

**AGENDA ITEM NO. 19**  
**CITY OF SUNLAND PARK**  
**CITY COUNCIL**  
**(FOR INFORMATION ONLY)**

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**Meeting Date:** 8/21/2018

**Submitted By:** Julia T. Brown  
City Manager

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**Subject:** Adoption of the Local Economic Development Act (LEDA) Ordinance for Stampede Meat Inc.

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**Fiscal Impact:**

Amount Budgeted: N/A

Fund: N/A

Amount Available: N/A

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**Background:**

The LEDA ORDINANCE FOR STAMPEDE MEATS, consists of 3 parts:

- Approval of the Local Economic Act for Stampede Meats
- Intergovernmental Agreement (see item 20 on agenda)
- Project Participation Agreement (see item 21 on agenda)

Items in the LEDA Ordinance for Stampede Meats have been separated in case Council has questions regarding any one of them.

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**Recommendation:** Staff recommends approval.

*Back UP of  
Posting*

**CITY OF SUNLAND PARK, NEW MEXICO  
NOTICE OF INTENT TO ADOPT ORDINANCE**

Notice is hereby given of the title and general subject matter contained in an ordinance which the City Council of the City of Sunland Park, New Mexico (the "City"), the governing body of the City, intends to adopt at its regular meeting scheduled for August 21, 2018 at the hour of 6:00 pm at City Hall, City Council Chambers, 1000 McNutt Rd., Sunland Park, New Mexico, providing for a local economic development project.

The proposed title of the Ordinance is as follows:

**AN ORDINANCE APPROVING A PROJECT INVOLVING STAMPEDE MEAT, INC. PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE NO. 2014-08, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE;**

**General Summary:** Stampede Meat, Inc. (the "Company") has submitted an application to the City, pursuant to the Local Economic Development Act (Sections 5-10-1 through 5-10-13, NMSA 1978) and the City's Economic Development Plan. The Company is requesting from the State of New Mexico (the "State") a \$3,000,000 contribution (the "State Contribution") under the Local Economic Development Act to assist the Company in the acquisition, repair, refurbishment or renovation in the City of Sunland Park, New Mexico of land and a building to be used by the Company as a manufacturing facility. No City funds are requested. The City will act as the fiscal agent for the State in the disbursement of and administration of the State Contribution and will generally monitor the Project to completion. The Project Participation Agreement submitted with the Ordinance is the contract between the City and the Company that details their corresponding rights and obligations with respect to the State Contribution. The proposed Ordinance would, among other things, approve the Project Participation Agreement, establish contingencies on the economic assistance authorized, and delegate authority to the Mayor to implement the economic development assistance.

A copy of the Ordinance in draft form is on file in the office of the City Clerk 1000 McNutt Rd., Sunland Park, New Mexico and will be available for inspection during normal business hours.

This notice is given pursuant to and constitutes compliance with Section 3-17-3 NMSA 1978.

Dated: August 3, 2018.

  
Daniel Carranco, City Clerk

**AGENDA ITEM NO. 20**  
**CITY OF SUNLAND PARK**  
**CITY COUNCIL**  
**(FOR INFORMATION ONLY)**

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**Meeting Date:** 8/21/2018

**Submitted By:** Julia T. Brown  
City Manager

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**Subject:** Approval of the Intergovernmental Agreement between the New Mexico Economic Development Department and the City of Sunland Park NM related to Stampede Meat Inc.

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**Fiscal Impact:**  
Amount Budgeted: N/A  
Fund: N/A  
Amount Available: N/A

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**Background:** This item goes hand in hand with LEDA Ordinance for Stampede Meat Inc.

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**Recommendation:** Approve.

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT  
AND THE CITY OF SUNLAND PARK, NEW MEXICO**

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and the City of Sunland Park, New Mexico (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

**RECITALS:**

**WHEREAS**, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

**WHEREAS**, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-13 (2007) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

**WHEREAS**, the City has adopted LEDA by Ordinance No. 2014-08, which established the City of Sunland Park Economic Development Plan that promotes economic development within the City; and

**WHEREAS**, Stampede Meat, Inc (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

**WHEREAS**, pursuant to the terms of that PPA, the Qualifying Entity will renovate and occupy the industrial facility at 5701 McNutt Road in the City (the "Project") and is expected to employ 1,295 full-time persons by June 30, 2024; and

**WHEREAS**, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

**NOW THEREFORE**, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

**SECTION 1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to \$3,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to three million dollars (\$3,000,000) to implement the Project. The

Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

## **SECTION 2. SCOPE OF WORK**

The City will act as fiscal agent for up to \$3,000,000 of the Appropriations for the Project. Pursuant to the LEDA statutes, EDD will transfer up to \$3,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it expects to employ 1,295 full-time employees at the facility by June 30, 2024.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

## **SECTION 3. CITY RESPONSIBILITIES**

The City shall:

- A. Pay the costs and expenses incurred for the Project from the Appropriation;
- B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD;
- C. The City shall notify EDD in writing of any default by the Qualifying Entity within 15 business days of learning of the event of default;
- D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
- E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;

- F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;
- G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and
- H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary; and
- I. Monitor job creation by the Qualifying Entity and report the number of jobs created to EDD each quarter until December 31, 2025. Job reports shall include a copy the Qualifying Entity's quarterly reports to the New Mexico Department of Workforce Solutions and an affidavit signed by an officer of the Qualifying Entity.

#### **SECTION 4. CITY CERTIFICATIONS**

As Fiscal Agent, the City hereby assures and certifies that:

- A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;
- B. It has the legal authority to receive and expend the Appropriation;
- C. It will enforce the provisions of Ordinance No. 2018-\_\_\_\_\_ and the City's Economic Development Plan;
- D. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;
- E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;
- F. It has entered into a PPA with the Qualifying Entity and has obtained all financial documentation necessary to protect the City's and State's investments in the Project;

- G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;
- H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;
- I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and
- J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

#### **SECTION 5. EDD RESPONSIBILITIES**

EDD shall:

- A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed three million dollars (\$3,000,000). The funds shall be used only for the purpose stated in this Agreement;
- B. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and
- C. Reimburse the City for any costs associated with litigation to enforce the terms of the Security.

#### **SECTION 6. TERM OF AGREEMENT**

This Agreement shall become effective on the date it is fully executed and shall terminate on December 31, 2025 or when all of the obligations of the PPA have been fulfilled.

#### **SECTION 7. LIABILITY**

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to

sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

### **SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS**

- A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.
- B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.
- C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by City, City shall return said funds to EDD for disposition in accordance with law.

### **SECTION 9. STRICT ACCOUNTABILITY**

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

### **SECTION 10. REPORTS**

The Qualifying Entity shall submit quarterly reports regarding employment to the City during the life of this Agreement and the City shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with EDD. The City shall coordinate with EDD to conduct an annual performance review of the Project.

### **SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

#### **To EDD:**

Juan Torres  
Finance Development Team Leader  
Joseph Montoya Building  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505

#### **To the City:**

Julia Brown  
City Manager  
City of Sunland Park  
1000 McNutt Rd. Ste. A  
Sunland Park, New Mexico 88063



**SECTION 12. AMENDMENTS**

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

**SECTION 13. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

**CITY OF SUNLAND PARK, NEW MEXICO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

Attorney

**NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

By: \_\_\_\_\_

Matt Geisel  
Cabinet Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

David Mathews  
General Counsel

**AGENDA ITEM NO. 21**  
**CITY OF SUNLAND PARK**  
**CITY COUNCIL**  
**(FOR INFORMATION ONLY)**

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**Meeting Date:** 8/21/2018

**Submitted By:** Julia T. Brown  
City Manager

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**Subject:** Approval of the Stampede Meat Project Participation Agreement.

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**Fiscal Impact:**  
Amount Budgeted: N/A  
Fund: N/A  
Amount Available: N/A

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**Background:** This item goes hand in hand with LEDA Ordinance for Stampede Meat Inc.

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**Recommendation:** Approve.

## PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF SUNLAND PARK, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **STAMPEDE MEAT, INC** (the "Company").

### Recitals.

- A. Article 9, Section 14 of the New Mexico Constitution provides communities the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.
- B. Pursuant to Ordinance No. 2014-08 (the "Economic Development Plan Ordinance"), adopted on December 16, 2014, the City of Sunland Park established a Local Economic Development Plan (the "Plan") as required by Section 5-10-6, NMSA 1978.
- C. As provided in the Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to \$3,000,000 from the Legislature of the State of New Mexico (the "State Contribution") to go toward the Company's acquisition, repair, refurbishment, or renovation as part of the redevelopment of the industrial facility at 5701 McNutt Road in the City of Sunland Park, New Mexico (the "Project"). The company will renovate the existing facility and expects to employ 1,295 full-time persons by June 30, 2025.
- D. The City has adopted Ordinance No. 2018-\_\_\_\_\_ ("Project LEDA Ordinance") finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.

1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

**2. Substantive Contribution from the Company.**

- a. **Facility.** The Company will establish manufacturing and business operations at 5701 McNutt Road in the City of Sunland Park (the "Facility").
- b. **Investment.** The Company will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately \$22,000,000 by June 30, 2021 and up to an additional \$14,000,000 thereafter if Phase 2 of the Project is exercised (the "Project Contribution"), provided, however, failure to meet this level of Project Contribution will not constitute a breach of this Agreement.
- c. **Job Creation.** The Company will directly employ a target of 1,295 full-time employees at the facility by June 30, 2025 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full-time employees do not include agency, sub-contracted, temporary employees or independent contractors. While failure to meet certain Minimum Job Numbers may result in a Performance Clawback as provided in Section 6b, below, the Company's failure to meet the Job Target will not constitute a breach of this Agreement.
- d. **Schedule.** A preliminary Project schedule is as follows, but failure to meet these milestones will not constitute a breach of this Agreement.

Fall 2018	Initiate facility improvements and hiring
Fall 2018	Begin Project operation
Summer 2019	Project in full, multi-shift operation

- e. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until June 30, 2025.

**3. The State Contribution**

- a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the

conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this Agreement, LEDA Eligible Expenditures shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

- b. The State Contribution is composed of up to \$3,000,000 which includes a base LEDA award of \$1,300,000 and additional awards of \$850,000 tied to Project acceleration; \$500,000 tied to expenditures through New Mexico based companies; and up to \$350,000 on a per job basis (yet payable and reimbursable against eligible expenditures). The State Contribution will be disbursed to the Company in accordance with the provisions of this Agreement for such purposes as set forth in Section 5-10-3D NMSA 1978.

**4. The City Contribution.**

- a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will comply with the Local Economic Development Act (“LEDA”) with respect to the acceptance and disbursement of the State Contribution. As required by the LEDA Ordinance and the Act, the City will deposit the State Contribution into a clearly identified separate account.
- b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

**5. Disbursement of State Contribution**

- a. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in six (6) separate allotments. Each disbursement will be conditioned on (i) the Company’s having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) after such date as the Company hires any employees at the Facility, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company’s satisfaction of the performance milestones set forth below (the “Disbursement Performance Milestones”) for each allotment prior to the disbursement:

<b>Amount of State Contribution Available for Disbursement</b>	<b>Disbursement Performance Milestone</b>
\$1,300,000	Acquire Facility, receive Certificate of Registration from the New Mexico Secretary of State and register with the New Mexico Department of Workforce Solutions.

\$850,000	Employ at least 1 person and incur LEDA Eligible Expenses prior to June 30, 2019.
\$250,000	Achieve Local Purchasing Requirement (defined below) of at least \$1,000,000 prior to June 30, 2019 and incur LEDA Eligible Expenses.
\$250,000	Achieve Local Purchasing Requirement (defined below) of at least \$2,000,000 prior to June 30, 2020 and incur LEDA Eligible Expenses.
\$100,000	Maintain a minimum employment level of 480 or more (per quarterly Wage and Employment report submitted to State of NM) for six (6) consecutive months and incur LEDA eligible expenses.
\$250,000	Maintain a minimum employment level of 800 or more (per quarterly Wage and Employment report submitted to State of NM) for six (6) consecutive months and incur LEDA eligible expenses.
	Note: Job creation attainment shall be measured in line with actual jobs created pursuant to section 10-b (not target jobs).

The Company has budgeted approximately \$22,000,000 for its Construction Expenditures (defined below). The Company shall inform the contracted construction companies to use the correct New Mexico Taxation and Revenue Department Location Code of 07-416, City of Sunland Park, for Gross Receipts Tax filing. The Company will be eligible for the disbursement of up to \$500,000 if it satisfies the Local Purchasing Requirement. For the purposes of this Section, the "Local Purchasing Requirement" shall mean that the Company pays at least \$1,000,000 and up to \$2,000,000 in Construction Expenditures to New Mexico Companies (defined below). As evidence of satisfaction of the Local Purchasing Requirement, the Company will present such information, documents, and certifications to the City as may reasonably be requested by the City in order to determine satisfaction of the Local Purchasing Requirement. The parties acknowledge that the Company shall not be required to disclose any information that the Company deems as confidential.

For the purposes of this Section:

"Construction Expenditures" means an expenditure for construction materials and services, but not for the acquisition of land, existing buildings, or equipment purchases.

"New Mexico Company" is an entity that has paid property taxes or rent on real property in New Mexico and paid at least one other tax administered by the State of New Mexico in each of the three (3) years immediately preceding the

Company's expenditure. The Company shall be permitted to rely on a written statement from any entity that it qualifies as a New Mexico Company.

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) after such date as the Company hires any employees at the Facility, documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than \$50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.
7. **Review.** City will deliver Disbursement Request for review by the New Mexico Economic Development Department ("EDD") to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 days of receipt of the Disbursement Request by the EDD from the City. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.
8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.
9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution, Company shall furnish the City with a Surety Bond (a form of which is attached hereto as Attachment 1), letter or credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). If this Agreement is executed by the parties before the Security is delivered to the City, the Security shall be delivered to the City substantially in form attached hereto no more than 30 days after the execution date of this Agreement. The maximum obligation secured by the Security (the "Maximum Obligation") will be \$3,000,000. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made.
  - a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.

- b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on December 31, 2025, unless earlier released in accordance with this Agreement.
- c. If the State reduces the amount of LEDA Funds that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds actually received by the Company.

**10. Clawbacks.**

Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions set forth herein.

- a. **Facility Closure Clawback.** If the Company ceases operations in the City on or before June 30, 2025 the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Clawback") and the City shall have the right to execute reimbursement from the Security, but only after thirty (30) days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 days or more or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 days.
- b. **Performance Clawback.** It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Cumulative Fulltime Target Job Number" on the Job Measurement Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Measurement Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below:



<b>Job Measurement Date</b>	<b>Cumulative Fulltime Target Job Number</b>	<b>Minimum Job Number</b>	<b>Clawback Penalty if Minimum Job Number not met</b>
June 30, 2019	400	320	100% of Clawback Penalty
June 30, 2020	600	480	100% of Clawback Penalty
June 30, 2021	800	640	100% of Clawback Penalty
June 30, 2022	1000	800	100% of Clawback Penalty
June 30, 2023	1000	800	75% of Clawback Penalty
June 30, 2024	1000	800	50% of Clawback Penalty
June 30, 2025	1295	1036	25% of Clawback Penalty

For the purposes of this Section:

The “Clawback Penalty” is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the “Percentage Hiring Shortfall” shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date.

“Cure Period” is the period of 180 days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

See Attachment 2 hereto for examples of Clawback Calculations

The parties hereto recognize certain economic factors generally described as “Business Climate Changes” are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. “Business Climate Changes” means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company’s ability to perform pursuant to the requirements of this agreement with the City. The Company may request

specific modifications to the job creation schedule in writing within ten days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

- c. **Job Reporting.** The Company shall submit quarterly employment reports in the form of an affidavit signed by an officer of the Company (a sample affidavit is attached hereto as Attachment 3) and documentation of its quarterly filing of the Department of Workforce Solutions' ("DWS") Employment and Wage Detail Reporting as submitted to DWS. The City will provide copies of all such reports to the EDD. The City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up to date quarterly job reporting as set forth herein.
- d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

**11. Fees.** Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

**12. Annual Performance Review.** To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2019 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with

LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

- 13. Termination.** This Agreement shall terminate at the close of business on December 31, 2025 or when otherwise terminated by ordinance.
- 14. Request for early release of security.** If the Company achieves and then sustains the Minimum Job Number of 1036 employees for six (6) consecutive months prior to June 30, 2025, the Company may request that the Security be released and, provided that the Company provides the information set forth in this Section 14, such request shall not unreasonably be denied. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2021. In the event that a request for early release of Security is granted, the job reporting and annual performance review requirements of this Agreement remain in full effect through the termination date stated above.
- 15. Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.
- 16. Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of the City of Sunland Park.
- 17. Governing Law.** This Agreement shall be governed by the laws of the State of New Mexico.
- 18. Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

**19. Notice.**

All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:

City of Sunland Park  
Attention: City Manager  
1000 McNutt Rd. Ste. A  
Sunland Park, NM 88063  
Tel: (575) 589-7565

If to the Company:

Stampede Meat, Inc.  
7351 South 78th Avenue  
Bridgeview, Illinois 60455  
Tel: (708) 552-8320

Effective Date: \_\_\_\_\_

**Attachments:**

1. Sample Security – Surety Bond
2. Example of Clawback Calculations
3. Sample Affidavit for Job Reporting

**SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT**

CITY OF SUNLAND PARK, NM

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

STAMPEDE MEAT, INC

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Attachment 1
Sample Security - Surety Bond

STATE OF NEW MEXICO
SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ of \_\_\_\_\_ as principal, and the \_\_\_\_\_ of \_\_\_\_\_ as surety, are held and firmly bound unto the State of New Mexico for the benefit of all the policyholders and creditors of the Principal herein in the State of New Mexico in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas the above bounden principal was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, duly licensed to transact \_\_\_\_\_ Kinds of Insurance insurance business in the State of New Mexico and it is contemplated that said Principal has issued and will in the future continue to issue policies of insurance covering risks in the State of New Mexico, or insuring residents of the State of New Mexico.

NOW, THEREFORE, if the said principal, shall well, truly and faithfully perform all of its obligations under and by virtue of the terms of all of its policies of insurance heretofore and hereafter issued covering risks in the State of New Mexico or insuring residents of the State of New Mexico and shall pay, as they become due, all lawful claims then this obligation is to be void and of no effect; otherwise to remain in force and effect; it being a condition of this bond that in the event delinquency proceedings of any nature including conservation proceedings, rehabilitation proceedings or liquidation proceedings are instituted against the said Principal, the Surety shall promptly and upon order of the court pay over to the Superintendent of Insurance of the State of New Mexico the full penal sum of this bond, said sum to immediately become an asset in said proceedings to be administered by the Superintendent in accordance with his statutory duties therewith; provided, however, that the Surety shall have the right to terminate its suretyship under this obligation by serving notice of its election to do so upon the Superintendent of Insurance and the State Treasurer of the State of New Mexico, by registered mail sixty (60) days prior to the date of such termination of suretyship, and after the date of termination of suretyship, the Surety shall not be liable for any liability under this bond for any default of the principal affecting any policy of insurance issued after termination of suretyship, but the Surety shall remain liable under this bond for any default of the Principal affecting its creditors and Policyholders on its policies of insurance issued prior to such termination of suretyship; but further provided, however, that in the event that either Principal or Surety shall terminate the suretyship of Surety and Principal shall fail to replace this bond with another like bond not later than fifteen days prior to termination of this suretyship, then such failure shall constitute a breach of the condition upon which the bond is given, and Surety shall pay over to the Superintendent the penal sum of this Bond to be held as a special or general deposit on behalf of Principal.

IN WITNESS WHEREOF the said principal and surety have caused this bond to be sealed with their respective corporate seals and executed by their respective Attorneys-in-Fact this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Name of Principal - typed \_\_\_\_\_ Name of Surety - typed \_\_\_\_\_
By: \_\_\_\_\_ Attorney-in-Fact By: \_\_\_\_\_ Attorney-in-Fact
(Corporate Seal) (Corporate Seal)

ACKNOWLEDGMENT OF PRINCIPAL

State of \_\_\_\_\_ )
County of \_\_\_\_\_ ) ss.
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that \_\_\_\_\_ is Attorney-in-Fact of the above named Principal upon this Bond and that the seal affixed to this instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.
Notary Public
My Commission Expires: \_\_\_\_\_
(Notary Seal)

Form 800 NM-INS (Revised: 11/25/02)

ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY

State of \_\_\_\_\_ )
County of \_\_\_\_\_ ) ss.
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that \_\_\_\_\_ is Attorney-in-Fact of the above named Surety upon this Bond and that the seal affixed to this instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation and that the above named Surety is duly qualified to do business as a Surety Company in the State of New Mexico and has complied with the laws of New Mexico with reference to the transaction of a surety business therein, and that its assets exceed its liabilities by the sum of \$ \_\_\_\_\_ and that the above named Principal does not control the above named Surety, nor is the above named Principal controlled by the above named Surety, nor are the above named Principal controlled by a common person.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.
Notary Public
My Commission Expires: \_\_\_\_\_
(Notary Seal)

**Attachment 2**  
**Example of Clawback Calculations**

Clawback Formula =	(Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed) * (Clawback%)	
Job Creation % Shortfall =	(1 - (actual jobs / minimum job number))	
<b>Example - 1 100%</b>	End of year 3, inclusive of cure period	
Actual Employees	(a)	500
Minimum Job Number	(b)	640
Job Creation % Shortfall =	(c) = 1-(a/b)	21.88%
LEDA Dollars Distributed	(d)	\$ 2,750,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	\$ 601,562.50
<b>Example - 2 75%</b>	End of year 5, inclusive of cure period	
Actual Employees	(a)	700
Minimum Job Number	(b)	800
Job Creation % Shortfall =	(c) = 1-(a/b)	12.50%
LEDA Dollars Distributed	(d)	\$ 2,750,000.00
Clawback %	(e)	75%
Penalty	(f) = c*d*e	\$ 257,812.50
<b>Example - 3 50%</b>	End of year 6, inclusive of cure period	
Actual Employees	(a)	750
Minimum Job Number	(b)	800
Job Creation % Shortfall =	(c) = 1-(a/b)	6.25%
LEDA Dollars Distributed	(d)	\$ 2,750,000.00
Clawback %	(e)	50%
Penalty	(f) = c*d*e	\$ 85,937.50
<b>Example - 4 25%</b>	End of year 7, inclusive of cure period	
Actual Employees	(a)	800
Minimum Job Number	(b)	1036
Job Creation % Shortfall =	(c) = 1-(a/b)	22.78%
LEDA Dollars Distributed	(d)	\$ 3,000,000.00
Clawback %	(e)	25%
Penalty	(f) = c*d*e	\$ 170,849.42

Attachment 3  
Sample Affidavit for Job Reporting



Susana Martinez • Governor  
Matthew Geisel • Cabinet Secretary

**Declaration from Authorized Representative**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Company's LEDA Project Address: \_\_\_\_\_

I declare as follows:

1. I am an authorized representative of the Company and have personal knowledge of the facts set forth in this Declaration.
2. The attached data is an accurate report of the Company's Quarterly Employment and Wage as submitted to the State of New Mexico Department of Workforce Solutions by or on behalf of the Company.
3. As of the ending date as shown on the attached Quarterly Employment and Wage report, the company had \_\_\_\_\_ full-time permanent employees who were based at the Project Address listed above. Full-time defined as an employee who is permanently on the regular payroll and compensated for at least 32 hours a week year-round.

As an authorized representative of the Company, I certify and declare that the information contained herein and attached hereto is true and correct according to the best of my knowledge and belief.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_