Industrial Development Authority of the Town of Front Royal & The County of Warren, Virginia
DBA: Economic Development Authority
Website: wceda.com
Phone: 540.635.2182 | Fax: 540.635.1853
400 D Kendrick Lane, PO Box 445, Front Royal, Virginia 22630-2910

Regular Meeting Agenda
Warren County Government Center: Caucus Room, 220 N. Commerce Ave, Front Royal, VA

October 28, 2022 **8:00 AM**

1. Call to Order
2. Adoption of Agenda – Additions or Deletions
3. Approval of Minutes – September 26, 2022 & October 14, 2022
4. Reports
   A. Executive Committee – Jeff Browne
   B. Asset Committee – Greg Harold
   C. Finance Committee/Budget Update – Jim Wolfe
   D. Board Members Updates
   E. Warren County Director of Economic Development – Joe Petty
5. Unfinished Business
   A. TPOF Incentive Agreement – Jeff Browne
6. New Business
   A. Strategic Plan Action/Priority Items – Jeff Browne & Jim Wolfe
   B. Small Business Loan Committee – Jim Wolfe & Joe Petty
   C. FY22/23 Budget – Jim Wolfe
   D. Property Release – TM#12----32A5A
7. Closed Session
   A. 4 matters – Discussion of disposition of publicly held real property where discussion in open meeting would adversely affect the bargaining position or negotiating strategy of the public body, Stephens Industrial Park, 1321 Happy Creek Rd, Avtex redevelopment, Happy Creek Industrial Park, and legal advice related thereto, pursuant to Va. Code § 2.2-3711.A.3 and 8.
   B. 2 matters – Consultation with legal counsel pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body, EDA vs Jennifer McDonald et al, EDA v. Town of Front Royal et al, pursuant to Va. Code § 2.2-3711.A.7 and 8.
8. Additional New Business (if needed)

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE TOWN OF FRONT ROYAL & COUNTY OF WARREN, VIRGINIA
dba ECONOMIC DEVELOPMENT AUTHORITY (EDA)

At a regular meeting of the Board of Directors of the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia, dba Economic Development Authority held on Monday, September 26, 2022, at 3:00 PM at the Warren County Government Center, Caucus Room, 220 N. Commerce Avenue, Front Royal, VA 22630, and streamed online.

Board Members Present:	Jeff Browne (Chairman); Greg Harold; Scott Jenkins; Jorie Martin; Jim Wolfe
Others Present:	Joe Petty, Warren County Director of Economic Development; Walt Mabe, Warren County Board of Supervisors, Roger Bianchini, Royal Examiner
Others Present (online):	Sharon Pandak, FR- WC EDA attorney

Jeff Browne called the meeting to order at 3:00 PM

Adoption of Agenda

On a motion by Scott Jenkins, seconded by Jorie Martin, and by the following vote, the Board of Directors approved the agenda as presented:

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

Approval of Minutes

On a motion by Jim Wolfe, seconded by Scott Jenkins, and by the following vote, the Board of Directors approved the meeting minutes from August 26, 2022, as presented:

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

Committee Reports

Jeff Browne as part of his Executive Committee report suggested a meeting with FREDA, and possible doodle poll to gauge others scheduling. There is an effort to continue working with the Town of Front Royal on a utility easement or MOU for the Kendrick Lane parcel.

Member Jim Wolfe reminded the Board of the upcoming board retreat on Friday, October 14 at 8:00 AM to discuss updating the Authority’s strategic plan. The Board has assumed specific tasks that will provide specific steps to accomplish its objectives. Jeff Browne and Greg Harold provided a template for the Board to follow by reviewing the current website and providing both immediate and longer-term goals.

Jorie Martin provided an overview of an existing insurance policy for the FRWCEDA office building, which has been restructured to provide both appropriate coverage and cost savings on the space.

Member Greg Harold provided an update from the Asset Committee. The 426 Baugh Drive property has been sold, and there is a renewed focus on other FR-WC EDA assets. Given the Avtex Redevelopment Site presents unique challenges and importance, the Board should explore working with an outside organization for future plans.

Treasurer, Jim Wolfe, presented an update regarding the Finance Committee by discussing monthly financial statements and the reestablishment of the small business loan committee. Jim has been working with County staff to create a balance sheet that give a financial overview of the FR-WC EDA.

Joe Petty provided the following update for the Warren County Department of Economic Development

- Continuing to work with prospects on various projects.
- Working on plans regarding coordination between County department and EDA.
- Assisting the Finance Department where needed regarding the audit process.
- Working with Jim Wolfe on small business loan updates.

Closed Meeting

On a motion at 4:34 PM by Greg Harold, seconded by Jim Wolfe, and by the following vote, the Board of Directors entered into a closed meeting for the following:

- 4 matters – Discussion of disposition of publicly held real property where discussion in open meeting would adversely affect the bargaining position or negotiating strategy of the public body, Stephens Industrial Park, 1321 Happy Creek Rd, Avtex redevelopment, Happy Creek Industrial Park, and legal advice related thereto, pursuant to Va. Code § 2.2-3711.A.3 and 8.
- 2 matters – Consultation with legal counsel pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body, EDA vs Jennifer McDonald et al, EDA v. Town of Front Royal et al, pursuant to Va. Code § 2.2-3711.A.7 and 8.

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

On a motion at 5:14 PM by Jorie Martin, seconded by Greg Harold and by the following vote, the EDA Board of Directors certified to the best of each member's knowledge only public business matters lawfully exempted from open meeting requirements under Va. Code § 2.2-3712 of the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the meeting by the public body:

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

Adjournment

On a motion by Jorie Martin, and by unanimous vote the motion was approved.

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

Jeff Browne adjourned the meeting at 5:16 PM

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE TOWN OF FRONT ROYAL & COUNTY OF WARREN, VIRGINIA
dba ECONOMIC DEVELOPMENT AUTHORITY (EDA)

At a special meeting of the Board of Directors of the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia, dba Economic Development Authority held on Friday, October 14, 2022, at 8:00 AM at the Warren County Government Center, Caucus Room, 220 N. Commerce Avenue, Front Royal, VA 22630, and streamed online.

Board Members Present:	Jeff Browne (Chairman); Greg Harold; Scott Jenkins (arrived at 9:33 AM); Jorie Martin; Jim Wolfe
Others Present:	Joe Petty, Warren County Director of Economic Development; Walt Mabe, Warren County Board of Supervisors, Cheryl Cullers, Warren County Board of Supervisors; Edwin Daley, Warren County Administrator
Others Present (online):	Vicky Cook, Warren County Board of Supervisors; Taryn Logan, Warren County Deputy County Administrator; Alex Bridges, Northern Virginia Daily

Jeff Browne called the meeting to order at 8:05 AM

Adoption of Agenda

On a motion by Jorie Martin, seconded by Jim Wolfe, and by the following vote, the Board of Directors approved the agenda as presented:

Browne, Aye; Harold, Aye; Martin, Aye; Wolfe, Aye

Strategic Plan Review

Jeff Browne as provided some guidelines for the Strategic Plan review and Jim Wolfe will be watching the time to keep the meeting on schedule.

Members Jeff Browne and Jim Wolfe provided an overview of the existing plan and successes regarding properties and perception since the draft was created.

An in-depth financial review was provided by Jim Wolfe and Joe Petty. County Board Member Vicky Cook suggested a timeline that is reflective of the County's debt. Ed Daley provided and overview of the County's financial position and its relationship with FR-WC EDA debt.

There was a discussion regarding FR-WC EDA's obligations for net proceeds from the disposition of property.

Members Jeff Browne and Greg Harold provided a plan for marketing opportunities. There should be a greater emphasis on digital marketing, such as websites, social media, and digital presentations. To assist in promoting FR-WC EDA assets, there are opportunities for group presentations, roundtables, and quarterly luncheons. In addition to marketing current assets, there was a suggestion by Supervisor Cullers to market to targeted prospects such as a grocery store.

Jim Wolfe discussed the possible recession and its impact on the FR-WC EDA's ability to market properties.

Member Scott Jenkins posed a discussion regarding the IT Federal property and the building at 400 Kendrick Lane, and what work is needed to complete or renovate the properties to get them ready for market.

Jorie Martin gave an update on the website, and in discussions with Joe Petty there will be attempt to update as much as possible in-house.

Members Jorie Martin and Scott Jenkins provided the group with an update from the Avtex Ad Hoc Committee. As part of the discussion it was recommended to convey the conservancy area to Warren County for recreational uses and advertise an RFI for the Avtex Redevelopment Areas.

Jim Wolfe presented his report on housing in Warren County and the EDA's role in housing initiatives in the future.

As a result of the meeting the Board created the following action items that will be rank ordered in importance by Board members and reviewed at the October regular Board meeting.

- **Bank Loans**. Set up automatic money transfers to pay all the regular bank loans each month in a timely fashion. Joe and Matt will work on this.
- **Bank Loans**. Board members and staff will meet with representatives of each of the major banks providing loans. Specific details regarding payments and efficient movement of cash will be discussed, among other topics. Jim, Joe, and Matt.
- **Audit**. Finance committee (Jim), Matt and Joe will meet with the auditors to review issues. Specific topics will include, among others, balance sheet valuations used for real estate owned by EDA.
- **Facebook Marketing**. Sharon Pandak, legal counsel, will be asked to send notice to Facebook regarding ownership of the EDA copyrights, in order to remove the out-of-date EDA Facebook postings. These pages are not controlled by EDA (no access to passwords), and are likely in violation of the DCMA Digital Copyright Maintenance Act.
- **Town Cooperation**. We will continue to actively invite leadership of the Town of Front Royal to participate in all EDA meetings, and special planning meetings and presentations as appropriate. Jeff and Staff.
- **USDA Loan Program**. We will inquire about inviting David Gedney to join our reconstituted loan committee. Board members are invited to seek other members quickly to stand up this program. Staff.
- **USDA Loan Program**. Staff will post the required advertisement seeking additional applicants to serve on the loan oversight committee. Our goal is to have recommendations for a full slate given to the Supervisors by close of the year. Staff.
- **Community Partnerships**. We will add formal invitations to one community group to join each regular board meetings and to make short informational presentations. Examples might include the Chamber of Commerce, large local employers, real estate developers and brokers, etc. Jeff and Staff.
- **Need for Grocery Store**. EDA will undertake a quick informal study of how to attract an additional grocery store to the County. We will look at factors used in site selection and expansion by chains such as Trader Joe's and Food Lion. Finance Committee.
- **Outside Resources**. Research the costs and process to join the Site Selectors' Guild and COSTAR. Staff.
- **IT Federal Property**. Determine necessary next steps to obtain occupancy permits for the IT Federal Building, in anticipation of taking possession of that real property. Asset Committee
- **Avtex**. Determine the timing and process to transfer possession of the Avtex Conservancy to Warren County. We would like transfer as soon as possible, but integrate this with any last needed information from arrangements for the Avtex commercial property. Avtex Committee.
- **Avtex**. Develop and public a request for information (RFI) on developing the Avtex commercial property from private sector developers specializing in brown field development. Avtex Committee.
- **Workforce Housing**. Develop a plan for putting Kendrick Village property into workforce housing as soon as practicable. This may include inviting outside developers for proposals, outright sale, or creative partnerships. Asset Committee and staff.

- **Workforce Housing**. Review EDA's other real estate holdings to search for any that should be moved into housing development. Asset Committee and staff.

Adjournment

On a motion by Jorie Martin, seconded by Jim Wolfe, and by unanimous vote the motion was approved.

Browne, Aye; Harold, Aye; Jenkins, Aye; Martin, Aye; Wolfe, Aye

Jeff Browne adjourned the meeting at 12:47 PM

Prepared By and When Recorded Return To:
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attn: Edmund S. Pittman, Esq.

Tax Parcel No: 12-32A5A

RELEASE OF REPURCHASE RIGHTS AND CONSENT AND ACKNOWLEDGEMENT AGREEMENT

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THIS RELEASE OF REPURCHASE RIGHTS AND CONSENT AND ACKNOWLEDGEMENT AGREEMENT (this "**Agreement**") is made and entered into as of this ___ day of _______________, 2022, by **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF FRONT ROYAL AND COUNTY OF WARREN, VIRGINIA** known as the **FRONT ROYAL WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the "EDA"; to be indexed as a "Grantor"), for the benefit of **VIRGINIA ELECTRIC AND POWER COMPANY**, a Virginia public service corporation ("Virginia Power"; to be indexed as a "Grantee").

Deleted: **FRONT ROYAL WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY**, a political subdivision of the Commonwealth of Virginia, formerly known as the

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RECITALS

A. Pursuant to those certain Covenants and Restrictions, dated August 13, 2004, and recorded in the Clerk's Office of the Circuit Court of Warren County, Virginia (the "Clerk's Office"), on January 23, 2008, as Instrument No. 080000475 (the "Covenants and Restrictions"), the EDA imposed certain covenants and restrictions on that certain parcel of land known as the Kelley Industrial Park, containing approximately 29.66 acres and located on Kelley Drive in Front Royal, Virginia, and more particularly described in the Covenants and Restrictions (the "Subject Property").

B. Pursuant to the Covenants and Restrictions, the EDA, among other rights, has: (a) certain repurchase rights as more particularly described in Paragraph 8 thereof, including, without limitation, a right of first refusal to purchase any portion of the Subject Property acquired by a third-party purchaser from the EDA upon a proposed resale of such portion of the Subject Property by such third-party purchaser (collectively, the "Repurchase Rights"); (b) the right to approve or disapprove the specific use of any portion of the Subject Property acquired by a third-party purchaser from the EDA upon the resale of such portion of the Subject Property by such third-party purchaser; and (c) the right to approve plans for the construction of any building, structure or other site improvements, including, without limitation, parking areas, landscaping and signs, to be constructed on any portion of the Subject Property.

C. Pursuant to that certain Deed, dated May 8, 2007, and recorded in Clerk's Office as Instrument No. 070004495, The Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia (now known as the EDA) conveyed to K.I.P., LLC, a Virginia limited liability company ("K.I.P.") a portion of the Subject Property more particularly described therein (the "K.I.P. Property").

D. K.I.P. has agreed to sell the K.I.P Property to Virginia Power, and Virginia Power has agreed to purchase the K.I.P. Property from K.I.P., provided the EDA executes this Agreement to waive its Repurchase Rights with respect to the K.I.P. Property, to approve Virginia Power's intended use of the K.I.P. Property and to provide certain certifications to Virginia Power regarding the compliance of the K.I.P. Property with the terms and conditions of the Covenants and Restrictions.

E. The EDA has agreed to execute and deliver this Agreement to Virginia Power in order to induce Virginia Power to proceed with Virginia Power's purchase of the K.I.P. Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Virginia Power to proceed with the purchase of the K.I.P. Property, the EDA, intending to be legally bound, hereby covenants, agrees, and certifies as follows:

1. Waiver of Repurchase Rights. The EDA does hereby now and forever waive any and all repurchase rights the EDA may have pursuant to the Covenants and Restrictions with respect to the K.I.P. Property, including, without limitation, the EDA's right of first refusal to purchase the K.I.P. Property for the purchase price being paid by Virginia Power to K.I.P. for the K.I.P. Property.

2. Approval of Virginia Power's Intended Use. The EDA hereby acknowledges and agrees that Virginia Power intends to utilize the K.I.P. Property for warehouse storage, outside storage, parking and small office usages to support Virginia Power's operation and maintenance of Virginia Power's existing Warren County Power Station, located at 477 Kelley Court ("Virginia Power's Intended Use"), and the EDA hereby approves Virginia Power's Intended Use.

3. Existing Improvements. The EDA hereby acknowledges and agrees that all approvals required to be obtained pursuant to the Covenants and Restrictions for the construction of all buildings, structures or other site improvements, including, without limitation, parking areas, landscaping areas and signs, on the K.I.P. Property were properly obtained and that all buildings, structures or other site improvements, including, without limitation, parking areas, landscaping areas and signs, were constructed on the K.I.P. Property in accordance with such approvals.

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4. No Defaults. The EDA hereby acknowledges and agrees that, as of the date hereof, the K.I.P. Property is in full compliance with all applicable terms and conditions of the Covenants and Restrictions and no defaults exist under the Covenants and Restrictions with respect to the K.I.P. Property.

5. Reliance by Virginia Power. The EDA hereby acknowledges and agrees that Virginia Power is relying upon the waivers, approvals and certifications set forth in this Agreement in proceeding with Virginia Power's purchase of the K.I.P. Property from K.I.P. and that Virginia Power may rely upon the same for such purpose.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the EDA has caused this Agreement to be executed by its duly authorized representative as of the date first written above.

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF FRONT ROYAL AND COUNTY OF WARREN, VIRGINIA ("EDA"), a political subdivision of the Commonwealth of Virginia

By: ____________________________
Name: Jeffrey Browne
Title: Chair

By: ____________________________
Name: Marjorie Martin
Title: Secretary

COMMONWEALTH OF VIRGINIA

COUNTY OF WARREN, to-wit

The foregoing instrument was acknowledged before me this ____ day of __________, 2022, by Jeffrey Browne, as Chair, and Marjorie Martin, as Secretary, of the FRONT ROYAL WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: ______________________
Notarial Registration Number:_____________________

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Notary Public

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FRONT ROYAL WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY,

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TPOF INCENTIVE GRANT AGREEMENT

This **AGREEMENT** is made on ________________, 2022, by and among **NATURE'S TOUCH FROZEN FOODS, LLC**, a Vermont limited liability company authorized to transact business in the Commonwealth of Virginia ("Company"); IPS2, LLC, successor to Lispen, L.L.C. a Virginia limited liability company, the property owner ("Landowner"); and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF TOWN OF FRONT ROYAL AND THE COUNTY OF WARREN, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("EDA") (collectively, "Parties").

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WITNESSETH:

WHEREAS, the Company is developing a frozen food processing facility ("Facility") in the County on property owned by Landowner, thereby making a significant investment, and creating new jobs; and

WHEREAS, the EDA has supported the Company and Landowner in a number of ways, including, but not limited to, a local incentive grant; and

WHEREAS, the EDA applied for a Virginia Department of Transportation ("VDOT") Transportation Partnership Opportunity Fund ("TPOF") Grant to assist the Company and Landowner in making road improvements to facilitate travel to the proposed Facility; and

WHEREAS, VDOT has made a TPOF award, in the amount of $155,516.00, to assist with funding of the road improvements for the Facility and VDOT requires that a public body, *i.e.*, the EDA, enter into a Transportation Partnership Opportunity Fund Award Agreement, including Exhibits ("TPOF Agreement"), memorializing the commitments required by the award, a copy of which TPOF Agreement is attached as Exhibit A hereto; and

WHEREAS, the EDA is willing to enter into said TPOF Agreement with VDOT, in a form substantially in accordance with Exhibit A, and be a conduit for the Company and Landowner to receive the TPOF funds only if the Company and Landowner commit to completely perform, indemnify, and hold harmless the EDA as to all commitments in the TPOF Agreement; and

WHEREAS, the Company and Landowner are willing to make and fulfill all commitments in the TPOF Agreement which are required of the EDA in order to receive the financial benefit of the TPOF Award, which funds the EDA will pass through to them in accordance with this Agreement; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by these investments and new jobs in the Facility constitutes a valid public purpose for the EDA to pass through the TPOF Award funds to the Company and Landowner pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows.
Section 1. Commitments.

A. Generally.

The Company and Landowner commit to and shall fulfill all commitments set forth in the TPOF Agreement, as entered into by the EDA, in order to receive the financial benefit of the TPOF Award, which the EDA will pass through to them. The TPOF Agreement, entered into by the EDA, shall be substantially the same as the TPOF Agreement attached hereto. The Parties understand that the TPOF Agreement is undergoing final legal review by the Commonwealth; and in the event that there are any substantive changes in the final TPOF Agreement, this Agreement shall be amended to include said final TPOF Agreement in this Agreement.

B. By the EDA. The EDA shall:

1. Timely forward all communications with VDOT relevant to the commitments in the TPOF Agreement to the Company and Landowner.

2. Disburse the funding proceeds of the Award to the Company, as soon as reasonably possible, upon receipt and deposit by the EDA of the funds received from VDOT, if the Company has provided evidence of the completion of the work in accordance with the requisition, which prompted said VDOT disbursement.

C. By the Company and Landowner. The Company and Landowner shall:

1. Timely perform all work required of the EDA by the TPOF Agreement, including, but not limited to, obtaining permits, and constructing the subject transportation improvements, documenting such work and expenditures for purposes of the EDA submitting requisitions to VDOT, meet all performance targets, and coordinate and cooperate with the EDA by providing all required reports and records to the EDA and VDOT.

2. Keep the EDA apprised on the status of work on the subject transportation improvements.

3. Indemnify and save the EDA, its directors, and staff, harmless from and against any and all claims for loss, damage, or expense or whatever kind (including without limitation reasonable attorney's fees, and litigation expenses), however caused, resulting from, or arising out of, alleged to arise out of, or in any way connected with this Agreement or the subject transportation improvements or the Facility. The indemnity of this Subsection shall survive the expiration or other termination of this Agreement.

4. Maintain continuously, during this Agreement and the completion and acceptance of the subject transportation improvements by VDOT, or cause to be maintained all insurance sufficient to cover the subject transportation improvements and work to be performed

thereon. Said insurance shall be through a company authorized to do business in Virginia, and the EDA shall be shown as an additional insured on the insurance.

Section 2. **<u>Default; Acceleration; Surety</u>.**

Notwithstanding anything contained herein to the contrary, if the Company or Landowner breaches any term or condition of this Agreement, then the EDA (without limiting any other rights and remedies that the EDA may have) may require that the Company and Landowner pay to the EDA the total amount of the TPOF Award plus interest at the judgment rate and any attorneys' fees and expenses incurred by the EDA in enforcing this Agreement or in completing or terminating without EDA liability the TPOF Agreement, by providing written notice of the amount due and due date for payment.

In partial surety or security for the foregoing commitment, at the time of its execution of this Agreement, the Company shall provide the EDA with surety (in the form of an escrow, letter of credit or bond) in the amount of the TPOF Award, *i.e.,* $155,516.00. Said surety shall terminate when the commitments under this Agreement are completed.

Section 3. **<u>Notices</u>.**

All notices to the Parties shall be given in writing and be given by either (i) personal service or (ii) overnight courier to the parties addressed as follows:

To the Company:

Nature's Touch Frozen Foods, LLC
195 Toray Drive
Front Royal, VA 22630
Email: john.tentomas@naturestouch.ca
Attention: John Tentomas, President

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To the Landowner:

IPS2, LLC, successor to Lispen, L.L.C.

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c/o InterChange Group, Inc., Manager

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1346 Pleasants Drive, Suite 6
Harrisonburg, VA 22801
Email: devon.anders@interchangeco.com
Attention: Devon C. Anders, President

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c/o InterChange Group, Inc., as Manager
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To the EDA:

Industrial Development Authority of
The Town of Front Royal and the County of

Warren, Virginia
400 D Kendrick Lane
Front Royal, Virginia 22630
Email: ______________________
Attention: Executive Director

Section 4. <u>Applicable Law</u>.

This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

Section 5. <u>Entire Agreement; Amendments; Modifications</u>.

This Agreement constitutes the entire agreement among the Parties hereto and may not be amended or modified, except in writing, and signed by each of the Parties.

Section 6. <u>Counterparts</u>.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, by their authorized representatives, have executed this Agreement as set forth below:

Nature's Touch Frozen Foods, LLC

By: ___________________________

Title: ___________________________

Date: ___________________________

IPS2, LLC, successor to Lispen, L.L.C.
By: InterChange Group, Inc., Manager

By: ________________________________

Devon C. Anders, President

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By: ____________________

Title: ____________________

Date: ____________________

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Industrial Development Authority of
the Town of Front Royal and the County of Warren, Virginia

By: ___________________________
Title: Chairman

Date: ___________________________

By: ___________________________
Title: Secretary

Date: ___________________________

TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
DRAFT AWARD AGREEMENT

This **Award Agreement** (this “Agreement”) is made and entered into as of _____________, 2022**)**, by and among the **Virginia Department of Transportation** (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia (the “Commonwealth”) and the **Warren County Economic Development Authority** (the “Recipient” or the “EDA”).

Explanatory Statement

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A. The Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”) was created under Section §33.2-1529.11 of the Code of Virginia (the “Code”) to provide funds to address transportation aspects of economic development opportunities.

B. The Governor is authorized to award assistance from the Fund in various forms to an agency or political subdivision of the Commonwealth.

C. The Recipient is a duly created and validly existing political subdivision of the Commonwealth and is eligible to receive financial assistance from the Fund.

D. The Recipient submitted an application requesting **one hundred fifty five thousand five hundred and sixteen dollars ($155,516.00)** in the form of a grant from the Fund to assist with **road improvements to facilitate travel to proposed Nature’s Touch Frozen Food Production Facility** as defined in Exhibit A (the “Project Description” or the “Project”). The Project facilitates an economic development opportunity for the Commonwealth, thereby meeting the Transportation Evaluation Criteria established for the Fund, and will be administered by the Recipient. The projected costs of the Project are identified in Exhibit B (the “Project Budget and Sources of Funds”) to this Agreement.

E. The TPOF Advisory Panel (the “Panel”) has evaluated the application and has found that it meets the requirements of the Code and the Transportation Evaluation Criteria established in the Fund’s Guidelines and Criteria, dated July 18, 2018. The Panel recommended on **May 18, 2022** to the Secretary of Transportation and the Secretary of Commerce and Trade, an award by the Governor of a **one hundred fifty five thousand five hundred and sixteen dollars ($155,516.00)** grant, subject to certain conditions.

F. On **June 28, 2022** the Governor approved the award of the **one hundred fifty five thousand five hundred and sixteen dollars ($155,516.00)** grant (the “Grant”) to the Recipient, subject to certain conditions. A copy of the Decision Brief signed by the Governor is provided as Exhibit C.

G. Sufficient monies exist in the Fund to support the Grant.

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NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to provide for the terms and conditions required for making the Grant sourced from the Fund, the disbursement and application or use of the proceeds of the Grant and other matters related thereto.

2. Disbursement Authorization and Application and Use of TPOF Grant Proceeds.

(a) Requisition. In order to requisition disbursement of the Grant proceeds, the Recipient shall submit to VDOT, a completed requisition for disbursement of the Grant proceeds signed by an authorized representative of the Recipient. The requisition will contain all information called for by, and otherwise be substantially in the form of Exhibit D (the "Requisition For Disbursement") to this Agreement.

(b) Disbursement. Disbursement of the Grant proceeds will begin after all other monies awarded to Recipient for the Project are exhausted and will be on a *reimbursable* basis for costs actually incurred in connection with the Project, with a frequency of no more than one (1) Requisition For Disbursement per month.

(c) Application and Use of Grant Proceeds. The Grant proceeds shall be used for the sole purpose of funding the cost and expenses of the activities and tasks undertaken by the Recipient in the development and procurement of the Project as generally summarized in the Project Budget and described in more detail in the Recipient's TPOF application (the "Work" or "Work Product"). Project expenditures, will be composed of but not limited to right-of-way acquisition, professional and inspection services, construction contractor payments and a contingency. The Grant will be limited to **one hundred fifty five thousand five hundred and sixteen dollars ($155,516.00**) and along with the other identified monies as set forth for the Work, is expected to be adequate to fully fund the tasks identified in the Project Budget. Any Project cost exceeding the amount of the Grant shall be paid for by the Recipient using its own monies.

(d) The TPOF Grant performance date shall be **December 31, 2024** (the "Performance Date"). If the Recipient, in cooperation with VDOT, deems that full faith and reasonable efforts have been made and are being made to achieve the Targets, as defined in section 2(e), VDOT may extend the Performance Date by six (6) months in accordance with section 5 of this Agreement.

The Performance Date shall only be extended twice during the life of the project.

(e) Targets. The terms "Capital Investment" and "New Jobs" shall have the meanings ascribed to those terms within the Virginia Investment Partnership Grant Program agreement dated September 27, 2021, (the "VIP"). The Recipient agrees that:

(i) the Capital Investment target is **$40,300,000** (the "Capital Investment Target"), and

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Commented [DA1]: What is this in reference to? Other VDOT (there are none) or do all other grants (RE Tax & PP Tax) have to be received? The latter would be impractical as they are a multi-year returns of taxes paid.

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(ii) the New Jobs target is **67** (the "New Jobs Target" and, together with the Capital Investment Target, the "Targets"),

all of which will be invested, created, and maintained in accordance with the terms of the VIP. The Targets will be achieved on or prior to the Performance Date.

The average annual wage of New Jobs will be at least $36,746.00.

The Capital Investment is limited to the Capital Investment required by the VIP.

(f) Reporting Period. The reporting period is from the date of this Agreement to the Performance Date (the "Reporting Period").

3. Project Schedule. Every good faith effort shall be made by the Recipient to cause the completion of components of the Work no later **December 31, 2024.**

4. Reports and Records.

(a) Maintenance Requirements. Full and detailed accounts and records shall be maintained, as appropriate, by the Recipient for the Project and the Grant and such controls shall be exercised as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and standards, so as to provide complete records to fully support the use of the Grant proceeds to pay any cost and/or expense charged to the Work. During the performance of the Work, access shall be afforded by the parties to each other and their representatives and agents. The Department shall have access upon demand to the records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as the "Books and Records") relating to the Work and the Project. Such Books and Records shall be maintained at Front Royal Warren County Economic Development Authority, 400 Kendrick Lane, Suite D, Front Royal, VA 22630.

(b) Periodic Reports. On April 1 and October 1 of each year until the End of the Reporting Period, the Recipient shall provide to VDOT's Chief Financial Officer a summary outlining the use of the Grant proceeds and the status of the Project. This report should also provide an update on all progress made in order to achieve the projects investment and employment targets. In addition, the Recipient shall promptly notify VDOT of any material events, adverse or otherwise, that could affect the Recipient's ability to meets its financial obligations toward the Project. The Recipient shall submit a final report no later than 120 days after the Performance Date. In the event the Recipient should fail to timely file that final report, the Recipient may request a 60-day extension for that final filing.

Deleted: TPOF monies

5. Extension in the Performance Date.

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If the Targets have not been achieved by the Performance Date, an extension may be granted, as long as the Recipient can provide sufficient evidence to VDOT that a full and good faith effort is underway to achieve the Targets. Generally, an extension will be granted only in circumstances under which it is reasonable to believe that significant progress toward meeting the Targets can be made by the extension date.

Deleted: If the Recipient has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in this agreement, an extension may be granted, as long as the Recipient can provide sufficient evidence to VDOT that a full faith effort is underway in achieving its Targets. Generally, an extension will be granted only in circumstances under which it is reasonable to believe that the Recipient is likely to make significant progress toward meeting its performance targets by the extension date.

6. Failure of Compliance. If Targets criteria are not met, the Recipient will be issued a Notice of Failure and will be held responsible for any repayments as calculated by VDOT. The recipient will have a period of Thirty (30) days to respond to a failure and repayment notice, after which time the Recipient will be required and responsible for returning the grant monies to the Commonwealth within ninety (90) days of the Notice of Failure.

7. Repayment Obligation. Repayment obligations will be assessed based on an equal weighting of the targets. In the event that the project covers Jobs and Investment, each Target is weighted at 50% and the repayment obligation will be based on the combined level of failure of the Targets. For projects that only have a single Target, this target will be the only calculation for repayment obligation.

The formula for calculating the failure for Job Targets is:

$$\frac{\text{Target Jobs } \textit{less} \text{ Actual Jobs}}{\text{Target Jobs}}$$

The formula for calculating the failure in Capital Investment Targets is:

$$\frac{\text{Target Capital Investment } \textit{less} \text{ Actual Capital Investment}}{\text{Target Capital Investment}}$$

If (i) Recipient achieves less than 25% of the Targets (on a combined basis) as of the Performance Date, or (ii) VDOT concludes at any time that the Targets will not be met by the Performance Date, VDOT may require the Recipient to repay 100% of the Grant funds actually distributed to Recipient.

8. Representations. The Recipient further represents, covenants and agrees as follows:

(a) The Recipient has full right, power and authority to execute and deliver this Agreement, to perform its obligations under the Agreement and to carry out the tasks associated with the Work and the Project.

(b) Any of the transportation improvements completed with TPOF funds shall be accomplished using applicable industry standards and specifications.

(c) To the best of the Recipient's knowledge, there are no pending or threatened suits or actions of any nature that may have an adverse effect on the Recipient's condition (financial or otherwise) or its ability to perform under the Agreement and there has been no material adverse change in the financial condition of the Recipient as indicated in the information furnished to VDOT.

(d) The Recipient shall be responsible for all activities necessary to complete the Project and shall coordinate with Department staff for all reviews, approvals and necessary oversight as required.

9. Public Property. The Work Product shall not become private property, but shall become or remain public property following completion. Recipient agrees that any reports, studies, analysis and intellectual property created or developed as part of the Work or the Project using monies from the Grant, in whole or in part, shall be the property of the Commonwealth and Recipient agrees to transfer same to the Commonwealth promptly and without demand.

Commented [CDL2]: This requirement is noted on page 3 of the Guidelines under "Project Ownership"

10. Amendment. The provisions of this Agreement may be amended, modified or waived only by written instrument executed by both parties.

11. Applicable Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

12. Permits. The Recipient shall obtain all necessary permits for all Work associated with the Project.

13. Notices. All notices, approvals, consents, requests and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, or when sent by Federal Express or a comparable express courier service, or when mailed by registered or certified mail, postage prepaid, addressed to the parties at the following addresses or such other addresses as a party may designate by prior written notice to the other:

(a) if to VDOT:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Chief Financial Officer

with a copy to:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Director, Budget & Funds Management Division

and

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Attn: Senior Assistant Attorney General, Chief - Transportation Section

(b) if to the Recipient:

Front Royal Warren County Economic Development Authority
P.O. Box 445
Front Royal, VA 22630-4937

14. Entire Agreement. This Agreement, together with the Exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous, oral or written agreements or understanding with respect to such subject matter.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: ____

Name: Stephen C. Brich, P.E.

Title: Commissioner of Highways

FRONT ROYAL WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY

By: ____

Name: Jeffrey T. Browne

Title: Chair

EXHIBIT A
PROJECT DESCRIPTION

Project Nature

The Grant funds will be used to widen the pavement of an approximately 600' segment of Toray Drive by 9' on the north side of the roadway and will reconfigure said segment to add an eastbound left turn lane into the entrance of the industrial site now under development, and a 3'-wide shoulder. The left turn lane is intended to preserve the existing 40-m.p.h. free-flow condition on Toray Drive as called for in the County's Comprehensive Plan. Toray Drive, a two-lane local secondary road which carries an average daily volume of 2,600 vehicles, was built to provide access to industrial sites marketed by the Warren County EDA (the applicant). The improvement will maintain the marketability of those sites.

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EXHIBIT B
PROJECT BUDGET
AND SOURCES OF FUNDS
WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY
NATURE'S TOUCH FROZEN FOOD PRODUCTION FACILITY

TPOF Project Budget	
Task	**Estimated Cost**
Grading	10,690.80
Stone	45,273.56
Asphalt	99,551.64
Total	$155,516.00

Sources of Funds	
Source	**Amount**
Transportation Partnership Opportunity Fund	$155,516.00
Total	$155,516.00

[Type text]

EXHIBIT C
EXECUTED DECISION BRIEF
WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY
NATURE'S TOUCH FROZEN FOOD PRODUCTION FACILITY

Decision Brief
for
The Honorable Glenn Youngkin

Request: Governor's action to award financial assistance from the Transportation Partnership Opportunity Fund (the "Fund" or "TPOF") to the Economic Development Authority ("EDA") of Warren County (the "County") to complete roadway improvements to facilitate travel to Nature's Touch Frozen Food Production Facility.

Recommendation: It is recommended that the Governor approve, subject to the conditions contained within, a TPOF grant of $155,516 to the Economic Development Authority of Warren County.

Laura A. Farmer
Laura A. Farmer, VDOT CFO — June 8, 2022 — Date

CONCURRENCE

Secretary of Transportation:
Recommend ☑
Recommend w/ Modification ☐
Deny ☐
W. Sheppard Miller, III
W. Sheppard Miller, III
Date

Secretary of Commerce and Trade:
Recommend ☑
Recommend w/ Modification ☐
Deny ☐
Caren Merrick
Caren Merrick
6-15-22
Date

Secretary of Finance:
Recommend ☑
Recommend w/ Modification ☐
Deny ☐
Stephen E. Cummings
Stephen E. Cummings
6/22/22
Date

APPROVAL

Approve ☑ **Approve w/ Modification** ☐ **Deny** ☐

Governor: Glenn Youngkin — 6-28-2022
Glenn Youngkin — Date

[Type text]

EXHIBIT D
REQUISITION FOR DISBURSEMENT
WARREN COUNTY ECONOMIC DEVELOPMENT AUTHORITY
NATURE'S TOUCH FROZEN FOOD PRODUCTION FACILITY
[ON RECIPIENT LETTERHEAD]

[Date]

Mrs. Wendy Thomas
Budget and Funds Management Division
Virginia Department of Transportation
1401 East Broad Street
Old Highway Building – 4th Floor
Richmond, Virginia 23219

Re: **Transportation Partnership Opportunity Fund**

Dear Mrs. Thomas:

This requisition, Number ____, is submitted in connection with the Grant Agreement dated as of ________(the "Agreement"), between the Virginia Department of Transportation and ____ (the "Recipient").

The undersigned authorized representative of the Recipient hereby requests disbursement of proceeds under the Agreement in the amount of $______________, for the purposes of payment of project costs as set forth in Schedule 1 attached hereto.

Attached hereto are the invoices relating to the items for which payment is requested and that have been approved by the Recipient.

The undersigned certifies that i) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Recipient for the payment of project costs, and ii) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition.

This requisition includes an accompanying Certificate of the Project Manager/Project Engineer as to the performance of work.

Sincerely,

Recipient's Authorized Representative
Title

Attachments

[Type text]

SCHEDULE 1
TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

REQUISITION NUMBER: _______

RECIPIENT:

PROJECT NAME:

CERTIFYING SIGNATURE: ________________________________

TITLE: ___________________________

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures To Date	Net Balance Available
TOTALS					

Total Amount of Assistance

Previous Disbursements

Balance

This Request

Proceeds Remaining

TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
CERTIFICATE OF THE PROJECT MANAGER/PROJECT ENGINEER
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

This Certificate is being executed and delivered in connection with Requisition Number __, dated _______________, 20__, submitted by the ____ (the "Recipient"), pursuant to the Grant Agreement dated _________, between the Virginia Department of Transportation and the Recipient.

The undersigned consulting engineer for the Recipient hereby certifies that, insofar as the amounts covered by this requisition include payments for labor or to contractors, builders or materialmen, i) such work was actually performed or such materials, supplies and/or equipment were actually furnished to or installed in the construction portion of the Transportation Partnership Opportunity Fund project and ii) expenditures for such work have not been submitted as a part of a previous requisition.

____
[Project Manager/Project Engineer Firm]

By: _____________________________________

Date: ______________________, 20____

INCENTIVE GRANT AGREEMENT

This **INCENTIVE GRANT AGREEMENT** ("Agreement") is made and entered into on _________________, 2022 by and among the **COUNTY OF WARREN, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("County"), **NATURE'S TOUCH FROZEN FOODS, LLC**, a Vermont limited liability company, the ("Company"), , IPS2, LLC, successor to Lispen, L.L.C. a Virginia limited liability company, the property owner ("Landowner"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF FRONT ROYAL AND THE COUNTY OF WARREN, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("EDA").

Deleted: LISPEN, L.L.C.

WITNESSETH:

WHEREAS, Company plans to operate a frozen food processing facility ("Facility") in the County on Warren County Tax Map Parcel 12G-1-2-1A1 (the "Property") owned by Landowner, thereby making a significant investment, and creating new jobs;

WHEREAS, the County is willing to provide funds to the EDA with the expectation that the EDA will provide those funds to the Company and Landowner as financial incentives to the Company and Landowner to meet certain criteria relating to property investment in the County;

WHEREAS, the County, EDA, Company, and Landowner desire to set forth their understanding and agreement as to the financial incentives for and obligations of the Company and Landowner with respect thereto;

WHEREAS, the construction and equipping of the Facility is anticipated to entail (a) a capital expenditure in real estate by or on behalf of the Landowner of approximately $25,000,000 to construct a new building of approximately 126,000 square feet (the "Building") to house the Facility on the Property, and (b) a capital investment by or on behalf of the Company and Landowner in personal property to equip the Building for Facility operations of approximately $10,000,000 by December 31, 2024;

WHEREAS, the operation of the Facility is anticipated to result in the creation and maintenance of 67 new jobs in the County by December 31, 2024; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by these investments and new jobs constitutes a valid public purpose for the expenditure of public funds;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the Parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

Section 1. **Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

"Real estate" means that property which is subject to County taxation as real property and which is taxable as provided in the Code of Virginia.

"Tangible personal property" means that personal property, including machinery and tools, which is subject to County taxation as personal property and which is taxable as provided in the Code of Virginia.

Section 2. **Targets.**

(a) *Targets:* Targets: The Landowner will construct the Building in the County and make or cause to be made an investment of at least $25,000,000 in taxable real estate (the "Landowner Investment"). The Company and Landowner will equip and the Company will operate the Facility in the County, and make or cause to be made and retained an investment in personal property of at least $10,000,000 in taxable personal property by December 31, 2024 (the "Company Investment").

Deleted: Landowner

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The County and EDA strongly encourage the Company to ensure that at least 30% of the anticipated at least 67 new jobs are offered to "Residents" of the Commonwealth, as defined in Va. Code § 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage:* The County and EDA strongly encourage the Company to provide average annual wages for the new jobs of at least $ 37,746.27.

Section 3. **Incentives Grant.**

(a) *Local-Level Incentives:* The County and the EDA commit to provide an incentive grant of up to a maximum/total of $575,500 in the aggregate to incentivize and facilitate the Landowner Investment and the Company Investment. These incentives shall be provided in the form of refunded taxes ("Refunded Taxes"/"Grant"), which are subject to appropriation by the County and may be used by the Landowner and the Company for any lawful purpose. Landowner shall be paid the incentive relating to the real estate taxes. Company and Landowner shall be paid the incentive relating to the taxable personal property based upon their respective separate payments on taxable personal property bills provided by the Warren County Treasurer, subject to the limitations and conditions of this Agreement.

(1) *Refunded Real Estate Taxes*: The Refunded Taxes for the Landowner Investment consist of a portion of the County real estate taxes paid by the Landowner with respect to the Facility, commencing on January 1 of the first full calendar year within

which the Building is assessed as completed Real Estate and continuing for five (5) full calendar years in total, as follows (the "Real Estate Tax Grants"):.

RE Tax Grant Year	Year 1	Year 2	Year 3	Year 4	Year 5
Grant % of RE Tax Paid	80%	60%	40%	20%	20%

Landowner shall request the first Real Estate Tax Grant payment from the EDA within 90 days after the first installment of real estate taxes on the completed Building are due to the County, and each subsequent installment within 90 days after the applicable installment of real taxes are due to the County.

(2) *Refunded Tangible Personal Property Taxes:* The Refunded Taxes for the Company and Landowner Investment consist of a portion of the tangible personal property taxes paid by the Company and Landowner with respect to the personal property in the Facility, commencing on January 1 of the first full calendar year in which the Company and Landowner files a personal property tax return with respect to a particular Company and Landowner Investment and continuing for five (5) full calendar years. Because it is anticipated that the Company and Landowner Investment may straddle multiple years, new Company and Landowner Investments made in each calendar year shall be tracked and reimbursed separately, each on its own five-year schedule, as follows (the "Personal Property Tax Grants"):

PP Tax Grant Year	Year 1	Year 2	Year 3	Year 4	Year 5
Grant % of PP Tax Paid	80%	60%	40%	20%	20%

By way of example, if the Company and Landowner Investment is made over a two-year period in 2023 and 2024, the Company and Landowner will be entitled to a Personal Property Tax Grant for personal property taxes on the initial 2023 Company and Landowner Investment over five (5) years commencing 2024 (assuming that is when the personal property tax return is filed) through the end of 2028 (80% in 2024, 60% in 2025, 40% in 2026, and 20% in 2027 and 2028, respectively), and to a Personal Property Tax Grant for personal property taxes on the supplemental 2024 Company and Landowner Investment over five (5) years commencing 2025 (assuming that is when the property tax return for that supplemental property is filed) through the end of 2029 (80% in 2025, 60% in 2026, 40% in 2027 and 20% in 2028 and 2029, respectively).

The Company and Landowner shall request the first Personal Property Tax Grant payment from the EDA within 90 days after the first installment of personal property taxes relating to the Facility are due to the County, and each subsequent installment within 90 days after the applicable installment of personal property taxes are due to the County. Each request shall include a schedule of the personal property taxes paid as to Company and Landowner Investments broken down by applicable Grant Year, including calculation of the expected Tax Refund due to the Company, and that due separately to the Landowner, based on property taxes filed and equipment placed in service each Grant Year, so that the appropriate refund percentage can be easily verified by the County.

(b) *Formula and Conditions for Grants*:

(1) The Grants shall not be awarded to either Landowner or Company as to any tax period unless it has, respectively, paid in full at the time of this Agreement and remains current on payment of all County taxes and fees, including real estate taxes due as to Landowner and tangible personal property taxes due as to the Company and Landowner.

(2) The Grants shall be paid to Landowner and Company, respectively, through the EDA on a biannual basis within 45 days after request. Grant payments to Landowner and Company shall only be issued following certification of payment of all Warren County taxes and fees by Landowner and Company, respectively, from the previous calendar year.

(3) The award of this Incentive Grant to the Company and Landowner shall be contingent on the Company and Landowner having filed, in accordance with Warren County Code §160-56, all returns of tangible personal property, including machinery and tools, owned January 1 of each year, with the office of the Commissioner of the Revenue, on forms approved by that office, on or before February 15th of each calendar year. Failure to file such personal property tax return within the time required shall constitute a waiver of the Company's and Landowner's right to receive the Refunded Taxes for tangible personal property for the period covered by such unfiled return.

(4) In no event shall the cumulative total of Grants awarded to the Landowner and the Company in aggregate exceed $575,500.

(c) *Other Incentives:* This Agreement relates solely to the County and EDA's Refunded Taxes incentives. The qualification for, and payment of any and all State-Level Incentives and Local-Level Incentives, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company and Landowner Reporting.

The Landowner and Company commit to be forthcoming and accurate in all communications and filings with the County regarding their real estate and personal property.

Section 6. Additional Documentation. In addition to the verification data described above, in their sole discretion, the County or the EDA may each require such other documentation or audits as may be reasonably required to properly verify the property investments/valuations.

Section 7. **<u>Notices</u>.**

All notices to the Parties shall be given in writing and be given by either (i) personal service or (ii) overnight courier to the parties addressed as follows:

To the Company:

Nature's Touch Frozen Foods, L.L.C.
195 Toray Drive
Front Royal, VA 22603
Email: jtentomas@naturestouch.ca
Attention: John Tentomas

To the Landowner:

JPS2, LLC, successor to Lispen, L.L.C.

Deleted: LISPEN, L.L.C.¶

c/o InterChange Group, Inc1346 Pleasants

Deleted: .¶

Drive, Suite 6
Harrisonburg, VA 22801
Email: devon.anders@interchangeco.com
Attention: Devon C. Anders

To the County:

County of Warren, Virginia
220 N. Commerce Avenue
Front Royal, VA 22630
With an email copy to:
Email:Edaley@warrencountyva.gov

Deleted: net

Attention: County Administrator

To the EDA:

Industrial Development Authority of
the Town of Front Royal and the County of
Warren, Virginia
PO Box 445

Deleted: 400 D Kendrick Lane

Front Royal, Virginia 22630
Attention: Board Chair

Deleted: Executive Director

With email copies to:
Email: jbrowne@wceda.com
Email: Edaley@warrencountyva.gov

Deleted: net

Section 8. **Miscellaneous.**

(a) *Entire Agreement; Amendments; Modifications:* This Agreement constitutes the entire agreement among the Parties hereto and may not be amended or modified, except in writing, signed by each of the Parties.

(b) *Governing Law; Venue:* This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie solely in the Circuit Court of Warren County.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original of this Agreement.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, the remaining provisions shall remain valid and enforceable.

(e) *Waiver*: Any failure by any Party to enforce any provision hereof shall not constitute a waiver of any other breach of such provision or prejudice the right of any Party to enforce the provision at any subsequent time.

(f) *Conflicts*: In the event of any conflicts between the provisions of this Agreement and any other agreement or document, the provisions of this Agreement shall control.

(g) *Binding Effect/Assignability:* This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. The Company and Landowner may not assign their respective rights and obligations under this Agreement without the prior written consent of the County and the EDA, provided that the rights of Landowner shall be transferrable to any person or entity taking title to the Property during the term of this Agreement.

(h) *Attorneys' Fees:* Attorneys' fees shall be paid by the party incurring such fees.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed below by their duly authorized representatives, as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

This Incentive Grant Agreement is hereby entered into by the County of Warren, Virginia, as evidenced by the signature of the undersigned, who is authorized to enter into this Agreement on its behalf, as evidenced by a Motion or Resolution authorizing the same adopted by the Warren County Board of Supervisors on _________________, 2022.

COUNTY OF WARREN, VIRGINIA

By: ___________________________
Name: _____________________
Title: _____________________

Attest:

____
Ed Daley, Clerk
Board of Supervisors

This Incentive Grant Agreement is hereby entered into by the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia, d/b/a EDA, as evidenced by the signature of the undersigned, who are authorized to enter into this Agreement on its behalf, as evidenced by a Motion or Resolution authorizing the same adopted by the EDA on _________________, 2022

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF FRONT ROYAL AND THE COUNTY OF WARREN, VIRGINIA

By: ___________________________

Jeffrey T. Browne
Chairman

____

Marjorie Martin
Secretary

This Incentive Grant Agreement is hereby entered into by Company, as evidenced by the signature of the undersigned, who is authorized to enter into this Agreement on its behalf.

NATURE'S TOUCH FROZEN FOODS, LLC

By: ____________________________
Name: ______________________
Title: ______________________

This Incentive Grant Agreement is hereby entered into by IPS2, LLC, successor to Lispen, L.L.C.
as evidenced by the signature of the undersigned, who is authorized to enter into this Agreement on its behalf.

Deleted: Interchange Group, Inc

Deleted: By: InterChange Group, Inc., Manager.,

IPS2, LLC, successor to Lispen, L.L.C.
By: InterChange Group, Inc., Manager

Deleted: BLISPEN, L.L.C..¶

By: ____________________________
Name: Devon C. Anders, President

Deleted: InterChange Group, Inc.

Deleted: Title: Manager