
UNIFORM PROJECT AGREEMENT

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

2395 CDM MEAT & PRODUCE CORP.

Dated as of January 1, 2021

2021 2395 CDM Meat & Produce Corp. Project

UNIFORM PROJECT AGREEMENT

This **UNIFORM PROJECT AGREEMENT**, dated as of January 1, 2021 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006 (the “**Agency**”), party of the first part, and **2395 CDM MEAT & PRODUCE CORP.**, a corporation organized and existing under the laws of the State of New York, having its principal office in New York City at 2395 Frederick Douglass Boulevard, New York, New York 10027 (the “**Lessee**”), party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement or the Agency Lease (as defined below)).

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the City and located on the Land; and

WHEREAS, the Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

WHEREAS, the Owner has leased the Facility Realty to the Landlord pursuant to the Master Lease; and the Landlord has subleased the Facility Realty to the Lessee pursuant to the Retail Lease; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee will sub-sublease the Facility Realty to the Agency pursuant to the Company Lease, and (ii) the

Agency will sub-sub-lease the Facility Realty, and lease the Facility Personalty, to the Lessee pursuant to the Agency Lease; and

WHEREAS, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the Project and the Project Work, the sub-sublease of the Facility Realty by the Lessee to the Agency and the sub-sub-lease of the Facility Realty and the lease of the Facility Personalty by the Agency to the Lessee; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee through a Straight-Lease Transaction has been determined to be necessary to induce the Lessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. The following capitalized terms shall have the respective meanings specified for purposes of this Agreement.

Act shall mean, collectively, the Enabling Act and the Agency Act.

Additional Improvements shall mean any buildings, structures, foundations, related facilities, fixtures, and other improvements constructed, erected, placed and/or installed on, under and/or above the Land, when such improvements are not part of the Project Work and are assessed by NYCDOF after the first assessment following the Project Completion Date, including but not be limited to all replacements, improvements, additions, extensions and substitutions to the Existing Improvements and/or the Project Improvements.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

Agency Lease shall mean the Agency Lease Agreement, dated as of even date herewith, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Agent shall mean a contractor, subcontractor or other party appointed by the Lessee to act as the Agency's agent for the purpose of effecting purchases that are eligible for the Sales Tax Exemption.

Agreement shall mean this Uniform Project Agreement, dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Application Date shall mean the date on which the Inducement Resolution was adopted with respect to the Lessee's application for Financial Assistance.

Approved Project Operations shall mean the operation of the Facility Realty by the Lessee or an Affiliate of the Lessee approved by the Agency, in its sole discretion, for a Qualified Use.

As-of-Right Benefit shall mean, for any period of determination, any as-of-right incentives that would otherwise be applied in the absence of the Agency's interest in the Facility Realty to reduce Real Estate Taxes applicable to the Facility Realty and for which the Agency has been advised by NYCDOF that the Owner, the Landlord and the Lessee have met all application, eligibility and qualification requirements.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit C to the Agency Lease, or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency, (iii) in the case of any Guarantor which shall constitute an Entity (other than the Lessee), a person named in Exhibit C of the Agency Lease, or any other officer or employee of such Guarantor who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of such Guarantor has given written notice to the Agency, and (iv) in the case of any individual Guarantor, such individual Guarantor; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Authorizing Resolution shall mean the resolution of the Agency adopted on December 11, 2018 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Benefits shall mean, collectively, (i) all PILOT Benefits realized by the Lessee on and after the PILOT Commencement Date; and (ii) all miscellaneous monetary benefits derived from the Agency's participation in the Project contemplated by this Agreement, including any exemption from any applicable Sales and Use Taxes, and filing and recording fees.

City shall mean The City of New York, New York.

Commencement Date shall mean January 5, 2021, on which date this Agreement was executed and delivered.

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Completion Deadline shall mean July 15, 2022.

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Existing Improvements shall mean, if any, all buildings, structures, foundations, related facilities, fixtures, and other improvements erected, placed and/or situated on, over and/or under the Land and existing on the Application Date, other than all or any part of the foregoing that (i) is intended to be demolished as part of the Project Work, and (ii) is in fact demolished by the Completion Deadline.

Facility shall mean, collectively, the Facility Personalty and the Facility Realty.

Facility Personalty shall mean those Eligible Items consisting of personal property, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4 of the Agency Lease, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6 of the Agency Lease.

Facility Realty shall mean, collectively, the Land and the Improvements.

Financial Assistance shall have the meaning assigned to that term in the Enabling Act.

General Municipal Law shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

Guarantors shall mean, collectively, the Lessee and each other Person as shall be a Guarantor under the Guaranty Agreement, and their respective permitted estates, administrators, successors and assigns.

Guaranty Agreement shall mean the Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Improvements shall mean, collectively, the Existing Improvements, if any, the Project Improvements and any Additional Improvements, if any, and all other replacements, restorations and repairs to any of the foregoing.

Inducement Resolution shall mean the resolution of the Agency adopted on November 7, 2018 inducing the Project.

Ineligible Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;

- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Land shall mean the interest in the Retail Unit (including the Common Elements) in that certain lot, piece or parcel of land in the Borough of Manhattan, Block 1955 and Lot 1201, generally known by the street address 2395 Frederick Douglass Boulevard, New York, New York, all as more particularly described in Exhibit A to the Agency Lease, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

Lessee shall mean 2395 CDM Meat & Produce Corp., a corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20 of the Agency Lease.

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under the Agency Lease, which shall equal \$65,675.

Net Present Value shall mean the net present value calculated as of the PILOT Commencement Date using a discount rate of 6.25%.

NYCDOF shall mean the New York City Department of Finance.

Person shall mean an individual or any Entity.

PILOT shall mean payments in lieu of Real Estate Taxes with respect to the Facility Realty.

PILOT Benefits shall mean, for any period of determination, the dollar amount of all benefits that accrued during such period due to the exemption from Real Estate Taxes resulting from the Agency's leasehold interest in the Facility Realty, such amount to be computed by subtracting (y) the aggregate amount of PILOT paid by the Lessee during such period from (z) Real Estate Taxes that would have been levied by the City on the Facility Realty, as reduced by As-of-Right Benefits, during such period in the absence of the Agency's leasehold interest in the Facility Realty.

PILOT Commencement Date shall mean July 1, 2021.

Project shall mean the renovation, equipping and furnishing of a commercial facility constituting the Retail Unit, consisting of a ground floor supermarket of approximately 7,341 square feet and an approximately 6,011 cellar storage and prepared foods space, located on

the Land; and the acquisition and installation of machinery and equipment in connection therewith; and the occupancy, use and operation, through and until the Expiration Date, of the Facility Realty as a commercial facility for the Approved Project Operations.

Project Application shall mean the eligibility application and questionnaire submitted to the Agency by or on behalf of the Lessee, for approval by the Agency of the Project and the providing of Financial Assistance by the Agency therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

Project Completion Date shall mean the date which an Authorized Representative of the Lessee certifies to the Agency by signing and delivering to the Agency a certification substantially in the form set forth in Exhibit G to the Agency Lease, together with all attachments required thereunder, that the Project Work has been finished and the Project Improvements shall have been completed substantially in accordance with the plans and specifications therefor, and the Lessee shall have provided the Agency with a copy of a certificate of occupancy or a temporary certificate of occupancy issued by the New York City Department of Buildings, subject to the review, verification and acceptance of such certification and related documentation by the Agency, in its sole discretion.

Project Cost Budget shall mean that certain budget as set forth by the Lessee in Exhibit E to the Agency Lease.

Project Documents shall mean this Agreement, the Master Lease, the Retail Lease, the Company Lease, the Agency Lease, the Guaranty Agreement and the Agency-Owner-Landlord Agreement.

Project Finance Plan shall mean the plan for financing of the costs of the Project set forth in Exhibit J to the Agency Lease.

Project Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the Project Work.

Project Work shall mean the work required to complete the construction and/or renovation portion of the Project as such work is further set forth in the Project Cost Budget.

Real Estate Taxes shall mean real property taxes levied by the City on real property within the City.

Sales and Use Taxes shall mean City and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit H to the Agency Lease and to be delivered in accordance with Section 5.2(e) thereof.

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Project.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to the Agency Lease and each Sales Tax Agent Authorization Letter issued in connection with the Project.

State shall mean the State of New York.

Straight-Lease Transaction shall have the meaning assigned to that term in the Enabling Act.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) References to designated “Appendices,” “Sections” and other subdivisions are to the designated Appendices, Sections and other subdivisions of or to this Agreement.

(f) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(g) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

ARTICLE II

Section 2.1. Acknowledgments of the Lessee. The Lessee acknowledges that:

(a) In connection with the Project, the Lessee will receive the following types of Financial Assistance:

(i) PILOT Benefits with an estimated Net Present Value of \$680,070, as more particularly set forth in Section 5.1 of the Agency Lease, attached hereto as Appendix A;

(ii) Exemption from Sales and Use Taxes on the purchase of Eligible Items in an amount equal to the Maximum Sales Tax Savings Amount, as more particularly set forth in Section 5.2 of the Agency Lease;

(b) The Financial Assistance described herein is subject to suspension, modification, discontinuance and/or recapture, as more particularly set forth in Section 5.4 of the Agency Lease attached hereto as Appendix B, and as set forth in Section 5.1 and 5.2 of the Agency Lease.

(c) The description of the Project (as defined in Section 1.1 hereof) is true, correct and complete.

(d) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

Section 2.2. Covenants and Certifications of the Lessee. The Lessee shall provide annually to the Agency on August 1 of each year commencing August 1, 2021, a certified statement and supporting documentation:

(i) enumerating the full-time equivalent jobs retained and the full-time equivalent jobs created as a result of the Financial Assistance described in Section 2.1(a) above, by category, including full-time equivalent independent contractors or employees of independent contractors that work at the Facility; and

(ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Project Application are still accurate and, if not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an explanation for why the averages or ranges provided in the Project Application are not still accurate.

(b) The Lessee does hereby certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE III

Except for the Agency Lease and the Company Lease, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Agreement. This Agreement shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Lessee and the Agency.

ARTICLE IV

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 11.5 of the Agency Lease.

ARTICLE V

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Agreement are and shall be binding upon and inure to the benefit of the Agency and the Lessee and their respective successors and assigns.

If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Agency Lease, the Company Lease or any other Project Document.

ARTICLE VI

This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE VII

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency

may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee under the Agency Lease.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee and not of any director, officer, manager, partner, employee or agent of the Lessee in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, manager, partner, employee or agent of the Lessee.

ARTICLE VIII

Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra proferentem* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

[Signature Page Follows]