

## **ECONOMIC INCENTIVE AGREEMENT**

### **J&D Meat Company, Inc.**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), between the CITY OF FRESNO, a municipal corporation (“City”), and J&D MEAT COMPANY, a California corporation doing business as JD FOOD, and CERTIFIED MEAT PRODUCTS, INC., a California corporation.

### **RECITALS**

WHEREAS, J&D Meat Company, Inc., is a distributor of food related products to restaurants, schools, caterers, hotels, and retail grocery stores throughout Northern California, and Certified Meat Products, Inc., is a processor of meat products for foodservice operators, retail stores, and wholesale manufacturers throughout the United States; and

WHEREAS, J&D Meat Company is closely affiliated with Certified Meat Products by common ownership, the two being collectively referred to herein as the “Companies,” and the Companies currently share a location at 4586 E. Commerce, Fresno, California (“Current Location”); and

WHEREAS, the Companies propose to expand business operations (the “Project”) along Edgar Avenue between Maple and Dearing Avenues, APN 487-042-13S (the “Project Site”) as depicted on Exhibit “A”; and

WHEREAS, the Companies have considered locating in other jurisdictions and expansion at the Project Site has been conditioned upon Companies receiving economic development assistance from City; and

WHEREAS, City desires to increase employment opportunities and encourage the establishment of new jobs within the City to improve the economic welfare of the City and its citizens; and

WHEREAS, the Project will be of benefit to the citizens of the City in that the Project is expected to directly employ and expand the labor base of the City by approximately 144 new full time positions, and will expand the tax base of the City; and

WHEREAS, for the purpose of economic impact, performance requirements for the Companies shall be combined so long as they remain connected by common ownership, and the Companies shall be jointly and severally liable for the obligations herein; and

WHEREAS, Companies will invest approximately \$10,000,000 in capital improvements to the Project Site during the term of this Agreement; and

WHEREAS, the City Council finds the creation of jobs, the expansion of the tax base, and the infusion of money into the local economy are of public benefit for which the incentives set forth herein are proper; and

WHEREAS, in recognition of job creation and capital investment, City commits to provide the incentives set forth herein; and

WHEREAS, absent participation by the City pursuant to this Agreement, the Companies' expansion would not be constructed within the City.

NOW THEREFORE, in consideration of the foregoing recitals, which are contractual in nature, and the mutual promises and covenants hereinafter set forth, City and Company agree as follows:

## **DEFINITIONS**

"Agreement Year" means each calendar year after the Effective Date, beginning January 1, 2016.

"Economic Development Assistance" means the annual reimbursement payments made to Companies by City as authorized by this Agreement.

"Full Time" employees are defined as salary or full-time hourly employees with a scheduled work week of 35 hours or more throughout the calendar year and whose services are dedicated to Companies and receive their compensation from Companies.

"Initial Qualified Investment" means the capital expenditure of \$7,000,000 at the Project Site by December 31, 2016.

"Reimbursable Improvements" means the roadway, water, and sewer services more fully set forth in Exhibit "B" hereto, prepared by Companies' civil engineer.

"Required Levels of Employment" means the amount of Full Time Employees necessary to qualify for the full amount of Economic Development Assistance in a given Agreement Year.

"Total Qualified Investment" means the capital investment of \$10,000,000 (inclusive of Initial Qualified Investment) during the Term, broken down into annual totals as set forth in Section 5.c. The Total Qualified Investment shall consist of buildings and other real property improvements, as well as furniture, fixtures and equipment needed to run each business.

## **AGREEMENT**

1. Term. Unless sooner terminated, the Term of this Agreement shall commence on the Effective Date and end on December 31, 2025, subject to the City's obligation, if

any, to make Economic Development Assistance payments for the final Agreement Year. This Agreement may sooner terminate upon occurrence of all of the following:

- a. Companies achieve the Full Time employment goal of 288 employees; and
- b. Companies make the Total Qualified Investment of \$10,000,000; and
- c. City fully reimburses Companies for the cost of the Reimbursable Improvements.

2. City's Economic Development Assistance

a. Off-Site Improvements Reimbursement.

i. Companies agree to construct the Reimbursable Improvements in accordance with approved plans and City's standards and specifications on behalf of City at Companies' sole cost and expense (including, but not limited to, engineering, inspection and testing). In completing the construction, Companies shall comply with (a) the conditions and terms of the entitlements and site plan, (b) all approved construction plans, (c) all applicable laws, ordinances, and resolutions, and (d) the construction standards contained in the City's Standard Specifications. Companies will complete all construction to the satisfaction of, and use materials satisfactory to, the City Engineer.

City's final written acceptance of any public facilities will constitute a finding that the public improvements comply with the plans and specifications, but Companies shall be responsible to City for any defects in work, material or design in the public improvements or facilities that occur or appear within one year after the date of written acceptance. This one-year obligation is in addition to, and does not limit, Companies' obligations under any express or implied warranties. City shall give Companies written notice to repair or correct any defect occurring or appearing within one year, and the Companies' cost to repair or correct the defect will not be reimbursable by City. Failure to repair or correct any defect may result in an offset to, or suspension of, the Economic Development Assistance until the repair or correction is completed to the satisfaction of the City. Companies shall include City as a named beneficiary to any subcontract for or warranty of the public facilities.

The parties understand that some of the Reimbursable Improvements are being installed in front of undeveloped properties. If those properties are developed in the future and connected to the Reimbursable Improvements, the installer of the improvements may be entitled to reimbursement. Until the Companies have been fully reimbursed for the Reimbursable Improvements the Companies shall receive all reimbursements paid by those who connect to the Reimbursable Improvements. Because City is reimbursing Companies for the Reimbursable Improvements pursuant to this Agreement, however, the City shall receive a credit for reimbursements to the Companies for the Reimbursable

Improvements from adjacent property owners. After the Companies have been reimbursed, from all sources, for the full amount of reimbursement owing to the Companies as calculated pursuant to this Agreement, the Companies shall not be eligible for any additional reimbursements or payments from City or adjacent property owners for the Reimbursable Improvements. Any additional reimbursement for the Reimbursable Improvements from adjacent property owners shall be paid to and be the property of City.

ii. After the Reimbursable Improvements have been accepted by City, City shall reimburse Companies for their actual out-of-pocket costs in constructing the Reimbursable Improvements, in an amount not to exceed \$360,467, according to the specified improvement reimbursement credit formulas below. Companies shall provide invoices to City evidencing the actual cost of the Reimbursable Improvements. The reimbursement of Companies' improvement costs using future City revenues generated directly by the Project will occur only after the City's receipt thereof.

A. Real Property Improvements Credit Formula. 100% of the City's share of secured real property taxes paid annually in connection with improvements and capital equipment purchases to the Project Site, such taxes on improvements and capital equipment purchases to be determined by subtracting the amount of the secured real property taxes paid in the last full year prior to the commencement of Companies' improvements to the Project Site from the amount of property taxes paid in any subsequent year (the "Associated Funds"). The City will exercise all reasonable efforts to acquire such distributions from the County in a timely manner each Agreement Year for the preceding Agreement Year. The City will confirm the Real Property Improvement Credit to which Companies are entitled within thirty days of receipt of the distribution of funds from the County. Within thirty days of confirming the amount of the Real Property Improvement Credit, City will issue payment to Companies.

B. Wholesale Business Tax Credit Formula. The City will waive the amount of Wholesale Business Tax attributable to the Companies during the term of this Agreement, up to a maximum amount of \$31,128/year.

3. Deferred Improvements. The following required improvements shall be deferred:

a. Construction of sidewalk along Edgar Avenue shall be deferred indefinitely.

b. Undergrounding of power and telephone lines shall be deferred by covenant. Companies shall execute an Underground Utility Covenant stating the Project Site may be included in a future underground utility district that may be formed,

and Companies understand they may have a future financial obligation to participate in undergrounding these facilities.

4. Plan Review Assistance. City shall process Companies' site plan review application on a priority basis. City shall make every effort to complete the review within sixty days of receipt of a complete application. City shall assign a dedicated staff member to serve as Companies' primary point of contact for permit processing.

5. Conditions on Economic Development Assistance. The City's obligations to provide Economic Development Assistance to Company is conditioned upon the following:

a. Companies are not in default of this Agreement.

b. Job Retention. During the Term, Companies shall retain at the Current Location and Project Site the 144 Full Time employees employed by Companies as of January 1, 2015.

c. Job Creation. Commencing with Agreement Year 2017, Companies shall add Full Time employees at the Current Location and Project Site to maintain the following Required Level of Employment:

Year	Required Level of Employment - Total Number of Full Time Employees
Base Year – Effective Date	144
2016	144
2017	152
2018	162
2019	180
2020	196
2021	212
2022	228
2023	250
2024	270
2025	288

All determinations of the number of Full Time employees maintained by Companies during any given Agreement Year shall be made based on the number of Full Time employees employed by Companies as of December 31 of the Agreement Year for which such determination is being made.

If Companies fail to meet the Required Levels of Employment in a given Agreement Year, the Economic Development Assistance payment for that year will be retained by City. If in the next Agreement Year Companies meet the goal for the then

current Agreement Year, Companies shall be entitled to the Economic Development Assistance for that Agreement Year and the retained Economic Development Assistance payment from the prior Agreement Year. If Companies do not meet their Required Levels of Employment for two consecutive years, then City's obligation to Companies shall immediately terminate, and City shall have the right to terminate this Agreement.

d. **Qualified Investment.** To receive the full Economic Development Assistance in Agreement Year 2017, Companies shall have made at least \$7,000,000 capital investment at the Project Site by December 31, 2016. By December 31 of each Agreement Year thereafter, Companies shall make the following additional annual capital investments, to reach the Total Qualified Investment.

Year	Annual Qualified Investment	Cumulative Total Qualified Investment
2016	\$7,000,000	\$7,000,000
2017	\$1,000,000	\$8,000,000
2018	\$500,000	\$8,500,000
2019	\$500,000	\$9,000,000
2020	\$100,000	\$9,100,000
2021	\$0	\$9,100,000
2022	\$0	\$9,100,000
2023	\$500,000	\$9,600,000
2024	\$200,000	\$9,800,000
2025	\$200,000	\$10,000,000

If Companies fail to meet (within 3%) their Annual Qualified Investment Total in a given Agreement Year, the Economic Development Assistance payment for that year will be retained by City. If in the next Agreement Year Companies meet the goal for the then current Agreement Year, Companies shall be entitled to the Economic Development Assistance for that current Agreement Year and the retained Economic Development Assistance payment from the prior Agreement Year. If Companies do not meet their Required Levels of Investment for two consecutive years, then City's obligation to Companies shall immediately terminate, and City shall have the right to terminate this Agreement.

6. Termination.

a. Either party may terminate this Agreement for cause upon giving thirty days written notice to the other party should the other party materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified, and fails to cure the default within thirty days. If the default cannot with due diligence be cured in thirty days, the party shall have the additional time reasonably necessary to accomplish the cure, provided that party has commenced curing within such thirty days and thereafter diligently prosecutes the cure to completion. If notice of termination for

cause is given and it is later determined the other party was not in default or the default was excusable, then the notice of termination shall be deemed void.

b. City may suspend, amend, or terminate this Agreement immediately upon giving written notice to Companies if due to a change in law or regulation the Economic Development Assistance payments become illegal or otherwise impossible due to no Associated Funds being paid to City from the County. Any suspension, amendment or termination of this Agreement pursuant to this Section shall preserve the rights of Companies to the extent that Associated Funds are still available for payment of the Economic Development Assistance payments. Nothing in this provision shall prevent Companies from pursuing any remedies against the responsible government authority otherwise available to it by law.

c. If Companies fail to commence operations within twelve months of the approval of building permits, or if Companies suspend or cease operations at the Current Location or Project Site for twelve consecutive months, then City's obligation to Companies shall immediately terminate, and City shall have the right to terminate this Agreement.

d. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obliged, performance of such act shall be excused for the period of the delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

## 7. Indemnity.

To the furthest extent allowed by law including California Civil Code section 2782, Companies shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Companies, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen from acts or omissions of Companies directly or indirectly involving and occurring during the construction by Companies of the Reimbursable Improvements, or directly or indirectly involving and occurring during the relocation by Companies of utilities. Companies' obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Companies should subcontract all or any portion of the work to be performed under this Contract, Companies shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Companies' obligations under this indemnity shall survive termination of this Agreement.

8. Audits and Records. The parties acknowledge and agree a strong City economy is in the best interest of both the Companies and the citizens of City. The Companies shall prepare and deliver to City such data and other information as and when City may from time to time reasonably request concerning public benefits anticipated in connection with City's provision of incentives to Companies.

At the end of each Agreement Year from December 31, 2016, until the termination of this Agreement, Companies shall document for City for such Agreement Year, (i) the number of Companies' Full Time employees at Current Location and Project Site, and the aggregate average annual compensation by class of employee, (ii) the amount of Wholesale Business Tax attributable to Companies based on gross receipts for wholesale sales for the Agreement Year and (iii) the total capital investment made during the prior calendar year as required by the foregoing investment schedule. Companies shall provide copies (or printed reports, if such records are maintained electronically) of such records to the City, with personal information redacted, on or before March 1 following the end of each Agreement Year.

Upon City's request, City or its designee shall have the right to audit Companies' documentation associated with the minimum capital investments and employment obligations under this Agreement and shall at all times be maintained in reasonable condition for audit and shall be subject to reasonable examination by the City or its agents during reasonable hours upon reasonable notice solely for the purpose of reviewing Companies' compliance with this Agreement. The books and accounts of the operations under this Agreement shall be kept in accordance with generally accepted accounting principles. City shall handle records provided pursuant to this provision as confidential and proprietary business information to the extent allowed by State and Federal laws. City shall not copy or remove from the Companies site any proprietary or confidential information. City agrees that for the purposes of determining that the Companies are in compliance with this Agreement only aggregated data concerning investment and employment is required. Companies shall maintain such records for a period of four years following the end of the respective Agreement Year to which such records apply.

9. Confidentiality. City shall keep all proprietary and confidential information and data provided by Companies under this Agreement strictly confidential to the fullest extent permitted by law. City will use information provided by Company pursuant to this Agreement only for purposes within the scope of this Agreement. If there is a demonstrated need for the City to review any confidential or proprietary data of the



Companies, then the Companies shall clearly mark or otherwise identify in writing all information it considers to be proprietary or confidential at the time it is delivered to City. If the City obtains any material from the Companies that is marked proprietary or confidential, then the City shall store that information in separately marked and locked files. Those files shall not be copied or removed from the location where they are stored and access shall be restricted to those only those employees or others who are conducting an audit to ensure compliance with this Agreement. The City is not authorized to utilize the information for any other purposes. The confidentiality obligation under this section shall not apply to: (a) information which is already public information or which is otherwise available to the general public; (b) information received by the City from a third party without a similar confidentiality restriction who is lawfully in possession of the information and who has the lawful right to disclose it; (c) information that is already in the City's possession prior to receiving it from Companies; or (d) information delivered by Companies to City and not marked or otherwise identified as proprietary and confidential at the time it was delivered.

10. Termination if Subject to California Labor Code section 1720. Companies shall be solely responsible for determining whether payment of prevailing wage is required. Companies shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Companies, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations. Other provisions of this Agreement and its Effective Date notwithstanding, Companies may, at their sole discretion, terminate this Agreement by providing notice in writing to City if any competent governmental authority makes a final determination that this Agreement, or any agreement of its type, is subject to California Labor Code section 1720 or any regulations promulgated pursuant thereto. Companies' obligation to indemnify City under the provisions of this paragraph shall survive termination of this Agreement.

11. No Reliance. Companies represent and warrant they are not relying on any representation by City as to the sufficiency of Companies' information and material required to obtain permits, approvals, bonds, or other certifications authorizing development, manufacturing or financing. Companies further represent and warrant that they are not relying on any representation of City that any certain desired permit, approval or other desired outcome is guaranteed as a result of assistance provided by City under this Agreement. Companies acknowledge and agree City is not responsible for any loss, whether claimed or suffered by Companies, in connection with the assistance provided by City pursuant to this Agreement or in the event the desired permits and/or approvals are not awarded to Companies.

12. Amendment and Waiver. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition

shall not be construed as a waiver of any other default, breach or condition, or any other right hereunder. No alteration, amendment, variation or waiver of this Agreement shall be binding upon City unless agreed to by the City Council.

13. Successors and Assigns. This Agreement shall be binding on the parties' successors and assigns. Companies shall not assign this Agreement or any right or obligation hereunder except that it may so assign to its immediate or ultimate parent, or to a directly related corporate or business entity, by providing notice to City. There shall be no third party beneficiaries or, nor any holders of any lien interests in, Companies' rights under this Agreement, including, but not limited to, any person or entity holding any easement rights or appurtenant interest in the land associated with the Project Site or claiming superior title to the Project Site.

14. Governmental Approvals. By entering into this Agreement, neither City nor its City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any discretionary action relating to Companies' activities. Discretionary action includes but is not limited to rezones, variances, environmental clearances, or any other governmental agency approvals which may be required for Companies' activities.

15. Compliance with Laws, Venue, Attorney's Fees. Companies shall observe and comply with all applicable Federal, State and local laws, regulations and ordinances. This Agreement shall be governed by the laws of the State of California, and venue shall be Fresno County. If any party to this Agreement begins any action, proceeding, or arbitration arising out of this Agreement, then as between Companies and City, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.

16. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants he or she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and such entity is qualified to do business in California.

In witness whereof, the parties have executed this Agreement as of the date first written above.

CITY OF FRESNO, a municipal corporation

J&D MEAT COMPANY, a California corporation

By \_\_\_\_\_  
Bruce Rudd, City Manager

By \_\_\_\_\_  
Mark Ford, President

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:

CERTIFIED MEAT PRODUCTS, INC., a California corporation

YVONNE SPENCE, CMC  
City Clerk

By \_\_\_\_\_  
Cassi Maxey, President

By \_\_\_\_\_  
Deputy

Date \_\_\_\_\_

APPROVED AS TO FORM:

DOUGLAS T. SLOAN  
City Attorney

By \_\_\_\_\_  
Deputy

KBD:ns [67875ns/kbd]- 5/12/15

EXHIBIT A  
PROJECT SITE

EXHIBIT B  
REIMBURSABLE IMPROVEMENTS – ENGINEER'S ESTIMATE