

INCENTIVE AGREEMENT

THIS INCENTIVE AGREEMENT (this “*Agreement*”) is made and entered into as of _____, 2022 (the “*Effective Date*”), by and between the **CITY OF HARTSVILLE, SOUTH CAROLINA** (the “*City*”) and **MR. B’S FROZEN FOODS LLC** (the “*Company*” and together with the City, the “*Parties*”), and sets forth certain commitments and understandings of the Parties.

Background:

A. The City is a municipal corporation located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and laws of the State of South Carolina (the “*State*”) to such public entities.

B. The Company, a limited liability company incorporated in the State of South Carolina (the “*Company*”), that makes frozen foods, particularly home-style biscuits and macaroni and cheese, is planning to expand a portion of its food processing operations (the “*Project*”) and move into a new facility located in the City, particularly 1015 W. Bobo Newson Hwy., Hartsville, SC 29069 (TMS No. 036-00-03-012) (the “*Property*”) all as more particularly shown on the map attached hereto as Exhibit A.

C. The City recognizes that it is necessary and beneficial to promote economic development and redevelopment within the City. By encouraging development and redevelopment, the City generally seeks to facilitate business growth and increase commercial activity within designated areas, particularly in the area around the Property.

D. The development of the Project, including acquisition of the Property, shall involve a minimum investment of \$2,000,000.

E. The City is mindful of and has considered the requirements of *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) and *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000), for determining when the expenditure of funds for the purpose of economic development project constitutes a public purpose, and assuming these requirements are met, the City expects to provide certain incentives to the Company in order to induce the development of the Project.

F. This Agreement and the Incentives (as defined herein) to be provided hereunder are intended to induce the development of the Project. The City has agreed to provide the Incentives in consideration for the Company undertaking and completing the Project, The Parties acknowledge that the provision of the Incentives hereunder and the Company’s agreement to undertake the Project constitutes good and valuable consideration for the respective contractual obligations of the Parties described herein.

G. The City and the Company commit themselves to work together for the success of the Project and to deal with each other with fairness, respect, cooperation and good faith.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, undertakings, and obligations set forth herein, the Parties agree as follows:

Section 1 Actions/Incentives.

(a) Subject in each instance to the applicable provisions and limitations of this Section 1, the City commits to reimburse the Company for certain costs associated with sewer utility infrastructure associated with the Project as follows: reimbursement to the Company of not more than \$21,710 (the “*Cap*”) or the lesser amount of the Company’s actually incurred costs to design, develop, acquire, construct and install a “Liberty Deep Duplex Pump Station” necessary for public sanitary sewer to serve the Project (the “*Incentives*”).

(b) With respect to the Incentives, the Company shall provide to the City invoices or other documentation satisfactory to the City of costs actually incurred for the pump station, and the City shall reimburse the Company up to the amount of the Cap within 10 business days of each written request for reimbursement.

(c) Prior to the City providing or undertaking the Incentives, the City may request and the Company shall provide any documentation or information to give the City reasonable assurances that the Project remains feasible, adequate financing for the Project remains in place, and that the Project is otherwise expected to be completed.

Section 2 Mutual Expectations.

The Parties acknowledge that the Project will be an important catalyst in the revitalization and redevelopment of the City and the Parties espouse a mutual commitment to making the Project first class in all respects.

Section 3 Permitting; Zoning.

(a) To the maximum extent allowed by law, the City will assist with the identification and coordination of, and will use its best commercially reasonable efforts to cause, all City and any other local construction and other permits for which appropriate application is made by the Company, and applicable fees paid by the Company, including all environmental permits, approvals, and consents which may be necessary or desirable in connection with the construction and operation of the Project, to be issued or obtained on a timely basis.

(b) To the best of the City’s knowledge, the Property is zoned for the Company’s intended present and contemplated future uses, which are permitted uses. To the extent the Company is required to obtain any additional land use-related approvals in order to carry out the Project (such as design review), the City agrees to exercise its best efforts to support to Company’s required approvals.

Section 4 Representations and Warranties.

(a) The City hereby makes the following representations and warranties to the Company:

(1) The City is a South Carolina municipal corporation and is duly authorized to meet, perform and provide the agreements provided in this Agreement.

(2) This Agreement has been duly authorized and approved by the City Council of the City, as the governing body of the City (the “*City Council*”).

(3) The official signing this Agreement on the City’s behalf is duly and legally authorized to execute this Agreement and bind the City to its terms.

(4) The City will diligently perform and take all steps and actions necessary to perform its duties and obligations under this Agreement.

(b) The Company hereby makes the following representations and warranties to the City:

(1) The Company is a duly authorized South Carolina limited liability company and is duly authorized to meet, perform, and provide the agreements set forth in this Agreement. The Company is authorized to operate within the State and is in good standing with the South Carolina Secretary of State.

(2) The Company has invested, or expects to invest, not less than \$2,000,000 in the Project, to include acquisition of the Property and planning, designing, acquiring, constructing, and completing the Project.

(3) This Agreement has been duly authorized and approved by parties required to bind the Company to a particular course of action.

(4) The individual signing this Agreement on the Company’s behalf is duly and legally authorized to execute this Agreement and bind the Company to its terms.

(5) The Company will diligently perform and take all steps and actions necessary to perform its duties and obligations under this Agreement.

Section 5 Remedies. In the event of any default in or breach or a reasonably anticipated default or breach of any terms or conditions of this Agreement by any Party, or any successor in interest to any Party, the defaulting or breaching Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and shall in any event, within 15 days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved Party shall be entitled to all rights and remedies available at law or in equity, and may also institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to proceedings to compel specific performance by the defaulting or breaching Party. The Parties, their successors and assigns, further agree that the other Party shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any clauses contained herein.

Section 6 Disclosure.

(a) The Parties acknowledge that the City is subject to the South Carolina Freedom of Information Act, which is codified at Title 30, Chapter 4 of the Code of Laws of South Carolina

1976, as amended (“**FOIA**”). To the extent any information exchanged by the Parties is not otherwise exempted from FOIA, it shall be subject to disclosure by the City.

(b) Any additional documents intended by either Company or the City to be confidential (the “**Confidential Materials**”) shall be clearly marked with the following statement: “Confidential Materials – DO NOT DISCLOSE.”

(c) In the event the City receives a request the disclosure of any Confidential Materials, including this Agreement, the City will notify Company in writing within two business days of such request. Nothing herein obligates the City to withhold documents not subject to an exemption under FOIA or prevents Company from seeking a protective order or other appropriate remedy to limit disclosure of any Confidential Materials or other documents that may be withheld under FOIA.

Section 7 Amendment. This Agreement may be amended only by a written agreement executed by the Parties and delivered as set forth in the Notice section herein.

Section 8 Notice. Any and all notices required under the terms of this Agreement shall be in writing and shall be delivered in person or by U.S. Mail, by certified mail, return receipt requested, postage prepaid to the principal addresses of the Parties as follows:

As to the City:

City of Hartsville
Attn: City Manager
100 E. Carolina Ave. (in person)
P.O. Drawer 2497 (by mail)
Hartsville, SC 29551

As to the Company:

Mr. B’s Frozen Foods LLC
Attn: Daniel O. Goff
2424 Tomahawk Road
Lamar, SC 29069

Section 9 Miscellaneous.

(a) *Binding; Choice of Law.* This Agreement is binding upon the Parties’ representatives, assigns and successors. This Agreement shall be taken and deemed to have been fully executed and made by the Parties herein and governed by the laws of the State.

(b) *Entire Agreement.* The Parties agree that this Agreement constitutes the entire Agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing, and effective when signed by the authorized agents of the Parties.

(c) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

(d) *Severability.* In the event that any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

(e) *Term and Termination.* This Agreement shall continue in effect until the earlier of: (i) one year from the Effective Date, or (ii) the date that the City reimburses the Company for the maximum amount of the Incentives (the “**Termination Date**”). This Agreement may be extended by mutual agreement of the Parties. The City expressly authorizes the approval of any extension of the Termination Date to be done by resolution of the City Council. The City shall have no obligation to reimburse or fund any Incentive after the Termination Date, as it may be extended from time to time.

(f) *Assignment.* The Company may assign this Agreement at any time to an entity that is controlled by the Company upon written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties have executed this Agreement to be effective as of the day and year first above written.

CITY

**CITY OF HARTSVILLE, SOUTH
CAROLINA**

By: _____

Print Name: Daniel Moore

Title: City Manager

COMPANY

MR. B'S FROZEN FOODS LLC, a South
Carolina limited liability company

By: _____

Print Name: _____

Title: _____

Exhibit A
(Map of Property)

