

AGREEMENT

THIS AGREEMENT is made and entered into by and between **CUMBERLAND PACKING CORP., d/b/a BUTTER BUDS FOOD INGREDIENTS (“BUTTER BUDS”)**, and the **CITY OF RACINE**, a municipal corporation located in Racine County, Wisconsin (the “City”);

RECITALS:

1. Butter Buds currently has 55 full time employees at its Racine facility located at 2330 Chicory Road, Racine, WI 53403, and is in need of additional space to accommodate new employees, expand its operations and provide additional warehouse space.

2. After reviewing alternative sites in Racine and Lake County, IL for its expansion, Butter Buds is prepared to expand its Racine facility by acquiring and connecting to an existing building located adjacent to its present facility, provided the City extends the financial assistance set forth below. The existing facility and property, with Parcel I.D. No. 276-00-00-16-875-029 and the building and property to be acquired at 3911 – 3931 S. Memorial Drive, with Parcel I.D. No. 276-00-00-16-875-030 shall be defined as the “Site.”

3. In order to qualify for receipt of the City’s financial assistance, Butter Buds projects the creation of 22 new full time equivalent positions over a three-year period, granting preference to qualified job applicants residing in the City of Racine.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Defined Terms.**

“Full-Time Employment Position” shall mean any regular, full-time position

where an employee is required, as a condition of employment, to work at least 40 hours per week and at least 2,080 hours per year, including paid leave and holidays, and for which the employee receives pay that is equal to at least 150% of the federal minimum wage.

“Property Tax Increment” shall mean the gross amount of tax increment actually received by the City (as defined in Section 66.1105 Stats.) generated by the Value Increment of the Site, or payments received in lieu of taxes pursuant to Paragraph Six. Property Tax Increment shall not contain any tax increment received by any other taxing jurisdiction.

“Site Tax Incremental Base Value” shall mean \$0.00.

“Value Increment” shall mean the full (equalized) value of the Site in any year minus the Site Tax Incremental Base Value.

3. **Conditions of Agreement.** This Agreement is conditioned upon the occurrence of all of the following:

- (a) Owner’s purchase of the Site by December 31, 2011.
- (b) Butter Buds obtaining all necessary local, county, state and federal approvals and permits.

4. **Butter Buds Job Projections.**

A. **Job Creation.** Butter Buds currently employs fifty-five (55) full time employees and projects it will create approximately twenty-two (22) full time equivalent (“FTE”) new employment positions over a three (3) year period following the effective date of this Agreement. Butter Buds, however, cannot guarantee, and does not promise or agree, that all twenty two (22) FTE employment positions will be created over the three (3) year period or

will last during the ten (10) year term of this Agreement. Only FTE Positions on the payroll of Butter Buds shall be counted for the purpose of determining the amount of Development Incentive to be paid by the City. Should Butter Buds utilize a temporary agency for temporary or emergency hiring purposes, such employees shall not be counted until they are direct hires of Butter Buds. The City shall pay the full Development Incentive during the first three (3) years of this Agreement. Commencing on the fourth anniversary date of this Agreement, in the event the number of additional FTE jobs in any year is less than 22, then the Development Incentive (defined below) to be paid to Butter Buds will be proportionately reduced, after giving full credit for the retention of jobs in both the numerator and the denominator. For example, if, in year 6, the number of additional FTE jobs is 11, then Owner will receive 85.71% of the Development Incentive (i.e., $(55 \text{ retained jobs plus } 11 \text{ new FTE positions}) \div 77$). The types of jobs created, schedule of job creation, wages to be paid and benefits to be offered to employees are estimated and summarized in the Prospect Data Sheet, which is attached as Exhibit A, and incorporated herein by reference.

B. Preference to City of Racine Residents. The following procedures shall be utilized in the recruitment, screening and referral of City of Racine residents for job openings at Butter Buds during the term of this Agreement:

(1) Butter Buds shall develop a job description for each of the new jobs that will be created as a result of the project. The job description shall include the following: job title, description of job responsibilities, prerequisite education and/or training, hourly wage or salary and fringe benefits, estimated starting date, and the contact person for additional information. Butter Buds shall provide this information on any opening directly to the

Racine County Workforce Development Center ("WDC") Business Consultant.

(2) Butter Buds will notify the WDC when any job opening occurs. Butter Buds will post the job on the JobCenterofWisconsin.com website; this site will refer applicants to apply in person at the WDC. Butter Buds will provide application forms including an attachment identifying residency to the WDC. WDC will collect applications and may conduct preliminary screening of applicants based on Butter Buds requirements. WDC will send the qualified candidates that reside in Racine to Butter Buds. If within two (2) weeks after Butter Buds notifies WDC of job openings, Butter Buds determines there are no acceptable applicants available to Butter Buds, then Butter Buds may begin general advertising for the jobs. Butter Buds agrees that if applicants are equally qualified, Butter Buds will hire the applicant who resides in Racine.

(3) Butter Buds agrees to provide the WDC with completed employee residency verification forms for those individuals interviewed and hired by Butter Buds.

5. **Development Incentive by the City.** Butter Buds and the City have each determined and agree that Butter Buds was weighing different locations for its expansion needs, and that the purchase and development of this Site would not occur unless the City agreed to provide the assistance set forth herein. The City agrees to reimburse Owner out of the City's intergovernmental Sewer Revenue Sharing Payment fund for a portion of the project costs of Butter Buds by paying Butter Buds a ten-year development incentive equal to 75% of the Property Tax Increment annually generated by the Site ("Development Incentive"), subject to the following conditions:

- (a) The Development Incentive shall be non-interest bearing.
- (b) The City's obligation to make Development Incentive payments is

conditioned upon the timely payment of Property Tax Increment by Butter Buds. The City agrees to make Development Incentive payments to Butter Buds in an amount equal to 75% of the Property Tax Increment no later than 60 days after the City's receipt of Butter Bud's final tax installment payment and upon notice, given by Butter Buds to the City as provided herein, and with a copy of such notice to the City's Finance Director at City Hall, that such Development Incentive payment is due. Development Incentive payments to Butter Buds shall cease upon the City making its tenth annual payment to Owner.

- (c) The City's obligation to make Development Incentive payments shall be contingent on Butter Buds continued compliance with the terms of this Agreement.
- (d) The City's obligation to make Development Incentive payments is conditioned upon the retention by Butter Buds of its existing fifty-five (55) FTE Positions.

6. **Taxability.** Until Butter Buds has received its final Development Incentive under this Agreement, Butter Buds shall not sell, transfer, convey or use the Site in any manner that would render it exempt from the imposition of general property taxes under the statutes of the State of Wisconsin, except where taken in whole or in part by the exercise of eminent domain under federal or state statutes, laws and regulations. Butter Buds agrees that in the event the Site, or any part thereof, were deemed to be tax exempt, Butter Buds shall make payments in lieu of taxes to the City in an amount equal to the amount of Property Tax Increment that

would have been collected were the Site taxable, and by the same date that the last installment tax payment on the Site's property would have been due were the entire Site taxable.

7. **Legal Action.** In addition to the provisions set forth in this Agreement, the City may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this or any other agreement it may have with Butter Buds, and in the event of a legal action in which the final determination is in favor of the City, the City shall be entitled to collect from Butter Buds statutory costs and disbursements, plus its actual attorneys' fees and costs.

8. **Laws To Be Observed.** Butter Buds shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the ownership and occupancy of the Site and the exercise of its rights and obligations hereunder. Butter Buds shall indemnify and save harmless the City and its agents, officers, consultants and employees, against any claims, costs and liability of every kind and nature, including reasonable attorney fees, for liability directly or indirectly arising from or based on the violation of any such Laws by Butter Buds or its principals, agents, employees or contractors, except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the City and any of its agents, contractors, officers or employees. Butter Buds shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful ownership and occupancy of the Site and the exercise of its rights and obligations hereunder.

9. **Public Protection and Safety.** The City shall not be responsible for any damage, bodily injury or death arising out of Butter Buds' ownership or occupancy of the Site, or Butter Buds' exercise of its rights hereunder whether from maintaining an "attractive

nuisance” or otherwise, except as caused by the negligence or willful misconduct of the City or any of its agents, contractors, consultants, officers or employees. Where apparent or potential hazards actually known by Butter Buds occur incident to the conduct of Butter Buds’ rights or obligations under this Agreement, Butter Buds shall provide reasonable safeguards. The City and Butter Buds do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

10. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City officers, agents, consultants or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.

11. **Indemnification/Hold Harmless Agreement.** Butter Buds hereby expressly agrees to indemnify and hold the City and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, fines, costs or loss (including reasonable fees for attorneys and consultants) and liability of every kind and nature, for injury (including death) or damage received or sustained by any person or entity in connection with, or on account of its ownership and occupancy of the Site and the exercise of its rights and obligations at or for the Site pursuant to this Agreement except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the City or any of its agents, contractors, officers or employees. Butter Buds further agrees to aid and defend the City or its agents (at no cost to the City or its agents, consultants and employees) in the event they are named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by Butter Buds and except to the extent as such claims or liability arise by virtue of the negligence,

unlawful or willful misconduct of the City or any of its agents, contractors, officers or employees. Butter Buds is not an agent or employee of the City.

12. **Insurance Requirements.**

(a) **General.** Butter Buds shall obtain insurance reasonably acceptable to the City as required under this section which shall name the City as an additional insured or loss payee as the City shall direct during the time that Butter Buds is receiving financial assistance from the City.

(b) **Certificates of Insurance.** Where the City does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Worker's Compensation	Statutory Limits
Comprehensive Motor Vehicle Liability	\$3,000,000.00 per Bodily Injury Accident & Property Damage combined
Comprehensive General Liability Bodily Injury	\$3,000,000.00 per accident
Property Damage Combined	\$1,000,000.00 aggregate

Butter Buds may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in combination with an umbrella excess third party liability.

13. **Successors and Assignment.** This Agreement is binding upon and enforceable against the Parties' respective successors and assigns. The City may assign its interest in this Agreement to any successor entity or entities, including any municipality or

municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the City.

14. **Butter Buds Default.** In the event Butter Buds fails to timely perform any one or more of its obligations under this Agreement (a “Butter Buds Default”), the City shall promptly provide written notice to Butter Buds to the extent known by the City of the action or omission constituting the basis for the default. The notice shall provide Butter Buds at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if Butter Buds promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one hundred and twenty (120) days from the date of the City’s notice.

In the event a Butter Buds Default is not fully and timely cured by Butter Buds the City shall have all of the rights and remedies available at law and in equity.

15. **City Default.** In the event the City fails to timely perform any one or more of its obligations under this Agreement (a “City Default”), Butter Buds shall promptly provide written notice to the City to the extent known by Butter Buds of the action or omission constituting the basis for the City Default.

The notice shall provide the City at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if the City promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no

event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of Butter Buds' notice.

In the event a City Default is not fully and timely cured by the City, Butter Buds shall have all of the rights and remedies available at law and in equity.

16. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To Butter Buds:

Tom Buhler
Director of Business Development
Butter Buds Foods Ingredients
2330 Chicory Road
Racine, WI 53403

With a copy to:

Gregg Kander, Esq.
Buchanan Ingersoll & Rooney
One Oxford Centre, 20th Floor
Pittsburgh, PA 15219

To the City:

City of Racine
Attention: City Clerk
730 Washington Avenue
Racine, WI 53403
Fax: (262) 636-9298

and to,

Brian F. O'Connell, AICP
Director of City Development
City Hall, Room 102
730 Washington Avenue
Racine, WI 53403

17. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

18. **Effective Date.** This Agreement becomes effective as of the date last executed by a party below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

**CUMBERLAND PACKING CORP., d/b/a
BUTTER BUDS FOOD INGREDIENTS**

By: _____

Name: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Personally came before me this _____ day of _____, 2011, the above-named _____, _____ of Cumberland Packing

Corp., d/b/a Butter Buds Food Ingredients, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

Notary Public, _____ County, _____
My Commission: _____

CITY OF RACINE

By: _____
John Dickert, Mayor

Attest: _____
Janice Johnson-Martin, City Clerk

STATE OF WISCONSIN)
) SS:
COUNTY OF RACINE)

Personally came before me this _____ day of _____, 2011, John Dickert and Janice Johnson-Martin, Mayor and City Clerk of the City of Racine, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Racine County, Wisconsin
My Commission expires: _____

COUNTERSIGNED:

Provision has been made to pay the liability that will accrue under this Agreement.

David Brown
City Finance Director

Approved as to form:

Robert K. Weber
City Attorney

Exhibits:
Exhibit A - Prospect Data Sheet

(06/24/11)