

PUBLIC NOTICE
Public Hearing Before the Rocky Mount City Council

Publication Date
8/13/2019

CITY OF ROCKY MOUNT
NOTICE OF PUBLIC HEARING
BEFORE THE ROCKY MOUNT
CITY COUNCIL

The City of Rocky Mount ("City") proposes to appropriate and expend City funds pursuant to N.C. Gen. Stat. 158-7.1 for the following economic development project. The City Council intends to consider entering into an economic development inducement agreement with Nash County and the Carolinas Gateway Partnership to provide economic development incentives to an industrial prospect (the "Company"). Under the agreement, the City will make three (3) annual cash incentive grants to the Company, beginning in 2021, measured by a percentage of the ad valorem taxes paid by the Company to the City the previous year. As consideration for the incentive grants the Company will create 96 jobs and pay ad valorem taxes to the City. The City will fund the payments with available revenues in the City's general fund. The City believes this project will increase the tax base, create substantial tax revenue, stimulate and stabilize the local economy, and result in the creation of a substantial number of new, permanent jobs in the City.

The City will hold a public hearing on the proposed appropriation and expenditure of funds for this project at its City Council meeting to be held at 4:00 p.m. on Monday, August 26, 2019 in the George W. Dudley City Council Chamber on the third floor of the Frederick E. Turnage Municipal Building, 331 S. Franklin St., Rocky Mount, North Carolina, at which time the City Council intends to consider approval of the economic development project and the related inducement agreement. The City Council invites all interested persons to attend and present their views.

BY ORDER OF THE CITY COUNCIL
Pamela O. Casey, City Clerk

8/13/19

**NORTH CAROLINA
NASH COUNTY**

ECONOMIC DEVELOPMENT INDUCEMENT AGREEMENT

(Project Tire)

THIS ECONOMIC DEVELOPMENT INDUCEMENT AGREEMENT (the “**Agreement**”) is executed this _____ day of _____, 2019, by and among **PROJECT TIRE ENTITY**, a _____ authorized to do business in the state of North Carolina, having its principal place of business in _____ (hereinafter the “**Company**”); **THE CAROLINAS GATEWAY PARTNERSHIP, INC.**, a North Carolina nonprofit corporation having its principal place of business at 427 Falls Road, Rocky Mount, NC 27804 (the “**Partnership**”); **NASH COUNTY**, a political subdivision of the State of North Carolina, having its principal place of business at 120 West Washington Street, Suite 3072, Nashville, NC 27856 (hereinafter the “**County**”); and **THE CITY OF ROCKY MOUNT**, a North Carolina municipal corporation having its principal place of business at One Government Plaza, Rocky Mount, North Carolina 27804 (hereinafter the “**City**”, and together with the Partnership and the County sometimes referred to herein as the “**Inducing Parties**” or individually as an “**Inducing Party**”, and the Company and the Inducing Parties are sometimes referred to as the “**Parties**” or individually as a “**Party**”);

RECITALS:

WHEREAS, the Partnership is a nonprofit corporation organized for the purpose, in part, of accelerating the quality and quantity of economic growth and employment opportunities in Nash and Edgecombe Counties by inducing the location in the region of business enterprises satisfying the aforementioned purpose and thereby reducing physical, economic, and social distress resulting from unemployment and underemployment existing therein; and

WHEREAS, the City and County seek to promote economic growth and development within their jurisdictions and the social and economic improvement of their citizens, and desire to accelerate the quality and quantity of economic growth and employment opportunities in their jurisdictions by encouraging business enterprises satisfying the aforementioned public purposes and thereby reduce physical, economic, and social distress resulting from unemployment and underemployment existing therein; and

WHEREAS, the Inducing Parties have been negotiating with the Company to induce the Company to locate a new food storage/warehouse, distribution and transportation facility (the “**Facility**”) in an existing building located at 3051 North Church Street in the City of Rocky Mount,

Nash County, North Carolina more fully described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Project Site**”); and

WHEREAS, other communities have offered attractive inducements attempting to induce the Company to locate its operations in those communities, and the Company has considered locating its operations in other communities if it were unable to obtain the cooperation and assistance of the Inducing Parties in locating its operations in the City and County; and

WHEREAS, the Inducing Parties have presented the Company with various incentives in order to induce the Company’s commitment to locate its Facility on the Project Site; and

WHEREAS, in partial consideration of the Incentives (as defined below) to be paid and delivered hereunder, the Company will acquire and locate its operations on the Project Site and, in connection therewith, construct or cause to be constructed and upfit improvements comprising the Facility and install on the Project Site machinery, equipment and other real and personal improvements subject to ad valorem taxation by the City and County with a non-depreciated initial capital investment cost of \$4,700,000.00 (the “**Required Minimum Investment**”) and place such real and personal property in service on the Project Site; and

WHEREAS, the building, machinery, equipment and other improvements to be installed and constructed at the Project Site in connection with the construction, upfitting and equipping of the Facility will expand the City’s and County’s tax bases through increased ad valorem tax value created as a consequence of the Company’s capital investment in such building improvements, machinery and equipment being brought into the City and County and the construction of new improvements and location of new equipment at the Project Site; and

WHEREAS, as of the Final Employment Milestone, the Company will employ on the Project Site ninety-six (96) new permanent full-time employees at an average annual wage of no less than \$52,292.00 for hourly and salaried permanent full-time employees, which will provide significant employment opportunities to the residents of the City and County; and

WHEREAS, in recognition of the benefits derived by the Inducing Parties from the expanded tax base and the new employment opportunities provided by the Company, the Inducing Parties have agreed to provide the economic incentives and inducements to the Company described herein; and

WHEREAS, the Parties desire to memorialize the agreements and undertakings between them relating to the Facility,

AGREEMENT

NOW, THEREFORE, IT IS AGREED:

1. DEFINITIONS.

- a. **Act:** means the Local Development Act of 1925, codified as N.C.G.S. 158-7.1, and all amendments and additions thereto or replacements thereof.
- b. **Actual Employment:** means the total number of permanent full-time employees at the Required Wage at work on the Project Site at any specified time.
- c. **Adjustment Factor:** has the meaning set forth in Section 4 hereof.
- d. **Affiliate:** means a Person which controls, is controlled by or is under common control with another Person.
- e. **Agreement:** means this Economic Development Inducement Agreement.
- f. **Annual Certification:** has the meaning set forth in Section 3 hereof.
- g. **Business Day:** means any day other than a weekend day or a legal holiday designated by the State of North Carolina.
- h. **City:** means the City of Rocky Mount
- i. **Company:** means _____
- j. **Company Rep:** means the individual identified by the Company to the Tax Office from time to time to be the Company's duly authorized representative and agent to deal with the Tax Office with respect to all matters relating to this Agreement. The initial Company Rep is _____; the Company Rep may be changed from time to time upon ten days' prior written notice to the Tax Office.
- k. **Continuation Period:** has the meaning set forth in Section 2.
- l. **County:** means Nash County.
- m. **Deemed Eligible Investments:** has the meaning set forth in Section 9.c.
- n. **Eligible Investments:** subject to the limitations in this Agreement, means investments made by the Company for the acquisition of the Project Site and the construction of buildings and other real property improvements constituting the Facility and the acquisition and location in the Facility upon the Project Site of machinery, equipment and other real and personal property improvements subject to ad valorem taxation by the City and County and properly reported and certified to the Tax Office in accordance with Section 3 hereof. Eligible Investments shall not include any investments made after the Investment Period. Only investments made for commercial and industrial purposes (as such purposes and terms are contemplated by the Act) shall

be eligible for inclusion in Eligible Investments, including without limitation manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, and other industrial and commercial purposes (including retail). Eligible Investments shall not include inventory and goods held for sale. Eligible Investments shall include only the investments made on and within the Project Site by the Company which are subject to ad valorem taxation by the City and County, and Eligible Investments may include motor vehicles owned by the Company (not leased) which are sited and registered in Nash County and subject to taxation by the City and County. Buildings and related real property improvements may be added to Eligible Investments only when a certificate of occupancy has been issued for them and they have been identified to the Tax Office and are subject to ad valorem taxation. Machinery, equipment and other personal property (including motor vehicles) may be added to Eligible Investments only when they have been located and placed in service on the Project Site, identified to the Tax Office and are subject to ad valorem taxation. Planning, permitting, engineering and architectural fees and similar costs may constitute Eligible Investments to the extent subject to ad valorem taxation under the customary guidelines followed by the Tax Office. For avoidance of doubt, all Eligible Investments shall apply toward satisfaction of the Required Minimum Investment of Four Million Seven Hundred Thousand Dollars (\$4,700,000). No Incentives and Grants shall be paid on Eligible Investments in excess of Four Million Seven Hundred Thousand Dollars (\$4,700,000).

- o. **Employment Records:** has the meaning set forth in Section 3.
- p. **Facility:** has the meaning set forth in the Recitals.
- q. **Final Employment Milestone:** means December 31, 2022.
- r. **Final Investment Milestone:** means December 31, 2020.
- s. **Grant:** means the annual payment of Incentives to be paid in accordance with this Agreement.
- t. **Grant Period:** has the meaning set forth in Section 4 hereof.
- u. **Incentives:** means the incentive payments to be paid by the Inducing Parties to the Company in Grants as described in Section 4 hereof.
- v. **Incremental Employment Levels:** means the number of new employees to be hired by the Company as of December 31 of Year 1, Year 2 and Year 3 found in Exhibit B.
- w. **Investment Period:** means the period from the date hereof through the Final Investment Milestone unless the Agreement is terminated at some earlier time in accordance herewith.
- x. **Investment Records:** has the meaning set forth in Section 3.
- y. **Partnership:** means The Carolinas Gateway Partnership, Inc.
- z. **Performance Commitments:** has the meaning set forth in Section 2 hereof.

aa. **Person:** means an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a government body.

bb. **Reported Year:** has the meaning set forth in Section 3 hereof.

cc. **Required Minimum Employment:** means ninety-six (96) new permanent full-time employees, as of the Final Employment Milestone, at an average annual wage of no less than the Required Wage (hereinafter defined) for all hourly and salaried permanent full-time employees employed by the Company at the Project Site. A “**permanent full-time employee**” shall mean a permanent full-time employee working a minimum of 1600 hours per year and eligible for the full range of employment benefits offered by the Company who is a United States citizen, permanent United States resident or immigrant visa holder authorized to work in the United States. The “**average annual wage**” shall be calculated by annualizing the wages and salaries of each permanent full-time employee employed by the Company at the applicable time of calculation, summing those wages and salaries and dividing such total number of wages and salaries by the number of employees reported.

dd. **Required Minimum Investment:** has the meaning set forth in the Recitals.

ee. **Required Wage:** means an average annual wage of no less than Fifty-Two Thousand Two Hundred Ninety-Two Dollars (\$52,292.00).

ff. **Tax Office:** means the Nash County Tax Office.

gg. **Year 1 through Year 3:** shall have the meanings set forth in Section 4 hereof.

2. **COMPANY’S COMMITMENTS.** For and in consideration of the Incentives, the Company hereby commits to perform or provide the following (the “**Performance Commitments**”):

a. Invest no less than the Required Minimum Investment by the Final Investment Milestone.

b. Attain the Required Minimum Employment by the Final Employment Milestone. Certifications of Actual Employment on the Project Site as of December 31 in each Reported Year with copies of fourth quarter NCUI 101 forms shall be provided by the Company to the Tax Office and the Inducing Parties at least annually with the Annual Certification, provided that the Company has or can obtain such forms, and if such forms are not available, the Company shall provide other documentation reasonably acceptable to the Tax Office.

c. If the Company has received and retained any Incentives pursuant to the provisions of Section 4 hereof, the Company shall maintain operations in the Facility on the Project Site and maintain the Required Minimum Employment at all times for two (2) years following the Final Employment Milestone through December 31, 2024 (the “**Continuation Period**”).

d. Continue in business and full-time operation in the Facility on the Project Site at all times during the Grant Period and the Continuation Period, subject to temporary interruptions

of operations as a result of force majeure, repairs following casualty damage and routine maintenance.

3. **REPORTING AND VERIFICATION.** Each year the Company shall in compliance with applicable law, list with the Tax Office all property in or on the Project Site subject to ad valorem taxation and owned by the Company. In addition, during the term of this Agreement beginning in the year 2020, the Company shall provide to the Tax Office no later than March 1 an annual certification (the “**Annual Certification**”) certifying the following for the immediately preceding calendar year (the “**Reported Year**”):

- a. Total Eligible Investments made by the Company during the Reported Year and cumulatively during the Investment Period, including the costs thereof.
- b. All ad valorem taxes paid during the Reported Year with respect to the Eligible Investments for which Incentives are to be paid.
- c. Any change affecting ad valorem taxes with respect to any Eligible Investments reported in prior Reported Years.
- d. The Actual Employment as of December 31 in the Reported Year, to be certified by the Company.

The investments comprising the Eligible Investments and the property acquired therewith shall be identified and tied to specific Nash County tax parcels by the Company and tracked by the Company and the Tax Office. The Company shall provide to the Tax Office accurate and complete documentation of the Eligible Investments made by the Company with each payment of ad valorem taxes and identify the ad valorem taxes applicable to the Eligible Investments, all in a form reasonably acceptable to the Tax Office with sufficient detail to enable the Tax Office to confirm the accuracy thereof.

The Annual Certification filed by the Company shall be certified by the Company Rep, who shall be authorized to act on behalf of the Company. The Company and the Company Rep shall at all times cooperate with the Inducing Parties and the Tax Office as reasonably requested from time to time in order to assure the proper administration of the terms of this Agreement.

The Company shall provide the Tax Office with information sufficiently detailed to allow the Tax Office to differentiate improvements and property added from time to time from any previous property reported on which Incentives are being paid.

The Inducing Parties or the Tax Office may request additional information from the Company reasonably necessary to verify compliance with the Performance Commitments. In such event, the Company will make available for inspection at a convenient location and time it designates copies of invoices, purchase orders, contracts, canceled checks and other evidence which corroborate the Eligible Investments (the “**Investment Records**”) and of employment records which evidence and corroborate Actual Employment (the “**Employment Records**”). The Inducing Parties or the Tax Office may further request at reasonable times and intervals that it be allowed to enter upon and inspect all improvements on the Project Site including the equipment, machinery, and personal property thereon for the purpose of verifying the Eligible Investments

and Actual Employment, which requests will not be unreasonably denied. For safety reasons, such inspections will be scheduled and coordinated with the Company Rep.

The failure of the Company to provide any information or take any action required by this Agreement shall be deemed a default by the Company.

4. **INDUCEMENTS AND INCENTIVES TO THE COMPANY.** The Inducing Parties agree that, to induce the Company to locate its operations in the Facility on the Project Site and in consideration of the Company's performance of its undertakings herein, the Inducing Parties will do or cause to be done the following:

a. **City and County Annual Cash Grants.** Provided that the Required Minimum Investment has been made, reported to the Tax Office as of the Final Investment Milestone as required hereby and that the applicable Incremental Employment Level or the Required Minimum Employment, as applicable for that year of the Grant Period, has been attained and maintained as of the end of each Reported Year and reported to the Tax Office, and further provided the Company is otherwise in full compliance with this Agreement, each of the City and the County shall pay Incentives to the Company in Grants from any lawfully available funds not otherwise restricted upon the terms and conditions hereinafter set forth.

Each of the Parties has determined, independently, that the assessed property tax value of the Eligible Investments is the most objective means of accounting for the economic benefit to the City and the County of the Eligible Investments. For purposes of convenience only in quantifying the benefit to the City and County, the amount of each Grant by the City and the County shall be measured by and equal to fifty percent (50%) of the ad valorem taxes paid to the City and the County, respectively, on the Eligible Investments in the previous calendar year by the Company (as they are classified for ad valorem taxes as real property or personal property).

Grants will be paid based only upon ad valorem taxes actually paid and received with respect to property constructed and acquired with Eligible Investments and placed on the Project Site during the Investment Period. Grants shall be paid in three (3) annual installments on or before March 15 of each calendar year for the previous calendar year beginning with the calendar year 2020. The Grants shall be made based upon the ad valorem taxes paid on the Eligible Investments during the calendar year as they are tracked through the three (3) year grant period (the "**Grant Period**"). "**Year 1**" of the Grant Period shall mean calendar year 2020, "**Year 2**" shall mean calendar year 2021, "**Year 3**" shall mean calendar year 2022. The first Grant payment shall be made on or before March 15, 2021.

The calculation of the Incentives and Grants shall not be based upon any portion of ad valorem taxes paid which represents interest or penalties. Also, the calculation of the Incentives and Grants shall not be based upon any fire, insurance, or service district ad valorem taxes, or any other charge, fee, assessment, or tax other than the City's and the County's primary general revenue ad valorem tax.

b. **Partnership Cash Grants.** Provided that the Required Minimum Investment has been made, reported to the Tax Office as of the Final Investment Milestone as required hereby and that the applicable Incremental Employment Level or the Required Minimum Employment, as

applicable for that year of the Grant Period, has been attained and maintained as of the end of each Reported Year and reported to the Tax Office, and further provided the Company is otherwise in full compliance with this Agreement, the Partnership shall pay Incentives to the Company in three equal annual Grants of \$23,333.33 on or before March 15 of each calendar year beginning March 15, 2021.

c. Adjustment and Recapture. If the Company fails to achieve (i) the Required Minimum Investment goal by the Final Investment Milestone, (ii) the applicable Incremental Employment Level to be reached as of the end of Year 1, Year 2 or Year 3 or (iii) the Required Minimum Employment goal by the Final Employment Milestone, the Inducing Parties shall be entitled, at their discretion, to reduce the Incentives and each of the Grants by a percentage (the “**Adjustment Factor**”) equal to the greater of (i) the percentage by which actual Eligible Investments as of the Final Investment Milestone is less than the Required Minimum Investment or (ii) the percentage by which Actual Employment as of the end of a Reported Year is less than the Incremental Employment Level or Required Minimum Employment, as applicable. Such adjustment shall be effective for the next Grant payment due following the end of the Reported Year; it may be re-adjusted annually to the largest percentage of non-performance.

The Adjustment Factor shall be applied to the full Grant amount payable by any of the Inducing Parties which would have been payable if the Required Minimum Investment goal and the Required Minimum Employment goal had been attained in full.

If as of the end of each of the Reported Years during the Continuation Period, the percentage by which the Actual Employment certified as of December 31 for such Reported Year shall be less than the Actual Employment reported for the last year of the Grant Period, each of the Inducing Parties at its election shall be entitled to recover from the Company for the shortfall in such year an amount equal to ten percent (10%) of all Incentives paid during the Grant Period. Such amount shall be paid within thirty days after demand for repayment is made.

5. **CONDITIONS PRECEDENT TO INDUCING PARTIES’ PERFORMANCE.** The Inducing Parties’ obligation to commence or continue the payment of any Incentives or Grants under this Agreement shall be subject to the following conditions:

a. The Inducing Parties shall not be required to pay or deliver any Incentives or Grants at any time following the Company’s complete cessation of active operations at the Project Site other than by reason of an Event of Force Majeure (hereinafter defined).

b. The Inducing Parties shall not be required to pay or deliver any Incentives at any time when the Company has not paid all ad valorem taxes, charges and fees of every nature due and owing to the City and the County and any other applicable local governmental entity before they are delinquent.

c. There is no current appeal pending regarding the valuation of property at the Project Site (in which case any Grant payment will be held in abeyance pending final resolution of the appeal).

d. The Inducing Parties shall not be required to pay or deliver any Incentives or perform any other obligation under this Agreement at any time following the occurrence of a

default by the Company under this Agreement or under any mortgage, deed of trust, security agreement, financing lease, the Lease (as defined in Section 9.c hereof) or other such obligation covering the Project Site or any personal property of the Company located on the Project Site, or following the Company's dissolution or filing a petition in bankruptcy or seeking the appointment of a receiver or any other debtor relief, or the filing against the Company of a petition in bankruptcy or seeking the appointment of a receiver or other creditor relief and such petition is not dismissed within sixty (60) days following the filing thereof, or the appointment of a receiver for the Company's property.

e. No violation of any other obligations of the Company to the City or the County, including conformity with all City and County ordinances and regulations and any laws, orders or regulations that the City or the County is obligated to enforce against the Company on behalf of another body of government, has occurred and not been cured.

f. The Company has complied with its other obligations and duties to the City and the County as set forth herein.

The payment of all taxes and other sums due the City and the County for the Eligible Investments is a material condition of eligibility for a Grant in any year during the term of this Agreement and shall not be construed as implying or suggesting that the City or the County is reimbursing to the Company any or all ad valorem tax collected by the City or the County.

6. **COMPANY DEFAULT AND REMEDIES.** In the event the Company fails to carry out or maintain the terms of this Agreement applicable to the Company for the period of this Agreement, including but not limited to the Performance Commitments, then one or more of the following remedies shall be available to the Inducing Parties:

a. If the Company breaches any of the covenants or other terms or provisions herein, other than the Performance Commitments in Section 2.a., 2.b. and 2.c., and shall fail to cure such breach within thirty (30) days after written notice thereof, the Inducing Parties may terminate the Agreement and no further Incentives shall be paid.

b. If the Company fails to attain the Performance Commitments in Section 2.a., 2.b. or 2.c., the Incentives and Grants shall be adjusted by the Adjustment Factor in the manner set forth in Section 4.

c. If the Company ceases or terminates its operations on the Project Site during the Grant Period or the Continuation Period other than for temporary purposes such as repairs following casualty damage, routine maintenance or as a result of a force majeure, it is a violation of Section 2.d. and no further Incentives or Grants shall be payable. A "termination" of operations shall be deemed to have occurred if at any time Actual Employment is less than fifty percent (50%) of the Required Minimum Employment.

If as a result of the Inducing Parties' investigation and audit of the Certifications, Investment Records or Employment Records, it is determined that the Incentives and Grants have been overpaid, the Inducing Parties may demand that the overpayment be repaid and any amounts

to be repaid shall be due and payable within thirty days after request for repayment and shall accrue interest at the legal rate from that date until repaid.

The Inducing Parties may, in their sole discretion, waive *de minimis* breaches of conditions of this Agreement and, instead of abating the Grants in their entirety, may reduce the amount of the Grants as it deems reasonable under all circumstances.

7. **WARRANTIES AND REPRESENTATIONS OF THE COMPANY.** For the Inducing Parties' reliance in entering into this Agreement, the Company hereby covenants, warrants and represents to the Inducing Parties that it is duly organized and in existence and has the corporate power and authority to bind itself to the requirements of this Agreement and to perform its obligations hereunder, that the execution and delivery of this Agreement have been approved in accordance with its organizational documents and that it is duly qualified to conduct business in the State of North Carolina. The Company shall provide such evidence of such authority and approval as may be reasonably requested by the Inducing Parties.

8. **LIABILITY OF OFFICERS AND AGENTS.** No official, officer, agent or employee of the Inducing Parties or the Company shall be subject to any personal liability or accountability by reason of the execution or performance of this Agreement or any other documents related to the transactions contemplated hereby. Such officials, officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such official, officer, agent or employee from the performance of any official duty provided by law. Nevertheless, the Parties, and each Person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, which is binding upon the Party represented by them, and to sign on behalf of the Party indicated, and are acting on behalf of themselves, their constituent members, and the successors and assigns of each of them.

9. **GENERAL PROVISIONS.**

a. **Notices.** All notices hereunder shall be in writing and shall be deemed to be given and received when delivered in person, on the next Business Day following the date when placed in the custody of a recognized national courier service and mailed for next Business Day delivery, postage prepaid, or on the date when delivered by facsimile transmission with electronic confirmation of receipt, addressed to the respective Party to receive notice at the following addresses:

If to the Partnership: The Carolinas Gateway Partnership, Inc.
427 Falls Road
Rocky Mount, NC 27804
Attention: E. Norris Tolson
Facsimile: (252) 442-7315

with a copy to (not constituting notice):

Poyner Spruill LLP
Post Office Box 353

Rocky Mount, North Carolina 27802
Facsimile: (919) 783-1075
Attention: Samuel W. Johnson

If to the City: The City of Rocky Mount
One Government Plaza
Rocky Mount, North Carolina 27804
Attn: City Manager
Fax: (252) 972-1173
Phone: (252) 972-1331
Email: _____@rockymountnc.gov

with a copy to (not constituting notice):

Poyner Spruill LLP
Post Office Box 353
Rocky Mount, North Carolina 27802
Attn: Richard J. Rose
Fax: (919) 783-1075
Phone: (252) 972-7107
Email: jrose@poynerspruill.com

If to the County: Nash County
120 West Washington Street, Suite 3072
Nashville, NC 27856
Attention: County Manager
Fax: (252) 459-9817
Phone: (252) 459-9800
Email: _____@nashcountync.gov

with a copy to (not constituting notice):

Battle Winslow Scott & Wiley, P.A.
P. O. Box 7100
2343 Professional Drive
Rocky Mount, NC 27804
Attention: G. Vincent Durham, Jr
Fax: 252-937-8100
Phone: 252-937-2200
Email: vdurham@bws.com

If to the Company: Company

Fax _____
Phone _____

with a copy to (not constituting notice):

Fax _____
Phone _____

b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns, subject to the provision of the following Section 9.c. Each of the City and County represents and warrants that it has approved this Agreement and the terms and incentives hereunder and that the terms and incentives hereunder have been, and this Agreement shall further be conditioned upon it being, stamp-certified as having been pre-audited in order to comply with the budgetary accounting requirements (if any) that apply under the Local Government Budget and Fiscal Control Act or otherwise. Such certification is set forth at the end of this Agreement, and must be signed by the respective finance officer for the City and the County.

c. Assignment. This Agreement shall be assignable by the Company only to an entity that is controlled by, controls or under common control with the Company or, in the case of a sale of the Project Site and substantially all of the operating assets of the Facility and the business operated therein, this Agreement may be assigned to the purchaser of the Project Site, the Facility and such assets, provided, however, any successor or assign of the Company shall expressly assume in writing the obligations of the Company hereunder, subject to all the limitations herein, including without limitation the obligations relating to the maintenance of an operating business at the Project Site. The Inducing Parties shall be given prior written notice of any such assignment and assumption and shall expressly be made a beneficiary of such assumption on terms reasonably acceptable to the City and the County. No such assignment shall relieve the Company of its obligations hereunder.

Subject to the last sentence of this paragraph, the Inducing Parties acknowledge and agree that an Affiliate of the Company (the “**Landlord**”) may acquire the Project Site and perform all or part of the upfitting, improvement and equipping of the Project Site which it will lease to the Company for its operations therein pursuant to a written lease which shall continue in effect for at least the duration of the Grant Period (the “**Lease**”). No such acquisition and lease shall relieve the Company of its obligations hereunder or be deemed an assignment of this Agreement. The investment and expenditures made by the Landlord for the construction and equipping of the Facility on the Project Site shall be deemed to be made by the Company for purposes of fulfilling the Required Minimum Investment if and to the extent that such investment and expenditures would have been an Eligible Investment if made directly by the Company (such investments and expenditures by the Landlord, “**Deemed Eligible Investments**”). The Inducing Parties’ willingness to agree to the foregoing is expressly conditioned upon the Lease containing the following provisions: (a) with respect to any Reported Year during which the Landlord makes one

(1) or more Deemed Eligible Investments, the Landlord shall comply with, and be bound by, the Company's obligations set forth in Section 3 hereof, including, without limitation, the obligation to furnish to the Inducing Parties an Annual Certification and such Investment Records as may be requested from time to time; and (b) the Company (and not Landlord) shall be directly responsible for the payment of, and shall pay, all ad valorem taxes with respect to the real and personal property on the Project Site (including such real and personal property acquired or constructed, as the case may be, with Deemed Eligible Investments), it being the case that the City and County cash grants described in Section 4.a. shall be paid solely with respect to any ad valorem taxes paid by the Company (and not Landlord) with respect to Eligible Investments.

d. Public Records. Notwithstanding any terms or conditions stated herein, the County and the City are at all times subject to North Carolina laws regarding open meetings and disclosure of public records, and nothing stated herein shall be construed as requiring the City or the County to violate such laws. The Company is directed to N.C.G.S. Section 132-1.2, which describes the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed. The responsibility for complying with these methods to avoid disclosure of confidential information lies with the Company.

e. Time of Essence; Remedies. The Parties acknowledges that time is of the essence in performing their respective obligations hereunder.

f. Governing Law; Jurisdiction; Venue. This Agreement has been drafted and shall be deemed a contract entered into, delivered and made in the State of North Carolina, United States of America, and it shall be governed, construed, interpreted and enforced in accordance with the laws of the State of North Carolina, without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of North Carolina. Any suit, action or proceeding with respect to this Agreement (or any document or instrument entered into or delivered in connection herewith) or any judgment entered by any court in respect thereof, shall be brought in the General Court of Justice, State of North Carolina, County of Nash, or in the United States District Court, Eastern District of North Carolina, and the Parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action or proceeding; provided, however, that nothing contained in this Agreement shall prevent the City or the County from bringing any action, enforcing any award or judgment or exercising any rights against the Company individually, against any security or against any property of the Company within any other county, state or other foreign or domestic jurisdiction with proper jurisdiction over the Parties. The Parties hereby irrevocably consent to the service of process in any suit, action or proceeding in said courts by the mailing thereof by registered or certified mail, postage prepaid, to the Parties' respective addresses. Each Party hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of this Agreement (or any document or instrument entered into or delivered in connection herewith) if brought in the United States District Court, Eastern District of North Carolina, or the General Court of Justice, State of North Carolina, County of Nash, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. If any term or provision of this Agreement is declared invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement (or the

application of such term, provision or condition to Persons or circumstances other than those in respect of which it is invalid or unenforceable), shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be enforceable to the fullest extent permitted by law.

g. Independent Agreement. This Agreement and the conditions hereof only relate to the provisions and grants from the Inducing Parties set forth herein and do not limit or affect other commitments made by other entities.

h. Entire Agreement. This writing contains the entire agreement between the Parties hereto as to the subject matter hereof and may be amended only by writing signed by all Parties hereto.

i. Interest and Attorneys' Fees. Any payment not made hereunder when due shall bear interest at the legal rate from the due date until paid. If any legal action or other proceeding shall be instituted for the collection of any sums or the performance of any other obligations hereunder, the prevailing party in any such action or proceeding shall be entitled to the recovery of its reasonable attorneys' fees and costs of litigation.

j. Limitation on City and County Obligations. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City or the County within the meaning of constitutional debt limitations nor shall any provision be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the City or the County within the meaning of the North Carolina Constitution. This Agreement shall not directly, indirectly or contingently obligate the City or the County to make any payments beyond those appropriated in the sole discretion of the City or the County for any fiscal year in which this Agreement shall be in effect. No provision in this Agreement shall be construed to pledge or to create a lien on any class or source of the City or the County's moneys and revenues, nor shall any provision of this Agreement restrict to any extent prohibited by law any action or right of action on the part of any City or County governing body. To the extent of any conflict between this paragraph and any other provision of this Agreement, this paragraph shall take priority.

k. Counterparts. This Agreement may be executed simultaneously in two or more counterparts each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or electronic mail shall be effective as delivery of a manually executed counterpart. Any Party so executing this Agreement by facsimile transmission or electronic mail shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission or electronic mail.

l. No Waiver. The failure of a Party to enforce any provision of this Agreement or any right arising hereunder or failure to exercise any election provided herein in any instance shall not constitute a waiver of the provisions, rights or elections in any other instance or affect the validity of this Agreement and such failure shall not preclude or prejudice such Party from later

enforcing or exercising the same or any other provision, right or election to which it may be entitled.

m. Survival. Subject to the terms hereof, the contractual commitments provided for herein and made by the Parties hereto shall be deemed to continue into the future, survive, and remain binding upon the Parties hereto to the full extent permitted under applicable law.

n. Force Majeure. Any delay in the performance of any of the duties or obligations of the Inducing Parties or the Company hereunder shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts not specific to the Inducing Parties or the Company; shortages of materials or energy; fires; explosions, floods or, with respect to construction deadlines, sustained adverse weather conditions (any such event, an “**Event of Force Majeure**”). The Party whose performance is delayed shall give prompt notice to the other Party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date thereof.

o. Recitals Incorporated. The recitals hereto are incorporated in this Agreement by reference and shall constitute an integral part hereof.

(Signatures are on the following pages.)

**Signature Page One
To Economic Development Inducement Agreement**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**THE CAROLINAS GATEWAY
PARTNERSHIP, INC.**

By: _____
Name: _____
Title: _____

NASH COUNTY

By: _____
Chairman
Nash County Board of Commissioners

ATTEST:

Clerk to the Board

CITY OF ROCKY MOUNT

By: _____
Mayor

ATTEST:

City Clerk

COMPANY

By: _____
Name: _____
Title: _____

**Signature Page Two
To Economic Development Inducement Agreement**

This instrument has been pre-audited to the extent, and in the manner required by, the “Local Government Budget and Fiscal Control Act.”

Name: _____
City of Rocky Mount Finance Officer
on behalf of the City of Rocky Mount

This instrument has been pre-audited to the extent, and in the manner required by, the “Local Government Budget and Fiscal Control Act.”

Name: _____
Nash County Finance Officer
on behalf of Nash County

Exhibit A

Project Site

That certain property known as 3051 North Church Street, Rocky Mount, Nash County, North Carolina, the said property being Nash County Tax Parcel No. _____ and being more fully described on Attachment One to this Exhibit A.

Exhibit B

Incremental Employment Levels

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>
Total Employees	32	59	96