

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2015, by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation (“CITY”) and _____ (“Project Protein”).

RECITALS:

WHEREAS, Project Protein is company headquartered in another state with offices nationwide and a local office looking for expansion opportunities; and

WHEREAS, Project Protein employs twenty-four (24) full time employees and is experiencing substantial growth; and

WHEREAS, Project Protein was contemplating relocating its business both inside and outside the State of Florida, including the City of Palm Coast; and

WHEREAS, Project Protein has agreed to locate within the City of Palm Coast, Florida and maintain and create fifty (50) primary jobs over the next seven (7) years under the terms and conditions of this Agreement; and

WHEREAS, the City desires to provide Project Protein economic incentives in furtherance of the municipal purpose of retaining Project Protein as a major employer within the City and expanding economic activity within its jurisdictional borders under section 166.021(9), Florida Statutes; and

WHEREAS, the parties recognize this Agreement is necessary to ensure that the economic incentives provided by the City to Project Protein ultimately serve their intended municipal purpose; and

WHEREAS, the City has established terms and conditions herein whereby Project Protein by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the City can fulfill the City’s desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and

WHEREAS, the parties agree that the economic incentives provided by the City hereunder are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Palm Coast, Florida and the County; and

WHEREAS, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City’s tax base.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the parties agree has been exchanged and received the parties agree as follows:

1.0 **Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference.

2.0 **Definitions.** For purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

- (a) “County” Shall mean Flagler County, Florida
- (b) “Effective Date” shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective against any part until said date.
- (c) “Jobs” shall have the meaning given to such terms in Section 288.106(i), Florida Statutes

3.0 **Commitment by Project Protein.**

- (a) Project Protein agrees that during the term of this Agreement, the City of Palm Coast, Florida shall serve as a location of Project Protein.
- (b) Within seven (7) years of the Effective Date, Project Protein agrees to use reasonable best efforts to establish a minimum of fifty (50) Jobs at the City of Palm Coast location.
- (c) Project Protein represents and warrants that the jobs created, on average, will have an average annual wage of at least \$33,000.

4.0 **Commitments by City.**

- (a) The City shall extend the City’s Fiber Optic Network (City FiberNET) to Project Protein’s location at no cost to Project Protein, if located along the existing City FiberNET.
- (b) The City shall rebate the City’s FiberNET transport costs to Project Protein for five years after connection. This does not include any costs or fees normally due to the service provider operating on the City’s FiberNET.
- (c) The City shall provide Project Protein with a grant in an amount equivalent to a percentage of Project Protein’s property taxes paid (City portion only) in the previous year based on the number of Jobs established and maintained by Project Protein pursuant to Paragraph 3.0 of this Agreement, not-to-exceed one hundred

percent (100%) of the property taxes paid (City portion only), per the following schedule:

	<u>City Fiscal Year</u>	<u>Percentage Per Job</u>
Year 1	FY 2016/2017	3.33%
Year 2	FY 2017/2018	2.86%
Year 3	FY 2018/2019	2.50%
Year 4	FY 2019/2020	2.22%
Year 5	FY 2020/2021	2.00%
Year 6	FY2021/2022	1.67%
Year 7	FY2022/2023	1.35%

The City shall determine the number of Jobs established and maintained on January 1 of each City fiscal year based on written documentation provided by Project Protein and deemed reasonably acceptable to the City. Upon verifying the number of Jobs, the City will pay Project Protein the grant in accordance with the aforementioned schedule, not to exceed one hundred percent (100%) of the property taxes paid (City portion only), within sixty (60) days of said determination. Payment of the grant is subject to budget approval by City Council and available funding in the City’s Economic Development Incentive Fund.

(d) The City shall not make any public announcements regarding this Agreement of the transactions contemplated hereunder unless and until such public announcements have been approved by and coordinated with Project Protein and the Office of the Governor of the State of Florida, if applicable.

5.0 **Progress Reports.** Upon request by the City, Project Protein shall submit in sufficient and reasonable detail a written progress report, along with supporting documentation, as to the status of the number of employees employed by Project Protein at its offices within the City of Palm Coast. If the detail is not sufficient in the City’s Manager’s reasonable discretion to permit the City to determine compliance with this Agreement, the City may seek more reasonable written detail from Project Protein.

6.0 **Compliance with Laws.** Project Protein shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within the City of Palm Coast.

7.0 **Work is a Private Undertaking.** With regards to Project Protein’s business operations and compliance with applicable laws, ordinances, rules, and regulations, it is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the City and Project Protein is such that the Project Protein is an independent contractor and not an agent of the City. Project Protein and its contractors, partners, agents, and employees are independent contractor and not employees of the City. Nothing in this Agreement shall be interpreted to establish any relationship other

than that of an independent contractor, between the City, on one hand, and Project Protein and its contractors, Partners, employees, or agents, under this Agreement.

- 8.0 **Compliance Monitoring.** Project Protein shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within City of Palm Coast.
- 9.0 **Audit and Inspections; Job Compliance Check.** Project Protein agrees that any records with respect to Project Protein's Obligations to the City Under this Agreement shall be made available to the City, at any time during normal business hours upon seventy-two (72) hours written notice to Project Protein, no more than once every calendar year, to audit, examine, and make excerpt or transcripts of all data relevant confirming that Project Protein's compliance with the Agreement. Any audit shall be conducted to Government Auditing Standards, or Generally Acceptable Auditing Standards, as applicable at the time of audit. Notwithstanding the foregoing, (1) Project Protein shall not be required to make available any documents or information that (i) are attorney/ client privileged, (ii) constitute a trade secret under the Uniform Trade Secret Act, or (iii) which are determined exempt from disclosure under Florida's Public Records Laws as trade secrets; and (2) with respect to any information regarding the amount of employee wages for specific Jobs, the City shall (a) treat such information as confidential, (b) not release such information to any third party, (c) not take any notes with respect to the information reviewed, and (d) not make any copies of any of the information reviewed. Any deficiencies noted in audit reports prepared by the City must be fully cleared by Project Protein within thirty (30) days after notice of said deficiencies were received by Project Protein. The City shall also conduct a written annual compliance check on the number of employees employed by Project Protein on each anniversary date of this Agreement, Subject to restrictions set forth in this Paragraph, Project Protein shall fully cooperate with the City providing access to appropriate payroll documentation to verify the total number of employees and whether such employees are part-time or full-time. Failure of Project Protein to reasonably comply with the above audit requirements will constitute a material breach of this Agreement and may result, at the sole discretion of the City, in the withholding of future economic incentives, terminating pending economic incentives, the reimposition of any ad valorem taxes abated under this Agreement, or termination of any other obligation required hereunder. Notwithstanding the foregoing, the parties agree to submit any dispute under this Paragraph to nonbinding mediation before the City's exercise of its rights hereunder for alleged violation by Project Protein.
- 10.0 **Promotion of Economic Incentives.** Either party may issue news releases, public announcements, advertisements, or other form of publicity concerning its efforts in connection with this Agreement. However, unless otherwise agreed, the party publicizing its efforts shall provide a courtesy copy of any written material to the other party for review and comments prior to publication.
- 11.0 **Severability.** Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable by any paragraph of this Agreement to render,

void, invalid, or enforceable any other paragraph or any part of any paragraph in this Agreement.

- 12.0 **Integration; Modification; Exhibits.** The drafting, execution, and delivery of this Agreement by the parties has not been induced by any representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to herein. Modifications of this Agreement shall only be made in writing signed by both referred to herein. Modifications of this Agreement shall only be made in writing signed by both parties. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is conflict between an exhibit and provisions of this Agreement, the provisions of this Agreement shall prevail over the exhibit.
- 13.0 **Attorney's Fees.** Unless otherwise provided herein, each party agrees to bear their own attorney fees and cost in furtherance of this Agreement.
- 14.0 **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 15.0 **Waiver.** No failure to insist on the prompt performance by Project Protein of its obligations under this Agreement shall be construed as a waiver by the City of its rights to demand performance. Further, any waiver by the City of any breach or violation of Project Protein's Obligations under this Agreement shall not be construed as continuing waiver or consent to any subsequent breach or violation or impede the City's ability to enforce the terms of this Agreement.
- 16.0 **Notices.** All notices required or permitted under this Agreement and any written consents or approvals requires hereunder shall be in writing (including telecopy communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or overnight courier service, telecopied or mailed by registered or certified mail (postage pre-paid), returned receipt requested, and addressed to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph:

Attn: Jim Landon, City Manager
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

With copy to:

Anthony A. Garganese, Esquire
Garganese, Weiss & D'Agresta, PA
PO Box 2873
Orlando, FL 32802-2873

With copy to:

Such notice, request, or other communication shall be considered given and deemed delivered: (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telecopier if transmitted prior to 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a non-business day, provided that copy of the notice is provided within two business days thereafter by one of the other methods permitted by this Paragraph: or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

17.0 **Term; Termination; Termination by Parties.**

- (a) Unless sooner terminated by the City or Project Protein under this Agreement or terminated by mutual consent, the Agreement shall terminate seven (7) years from the Effective Date. The City may terminate this Agreement, without penalty and any further obligation to perform under this Agreement, in the event of a material breach of any provision of this Agreement by Project Protein, which shall include, but not be limited to, failing to fulfill any of its obligations under Paragraph 3.0. The City may also terminate this Agreement if: (i) Project Protein is declared bankrupt or insolvent; (ii) Project Protein adopts a plan or resolution of liquidation of Project Protein or substantially sells all of its assets; (iii) Project Protein engages in fraud or misleading compliance reporting against the City; or (iv) a receiver or trustee is appointed on behalf of Project Protein for purposes of taking control of substantially all of Project Protein's assets within the City of Palm Coast, Florida or the said assets are judicially seized for any reasons, and possession of said assets are not released to Project Protein within ninety (90) days. Upon termination by the City, the City shall be entitled to recover a refund of any grant monies paid by the City pursuant to Paragraph 4.0 including the recovery of reasonable attorney's fees and costs incurred in collecting said monies

through all appellate proceedings. Project Protein may terminate the Agreement in the event of a material breach of any provision of this Agreement by the City which shall include, but not be limited to, failing to fulfill any of its legal obligations under Paragraph 4.0. Prior to exercising its right to terminate this Agreement, the terminating party shall provide the other party with written notice of termination setting forth the reason for termination (“Default”) and at least a thirty (30) day opportunity to cure the Default. In the event of termination under this Paragraph by Project Protein, Project Protein shall have all remedies available at law, including, without limitation, the right to sue for damages. However, any damages claimed or awarded to Project Protein under this Agreement shall not exceed the total monetary value of the economic incentives required to be paid by the City pursuant to Paragraph 4.0 of this Agreement.

- (b) The City and Project Protein acknowledge and agree that Project Protein’s performance under the terms of this Agreement is conditioned upon the approval by the State of Florida of other agreements related to Project Protein’s business operations. Project Protein shall have the right to either accept or reject this Agreement until January 8, 2016, at 5:00 P.M. EST (“Acceptance Date”). On or before the Acceptance Date, Project Protein shall deliver to the City written confirmation of its acceptance of the Agreement. In the event such acceptance confirmation is not delivered to the City prior to the Acceptance Date, this Agreement shall be deemed terminated and shall be null and void and of no further force and effect and the parties shall have no further obligations hereunder.

18.0 **Indemnification and Hold Harmless.**

- (a) Project Protein assumes any and all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of Project Protein and its officers, employees, servant, and agent thereof while acting within the scope of their employment with Project Protein and performing Project Protein’s requirements and obligations under the terms and conditions set forth in this Agreement. The City assumes any and all risks of personal injury and property damages to the extent attributable to the intentional and negligent acts or omissions of the City’s officers, employees, servants, and obligations of the City under this Agreement. Subject to the terms and conditions of this Agreement, Project Protein and the City further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) a waiver of sovereign immunity of the City beyond the waiver provided in Section 768.28, Florida Statutes. The limits of liability on the City set forth in section 768.28, Florida Statutes are hereby fully incorporated herein by this reference. This Paragraph shall survive termination of this Agreement.
- (b) The obligations arising under this Paragraph 18.0 shall survive the expiration or termination of this Agreement, as to claims or causes of action, liabilities,

expenses, losses, costs, reasonable attorneys fees, damages, fines and penalties of every kind and character or incurred or suffered by the City as a result thereof, based upon events arising prior to the date of termination of this Agreement.

- 19.0 **Assignment.** This Agreement and the grant provided hereunder shall not be assigned by Project Protein without the prior written consent of the City.
- 20.0 **No City Obligation for Future Funds.** No provisions in this Agreement shall be constructed as requiring the City to provide additional economic incentives of any kind, other than as specifically provided herein.
- 21.0 **Conflict of Interest.** Project Protein represents and warrants, and this Agreement is being made by the City in reliance thereon, that Project Protein and its officers, employees, and agents are neither officers nor employees of the City. Further, that no consideration of any kind is being paid, transferred, or conveyed directly to any City officer or employee, or indirectly to any City officer or employee through some other third party including a relative or legal entity, for the City's commitment to enter into this Agreement.
- 22.0 **Representations of Project Protein.** Project Protein represents to the City that (i) Project Protein is an entity organized in the State of Connecticut and Duly authorized to conduct business in Florida; (ii) Project Protein has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to Project Protein's best knowledge, Project Protein's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; (iv) to Project Protein's best knowledge, Project Protein's performance under this Agreement shall not result in the creation of any claims against the City for Money or performance, any lien, charge, encumbrance or security interest upon any asset of the City; (v) Project Protein shall have sufficient capital to perform its obligations under this Agreement: and (vi) Project Protein does not require any third party consent to execute, deliver and perform it obligations under this Agreement unless otherwise stated in this Agreement.
- 23.0 **Project Protein's Continuing Disclosure Requirement.** Project Protein must promptly notify the City of any developments that materially and adversely impact this Agreement and Project Protein's obligations stated herein including, but not limited to, compliance with all applicable laws, rules, and regulations pertaining to clean air permits, initiation any law suits or bankruptcy proceedings, sale or conveyance of real property, labor disputes, and changes in business operations.
- 24.0 **No Delegation of Police Power.** Project Protein shall not pledge the credit of the City nor make the City a guarantor of payment or surety for any contract, debt, or obligation, judgment, lien, or any form of indebtedness. The parties agree that this Agreement does not nor shall it be constructed as delegation of any of the City's authority or police powers to Project Protein.

IN WITNESS THEREOF, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

WITNESSES:

CITY OF PALM COAST, FLORIDA

By: _____

JIM LANDON, CITY MANAGER

Printed Name

ATTEST:

By: _____

VIRGINIA SMITH, CITY CLERK

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by the CITY OF PALM COAST, JIM LANDON, City Manager and VIRGINIA SMITH, City Clerk, of the City of Palm Coast, Florida, (check one) who are personally known to me or who produced _____ as identification.

Notary Public

Print Name: _____

My Commission expires:

PROJECT PROTEIN

WITNESSES:

Printed Name

Printed Name

By: _____

Name: _____

Its: _____

Date: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ the _____ of _____, (check one) who is personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: