

GUIDE TO COMMERCE CITY'S VOLUNTARY DISCLOSURE PROGRAM

In order to enter into a voluntary disclosure agreement, the City of Commerce City (the "City") requires that a company provide certain information, representations, and warranties. These are set forth in an offer by the company called the "Statement of Representations and Inducements" (Exhibit "A"), and are more fully explained in that document. Briefly they are:

1. A description of the taxpayer's activities and the date the activities began;
2. An estimate of Commerce City tax liability for previous tax periods;
3. A disclosure with respect to whether the company has or has not collected the relevant taxes;
4. A representation that the company has not been previously contacted by the City of Commerce City;
5. A representation that the failure to file is not the result of fraud or gross negligence on the part of the company.

A voluntary disclosure agreement request can be completed by performing the following steps:

Step 1. Read the entire packet consisting of the Agreement for License Registration and Payment of City of Commerce City, Colorado Sales and Use Taxes, Statement of Representations and Inducements (Exhibit "A") and Statement of Tax Liabilities (Exhibit "B"). A lot of the questions you may have will be answered.

Step 2. The "Agreement for License Registration and Payment of City of Commerce City Sales and Use Taxes" will normally be filled out by the City after review of the company's Exhibit "A". The copy is provided on our website so you can review the standard agreement. The voluntary disclosure request may be submitted anonymously.

Terms Paragraphs 1)-3). The City will normally require a look-back period, whereby the company will pay taxes covering a certain number of years past. The length of the look-back period or the City's requirement of one will depend on the nature of the company's activities and the size of past years' potential tax liabilities as submitted in Exhibit "B".

The City expects that a normal voluntary disclosure agreement will contain a provision for a look-back period of a minimum of three years for sales/use tax.

Paragraph 7). Whether penalties for taxes due for the period of non-filing are waived, and the extent of the waiver, will depend on the size of the liability as well as the explanation for the failure to file as stated in Exhibit "A".

Step 3. Complete an Exhibit "A" for the company. Be sure to answer all questions and submit all facts as requested in the Statement of Representations and Inducements (Exhibit "A"). Please be specific. Vagueness or ambiguity will only hinder the City's attempt to determine the company's liability and reach an agreement.

Step 4. Complete an Exhibit "B". Check the tax liabilities which the company wishes to settle.

It is hoped these guidelines answer most of your questions about the City's policy with respect to voluntary disclosure agreements.

If you wish to enter into a voluntary disclosure agreement, please submit an Exhibit "A" and Exhibit "B" and send them to the address at the bottom of this page.

After we review the offer, if it is acceptable, we will complete an Agreement for License Registration and Payment of City of Commerce City, Colorado Sales and Use Taxes, sign the agreement and mail it to you. We will send the necessary registration forms for the company to fill out with the signed agreement.

At that point, the company should sign the original agreement, include the company name, fill out any registration forms, keep a copy, and return the originals to us. You would then begin to comply with the terms of the agreement. Once the identity of the company is known to us, if contact from you regarding the agreement is to be made through a representative (CPA, lawyer, etc.), please provide a Power of Attorney.

Your response should be made to:

Tax Manager
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

Director of Finance
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

**AGREEMENT FOR LICENSE REGISTRATION AND
PAYMENT OF CITY OF COMMERCE CITY, COLORADO SALES AND USE TAXES**

THIS AGREEMENT (the "Agreement") is entered into as of the _____ day of _____, 20__ (the "Effective Date") between the City of Commerce City, Colorado (the "City") and _____ (the "Company").

Set out in Exhibit "A", which exhibit is hereby incorporated into and made part of the Agreement, is a statement of facts made by the Company and warranted by the Company to be true. The Company has, in Exhibit "A", fully disclosed all relevant and material facts and has done so in order to induce the City to accept the Agreement. The Agreement is entered into by the City in reliance on Exhibit "A". If any material facts set out in Exhibit "A" are incorrect or if any material facts are omitted from Exhibit "A", the Agreement is voidable by the City and subject to renegotiation and the Company is considered to be in breach of the Agreement.

Set out in Exhibit "B", which exhibit is hereby incorporated into and made a part of the Agreement, is a list of taxes. The Company believes that it is under an obligation either to collect and remit or to pay on its own account the taxes which have been designated in Exhibit "B" (the "Required Taxes"). Taxes not indicated with "from" and "to" dates are not covered by the Agreement.

TERMS

Duties of the Company

- 1) The Company will, within 30 days of the Effective Date, complete and return a Commerce City business license application and will pay all fees required by the Department of Finance in order to do business in the City.
- 2) The Company will maintain their business license until they cease to do any business in the City.
- 3) The Company will, within 60 days of the Effective Date, remit any sales and use taxes which the Company should have collected and/or remitted on its City taxable sales, purchases and acquisitions that took place on or after _____.
- 4) The Company will continue to collect and remit sales and use taxes until they cease to do any business in the City.
- 5) The Company will pay interest at statutory rates for all monies due under paragraph 3.
- 6) The Company will pay a penalty of zero percent (0%) of all monies due under paragraph 3.
- 7) The Company agrees to make all its books and records available to the City and its agents upon reasonable notice to verify the factual representations made by the Company in the Agreement or in any document referred to in the Agreement.

Duties of the City

- 8) So long as the Company is not in breach of the Agreement, the City agrees not to assess any fees, sales and/or use tax (as applicable) or interest based on activities conducted by the Company prior to the Effective Date other than as set out in numbered paragraphs 1, 3 and 5;

Miscellaneous

- 9) **Jurisdiction and Choice of Law.** The Agreement is made under the laws of the State of Colorado and is to be interpreted under the laws of the State of Colorado; the Company agrees to submit to the jurisdiction of the State of Colorado with respect to any dispute arising under the Agreement.
- 10) **Confidentiality.** The making of the Agreement and its terms, including the identity of the Company, shall not be disclosed by the City to any other state or entity, except as required by law.
- 11) **Entire Agreement.** The Agreement, including Exhibits "A" and "B", on which the Agreement is based, represents the entire agreement between the parties. No other agreements or representations exist other than as noted in the Agreement.
- 12) **Amendments.** No provision of the Agreement shall be waived or modified except in writing signed by all the parties to the Agreement.

CITY:

COMPANY:

City of Commerce City, Colorado

Taxpayer

By: _____
Sheryl L. Carstens

For: _____
(company name)

Title: Director of Finance

By: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "A"
STATEMENT OF REPRESENTATIONS
AND INDUCEMENTS

Nature of the Company's business

Comprehensively describe the Company's business, including what the business sells, the services it provides, the date the Company or its predecessor started conducting business in the City of Commerce City, Colorado, any change of ownership, including change of forms of ownership (e.g. partnership, limited liability company, etc.) and any other business facts that might have a bearing on tax liability.

Nature of the Company's present tax contacts with the City of Commerce City, Colorado (the "City")

Describe any taxes that the Company presently files with the City

State that the Company has, in Exhibit "B", checked all taxes that it has reason to believe may be due to the City.

Facts giving rise to settlement – determination of tax nexus

Describe the nature of the contact of the Company with the City. Explain the reason for the Company's earlier belief that filing of the relevant taxes was not required. Explain the reason or the change in circumstances that has caused the Company to seek this agreement. Has the Company sought a recent legal opinion which revealed that the Company is liable for taxes to Commerce City?

State that the Company's past determination that taxes were not due to the City of Commerce City was not a result of fraud or gross negligence (either by current management or by previous management).

Statement of past tax contacts with the City of Commerce City

Describe any recent (within the last three years) contacts between the City of Commerce City and the Company. Has the Company been contacted by the City recently with respect to the filing of taxes? Has the Company recently been contacted by the City with respect to an audit or is the Company now under audit?

Statement of collection of sales taxes

State whether the Company has failed to collect any sales taxes that it was obligated to collect or whether the Company has collected the taxes but failed to remit them to the City.

Statement of estimated tax liability

If disclosing a prior sales/use tax liability

Give a year-by-year estimate of the amount of sales and use taxes that the Company should have remitted to the City for the last three years. State that the sales and use tax liability for the Company for any previous year is not greater than the tax liability disclosed for any one of the last three years.

EXHIBIT "B"
STATEMENT OF TAX LIABILITIES

Name of taxpayer and address:

(the "Company")

<u>Tax Liability</u>	<u>Rate</u>	<u>Period From</u>	<u>Period To</u>
Sales Tax	3.5%	_____	_____
Use Tax	3.5%	_____	_____

<u>Tax Liability</u>	<u>Rate</u>	<u>Period From</u>	<u>Period To</u>
Sales Tax	4.5%	_____	_____
Use Tax	4.5%	_____	_____

(Note: The sales and use tax rate was increased to 4.5%, effective January 1, 2014)