

ECONOMIC DEVELOPMENT INCENTIVES COMMITMENT AGREEMENT

THIS ECONOMIC INCENTIVES COMMITMENT AGREEMENT (this “Agreement”) is hereby made and entered into effective as of the ____ day of _____, 2020 by and between the CONSOLIDATED GOVERNMENT OF COLUMBUS, GEORGIA (the “CCG”), and CHAIRMANS FOODS, LLC, a Delaware limited liability company (hereinafter referred to as the “Company”).

R E C I T A L S

WHEREAS, pursuant to the State of Georgia Enterprise Zone Act and in consideration for the Company Commitment as provided in Article 2 below, the CCG will grant certain tax incentives to the Company, as set forth in Article 3 below (collectively the “Tax Incentives”); and

WHEREAS, the Company currently owns and occupies 1333 Cusseta Avenue, Columbus, Georgia (the “Facility”), which is located within the Enterprise Zone; and

WHEREAS, the Company proposes to expand, renovate and make certain improvements to the Facility, to acquire and install machinery, equipment and other personal property in connection with a food manufacturing and distribution operation, with a total capital investment of \$13,000,000, and the creation of 25 new and additional full time jobs (the “Project”); and

WHEREAS, the parties hereto are desirous of entering into this agreement to set forth their understanding and agreement with respect to the undertaking and development of the Project and the Tax Incentives to be provided; and

A G R E E M E N T

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Terms.

The terms defined in this Article I shall have the meanings specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms defined herein.

“**Affiliate**” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. The term “control” as used in the preceding sentence means, with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of the controlled corporation, or with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person.

“Agreement” means this Enterprise Zone Project Agreement.

“Board” means the Board of Tax Assessors.

“CCG” means the Consolidated Government of Columbus, Georgia.

“Commitment Date” means December 31, 2021 and each anniversary thereof through and including the ninth (9th) anniversary of such date for purposes of the Company Commitment and the property tax savings set forth in Section 3.1(a) below).

“Completion Date” means the date that the Project is completed and commences operation.

“Designated Owner” means the entity designated by the Company to be the owner of the Project Site.

“Effective Date” means the date set forth above upon which this Agreement is to be effective upon the signature of the authorized representatives of each Party hereto.

“Enterprise Zone” means that certain Enterprise Zone described as the Columbus Business Development Center in Columbus Council Ordinance No. 18-54 adopted by the Council of Columbus, Georgia on December 11, 2018.

“Enterprise Zone Employment Act” means the Enterprise Zone Employment Act of 1997, as amended, codified in O.C.G.A. § 36-88-1 et seq.

“Equipment” means the machinery, equipment and other items of personal property installed in connection with the Project.

“Force Majeure” means any failure or delay in the performance of a party’s obligations under this Agreement which is caused, directly or indirectly, by fire, flood, earthquake, pandemic, epidemic, elements of nature or acts of God, acts of war, terrorism, threatened terrorism, riots, civil disorders, rebellions, strikes, lockouts or labor difficulties, court order or any other similar cause beyond the reasonable control of such party; provided that, such failure or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of reasonably available and economical alternate sources, work-around plans, or other means.

“Improvements” means improvements to the Facility and the Project Site in connection with the Project.

“O.C.G.A.” means the Official Code of Georgia Annotated.

“Party” or **“Parties”** shall have the meaning set forth in the preamble of this Agreement.

“Person” means all natural persons, corporations, business trusts, associations, companies, partnerships, joint ventures and other entities and governments and agencies and political subdivisions.

“Planning Department” shall mean the Columbus, Georgia Consolidated Government’s Planning Department.

“Project” shall have the meaning set forth in the recitals.

“Project Costs” means costs and expenses incurred by the Company in connection with the Project Improvements and the acquisition and installation of the machinery and equipment.

“Project Improvements” means the Company’s modifications and improvements to the Facility in connection with the Project.

“Public Entities” means the State, the City and any other agency, commission or department thereof.

“State” means the State of Georgia.

ARTICLE 2 COMPANY COMMITMENT

2.1 Capital Investment.

On or before the Commitment Date, the Company agrees to have made a total capital investment (which includes capitalized costs incurred in connection with the Project) of not less than THIRTEEN MILLION DOLLARS (\$13,000,000) in connection with the Project (the “Investment Commitment”).

2.2 Job Creation

The Company acknowledges that it currently employs eighty-five (85) full-time permanent employees at the Project, and the Company agrees to employ at least an additional twenty-five (25) new, full-time permanent employees at the Project by December 31, 2021 and maintain such employment of one-hundred ten (110) for nine (9) consecutive years (the “Employment Commitment”). The Investment Commitment and the Employment Commitment are the basis for the Financial Incentive to be provided to the Company as set forth herein.

ARTICLE 3 TAX INCENTIVES

3.1 Tax Incentives.

(a) Property Tax Savings. Subject to the Company’s compliance with the necessary requirements to receive the Tax Incentives, as described below, the Project shall be exempt from state, county and municipal ad valorem property taxes, excluding property taxes imposed by the Muscogee County School District, that would otherwise be levied on the Project, in accordance with the following schedule:

- (i) From January 1, 2021 – December 31, 2025: one hundred percent (100%) of such property taxes shall be exempt;
- (ii) From January 1, 2026 – December 31, 2027: eighty percent (80%) of such property taxes shall be exempt;
- (iii) From January 1, 2028 – December 31, 2028: sixty percent (60%) of such property taxes shall be exempt;
- (iv) From January 1, 2029 – December 31, 2029: forty percent (40%) of such property taxes shall be exempt; and
- (v) From January 1, 2030 – December 31, 2030: twenty percent (20%) of such property taxes shall be exempt.

(b) Requirements.

(i) In order to qualify for the above-described exemption from property taxes, With respect to the Investment Commitment, Company will supply documentation satisfactory to the Planning Department and the Board confirming expenditure of the \$13,000,000 Investment Commitment by January 31,2021. Once the investment is documented, the Planning Department will, if requested by the Company, provide a written acknowledgment that the Investment Commitment has been satisfied. If said investment is not completed by the Commitment Date, but there has been at least a 75% completion of the Investment Commitment, a one-year extension will be allowed without impact on the Tax Incentives. In the event that the Investment Commitment has not been satisfied by December 31, 2022, with a report substantiating the investment filed by January 31, 2022, the Tax Incentives described above will be rescinded. The Company shall also provide annual reporting by January 31st of each year to the Board and the Planning Department substantiating of actual performance for the Employment Commitment. If the required annual reports show that the Company has not achieved an actual performance of at least 75% of each of the Employment Commitment by December 31, 2021 and maintained the same for each year of the immediately succeeding nine (9) year period, then the tax exemption for the immediately following year (as described in the above schedule) will be rescinded. Notwithstanding the rescission of any tax exemption, should the Company, in any subsequent year during said nine (9) year period after the Commitment Date, achieve an actual performance of the Employment Commitment and the necessary information is timely provided to the Board and the Planning Department to confirm the actual performance, then the property tax exemption available for the immediately following year will be reinstated pursuant to the above schedule.

(ii) The Company must further comply with, inter alia, all requirements of the Enterprise Zone Employment Act and Columbus Ordinance No. 18-54.

ARTICLE 4 OTHER MATTERS

4.1 Project Improvements. The Company shall be responsible for all Improvements, and have sole discretion over, the Improvements and other costs of the Project, including but not limited to, approval of contractors, approval of change orders, acceptance of work.

4.2 Representations and Warranties of the Company. The Company represents and warrants to the City that it reasonably expects that the Completion Date will occur by or before the Commitment Date. The Company acknowledges that the Tax Incentive granted to the Company pursuant to this Agreement is being given in consideration for the Investment Commitment and the Employment Commitment. In addition to the commitments made herein, the Company agrees to abide by and comply with all rules and regulations from local ordinance and State Law. Falsification of documents or failure to comply with such regulations may result in revocation of this agreement and the recapture of all incentives thus far granted under this agreement.

ARTICLE 5 MISCELLANEOUS

5.1 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

5.2 Governing Law. The governing law of this Agreement shall be the law of the State of Georgia and venue for any action or proceeding to enforce the provisions hereof or for any claims or judicial action pursuant to this Agreement shall be brought in any court having jurisdiction in Muscogee County, Georgia.

5.3 Notices. Every notice required by this Agreement must be in writing and will be deemed to have been delivered upon receipt: (a) when delivered personally; (b) when sent by certified or registered mail, postage prepaid, return receipt requested via the U.S. Postal Service; or (c) when sent next-day delivery to a U.S. address via a nationally recognized overnight courier service such as Federal Express. In each case, a notice sent to a party must be directed to the address for that party set forth below or to such other address as the receiving party shall have most recently forwarded to the sending party pursuant to the provisions of this Section 6.3. The facsimile address as set forth are for information purposes only, and may not be used to satisfy the notice requirements of this Section 6.3:

So agreed this ___ day of _____, 2020.

CCG:

Planning Department
Columbus Consolidated Government
1104th Street
Columbus, Georgia 31901
Attn: Rick Jones

with a copy to:

Isaiah Hugley, City Manager
P.O. Box 1340
Columbus, Georgia 31902

The Company: Chairmans Foods, LLC

Attn: _____

with a copy to: _____

5.4 Cost and Expense. Except as otherwise provided in this Agreement, each Party agrees to pay its own costs incurred in connection with the Project proposal, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals, this Agreement or otherwise.

5.5 Press Releases. The City will cooperate fully to coordinate with the Company in connection with all press releases and publications concerning the Project. Any press release will be approved by both parties. The Parties agree that the City shall have sole responsibility in coordinating with the Company in this regard.

5.6 Amendment and Waivers. This Agreement may not be amended or modified except by a written instrument signed by each Party. The waiver by any Party of such Party's rights under this Agreement in any particular instance or instances, whether intentional or otherwise, shall not be considered as a continuing waiver which would prevent subsequent enforcement of such rights or of any other rights.

5.7 Assignment. This Agreement is not assignable except that the Company shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part hereof to any Affiliate of the Company; provided, however, the Company shall, notwithstanding such assignment and assumption, continue to be liable for its obligations hereunder.

5.8 Section Title and Headings. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

5.9 Entire Agreement. This Agreement constitutes the entire agreement and understanding among the Parties and no other offers, agreements, understandings, warranties, or representations exist between the Company and the City.

5.10 Survival of Representations, Warranties and Covenants. The representations, warranties and covenants made by each of the Parties hereto contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

5.11 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

5.12 Time is of the Essence. The Parties acknowledge and agree that time is of the essence as to all terms and conditions of this Agreement. The provisions of this Section 5.12 are subject to the excuse by any Party of Force Majeure.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date their signature was affixed to this Agreement.

**COLUMBUS CONSOLIDATED
GOVERNMENT**

By:

Isaiah Hugley, City Manager

Attest:

Sandra T. Davis, Clerk of Council

Approved as to form:

Clifton C, Fay, City Attorney

CHAIRMANS FOODS, LLC

By: _____

Name: _____

Title: _____