use Tax Rebate will be approximately \$22,770.

a. The Sales and Use Tax Rebate shall include use tax paid directly to the City by the Company, and/or sales tax collected from the Company and remitted to the City by City licensed businesses, on furniture, fixtures and equipment purchases for use at the Project.

b. The Sales and Use Tax rebate will be based on documentation prescribed by the City and provided by the Company, within 30 days of the end of the Sales and Use Tax Rebate Period, which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster for the Project and that taxes were paid to and collected by the City.

6. Payments of Rebates.

a. The total of all rebates hereunder is not to exceed \$42,437.

b. As applicable, the Company will file returns and pay all City sales and use taxes due no less than on a calendar quarter.

c. Payments of Rebates shall be made for each calendar quarter based upon revenue actually received by the City in connection with the build-out, tenant finish, and purchases of new furniture, fixtures and equipment for the Project.

i. If the total amount of a quarterly rebate due to the Company is at least \$1,000, the rebate will be paid within thirty (30) days following the end of the calendar quarter.

ii. If the total amount of a quarterly rebate due to the Company is less than \$1,000, such rebate will be added to the next quarterly rebate due until the total amount to be rebated is at least \$1,000. The accumulated amount of such rebates will then be paid within thirty (30) days following the end of the most recent calendar quarter reported.

iii. Payments of Rebates shall commence for the calendar quarter during which final occupancy approval is granted or a final inspection is issued.

iv. This entire paragraph iv. Is applicable only if not using a stipulated agreement as described in Section 4. No payment of the Construction Materials Use Tax Rebate provided for in Section 2 above will be made until the Company complies to the following:

(a) Submits a list of qualifying building permits for the (insert project name) to the City.

(b) Obtains a release form from the general contractor(s) related to the City’s disclosure of confidential tax information used in reconciling the construction materials use tax and provides such release to the City. (The Construction Project Cost Report and general contractor release forms are attached hereto as Attachment A.)

And the City approves the following:

(c) A Construction Project Cost Report for the (TriSalus Expansion 2024).

- (d) Submits a list of qualifying building permits to the City.
 - (e) Obtains a release from the general contractor(s) related to the City's disclosure of confidential tax information used in reconciling the construction materials use tax and provides such release to the City or the City receives a signed and fully executed Stipulated Use Tax Agreement.
 - v. No rebate payment on a Stipulated Use Tax Agreement will be made until the City receives a fully signed and executed agreement.
 - vi. No rebate payment shall be made until the Company has obtained a City of Westminster business license for the Company's expansion and remodeling project, submitted a completed, current W-9, a Certificate of Good Standing, and a completed EDA request for information form as prescribed by the City.
 - vii. All payments, except for the initial payment, by the City shall be made electronically to the Company's designated financial institution or other account. The initial payment will be issued by check and a pre-note confirmation sent to the Company's designated financial institution or other account. The Company must submit all documentation required by the City for electronic payment which may include a voided check or direct deposit form from the financial institution.
- d. In the event the Company fails to comply in any material respect with provisions of the City regulations or code relative to the development, use, occupancy or operation of the project the City may, after providing the Company with not less than ten (10) days advance written notice, suspend payment of the quarterly installments until the Company complies with such provisions of the City regulations or code.

7. Entire Agreement. This Agreement shall constitute the entire agreement between the City and the Company and supersedes any prior agreements between the Parties and their agents or representatives related to the same subject matter, all of which are merged into and revoked by this Agreement with respect to its subject matter.

8. Disclosure of Financial Information. The Company acknowledges that entering into this agreement could result in disclosure of the Company's financial information, including confidential sales and use tax return information to outside parties.

9. Termination. This Agreement shall terminate and become void and of no force or effect at the election of the City: (i) if the Company has not moved into the constructed Project by **January 6, 2025** or (ii) should the Company not comply with City regulations or code, after having received written notice of any such non-compliance and failed to cure, or to diligently pursue a cure, within thirty (30) days of such written notice of non-compliance.

10. Business Termination. In the event the Company ceases to conduct business operations within the City at any time prior to **December 31, 2027**, for reasons solely within the discretion or control of Company, including but not limited to reorganization, restructuring, dissolution or bankruptcy, then the Company shall pay to the City within sixty (60) days of business termination the total amount of fees and taxes that were paid by or for the Company to the City and were subsequently rebated by the City to the Company pursuant to this Agreement.

11. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and

similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City. The City reasonably believes as of the date hereof that sufficient sales and use tax reserves will exist to satisfy the City's obligations hereunder. In the event the City is unable to provide a timely refund as provided hereunder by operation of this section, the Company may terminate this Agreement, at which point this Agreement will become null and void in all respects.

12. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

13. Governing Law; Mediation; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado the Code. In the event of a dispute concerning any provision of this Agreement, the Parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator or panel of mediators for the purpose of resolving such dispute. Venue for any lawsuit concerning this Agreement shall be in the District Court for Adams County, Colorado.

[Remainder of page intentionally blank – signatures follow.]

TRISALUS LIFE SCIENCES, INC.

[Name, Title]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of ____
_____, 2024, by _____, _____, of Trisalus Life
Sciences, Inc.

(S E A L)

My commission expires: _____

Notary Public

CITY OF WESTMINSTER

City Manager

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.