PISGAH LABORATORIES INC

and

CITY OF BREVARD, NORTH CAROLINA

ECONOMIC DEVELOPMENT and UTILITY EXTENSION AGREEMENT

_____

Dated as of _____

_____

ECONOMIC DEVELOPMENT AND UTILITY EXTENSION AGREEMENT

THIS AGREEMENT is dated as of [DATE] (as supplemented or amended, the "Agreement"), and is between **PISGAH LABORATORIES INC** a North Carolina limited liability company (the "Company"), and **CITY OF BREVARD, NORTH CAROLINA**, a public body politic and a political subdivision of the State of North Carolina (the "City").

R E C I T A L S:

The purpose of this Agreement is to describe certain actions to be provided by the City to the Company in connection with the Company's expansion of its facilities in the area.

WHEREAS, the Company currently operates certain facilities, as described on Exhibit A (the "Facility"), in Transylvania County;

WHEREAS, the Company plans to expand its operations at the Facility, which will include at least fifty five million ($55,000,000) of investments in real and business personal property in the County (the "Project");

WHEREAS, the Project is expected to result in the creation of at least fifty-five (55) full time equivalent employees at the Facility, with average wages exceeding the County's average wage of $39,028 for full-time employment, plus other benefits;

WHEREAS, the Project will result in a new source of ad valorem property taxes, sales tax, and other revenues which will ultimately benefit the citizens of the Transylvania County;

WHEREAS, the City is the owner/operator of a water and wastewater utility system, access to which is advantageous to the Project;

WHEREAS, the City typically requires properties wishing to receive municipal utility services to voluntarily annex;

WHEREAS, to support the Project the City has agreed to waive its typical requirements and allow access to its utilities without immediate annexation if the Company agrees to certain terms; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

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ARTICLE I.

DEFINITIONS; RULES OF CONSTRUCTION

1.01 Definitions. For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

"40 CFR Subchapter N" means United States Code of Federal Regulations, subchapter N.

"Abandonment of Operations" means that for a period in excess of two (2) weeks the Company's level of Full Time Equivalent Employees goes below twenty percent (20%) of the required Jobs Minimum for any Grant Year.

"Applicable Tax Bill" has the meaning assigned in Section 4.02.

"Business Day" means any day that is not a Saturday or a Sunday, or a day on which banks in the State are required by law to be closed.

"Certification of Jobs Minimum" means the document the Company shall provide to the County prior to March 31 each year in which the Company certifies that the Company has fulfilled its Jobs Minimum requirement for the preceding calendar year, or states a lesser number of Full Time Equivalent Employees employed by the Company during the previous calendar year. The Certification of Jobs Minimum shall include: documentation of the number of the Company's Full Time Equivalent Employees shown on filings with the N.C. Employment Security Commission as to unemployment compensation taxes.

"City" means City of Brevard, North Carolina.

"County" means Transylvania County, North Carolina.

"Date of Connection" means the date on which utility service becomes available to the Facility [need a Cert. of Occupancy or anything like that? -WBH]

"Date of Execution" means the date on which this Agreement is first executed and delivered by the parties.

"Facility" means the facilities on the Site, as more particularly described in Exhibit B.

"Full Time Equivalent Employees" means the number arrived at by dividing the total annual payroll hours paid by 2080, which shall be computed on a calendar year basis ending on December 31 of each year.

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"Incentive" means the various incentive payments referred to in Section 4.01.

"Incentive Request" has the meaning assigned in Section 4.02.

"Grant Year" means any calendar year preceding the Company's submittal of an Incentive Request to the County. There are a maximum of nine (9) Grant Years pursuant to this Agreement.

"Jobs Minimum" has the meaning assigned in subsection (a) of Article II.

"Performance Commitments" means the Company's commitments described in Article II.

"Site" means the real property in the County upon which the Facility is located, as more specifically described in Exhibit A.

"State" means the State of North Carolina.

"Utility Connection" means [MORE]

"Voluntary Annexation" means the process of legally incorporating the described parcel into the municipal boundaries, receiving its services, and becoming subject to all the rules and regulations thereof. The process is outlined in N.C.G.S. 160A 50-58

1.02 Rules of Construction. Unless the context otherwise indicates:

(a) Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;

(b) All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;

(c) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect; and

(d) Notwithstanding the presumption of law whereby an ambiguity or conflict in provisions shall be construed against the drafter, the parties hereby agree that although one party may have generated this Agreement, the parties have been afforded the opportunity to consult with counsel of its own choosing and each has participated in the drafting of this Agreement. Therefore, such presumption shall not be applied if any provision or term of this Agreement requires judicial interpretation.

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ARTICLE II.

COMPANY'S COMMITMENTS

In return for the eligibility for Utility Connection set forth herein, which is a benefit to the Company that will support the goals of the Project, the Company commits to certain terms and conditions.

(a) The Company must meet all Performance Commitments related to job creation and incrementally increased taxes as outlined in the Company's October 2023 "Incentive Agreement" with Transylvania County.

(b) Prior to Date of Connection, the Company shall remove floodplain from its development site using FEMA-approved procedures, and obtain a "Letter of Map Revision Based on Fill"

(c) The composition of the Company's wastewater discharge from the Facility must comply with the City of Brevard's Code of Ordinances, Chapters 70-91 through 70-95 as well as provisions of 40 CFR subchapter N Part 401 Scope and Purpose which states the following:

> "Regulations promulgated or proposed under parts 402 through 699 of this subchapter prescribe effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources pursuant to sections 301, 304 (b) and (c), 306 (b) and (c), 307 (b) and (c) and 316(b) of the Federal Water Pollution Control Act, as amended (the "Act"), 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c) and 1326(b); 86 Stat. 816; Pub. L. 92-500. Point sources of discharges of pollutants are required to comply with these regulations, where applicable, and permits issued by States or the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) established pursuant to section 402 of the Act must be conditioned upon compliance with applicable requirements of sections 301 and 306 (as well as certain other requirements). This part 401 sets forth the legal authority and general definitions which will apply to all regulations issued concerning specific classes and categories of point sources under parts 402 through 699 of this subchapter which follow. In certain instances the regulations applicable to a particular point source category or subcategory will contain more specialized definitions. Except as provided in § 401.17, in the case of any conflict between regulations issued under this part 401 and regulations issued under parts 402 through 499 of this subchapter, the latter more specific regulations shall apply.

(d) The Company must Voluntarily Annex the Facility into the City of Brevard's corporate limits by 12/31/2039, a date corresponding with the expiration of the

considerations as outlined in the Company's October 2023 "Incentive Agreement" with Transylvania County

ARTICLE III.

CITY'S COMMITMENTS.

(a) To support the Project, the City will permit utility connections pursuant to Chapter 2-292 of its Code of Ordinances. This agreement shall serve as the Economic Development agreement referenced in the code.

(b) With funding from a U.S. Economic Development Administration grant and local sources, the City, in partnership and with financial support from Transylvania County, who shall fully cover the cost of installation of the said utility extension as outlined in a separate agreement, agrees to design and construct an extension of water and wastewater utilities from their current termination point near the intersection of Old Hendersonville Hwy and Ecusta Rd. to a point on the Company's property.

(c) Upon completion the City will assume sole ownership of the infrastructure as well as upkeep, maintenance, and replacement responsibility.

ARTICLE IV.

INDEMNIFICATION

The Company hereby agrees to indemnify, protect and save the City and its officers, directors and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Site or the Facility or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Company and not the City. The indemnification arising under this Article shall survive the Agreement's termination.

ARTICLE V.

TERMINATION OF AGREEMENT

The City shall have the option of terminating this Agreement upon an Abandonment of Operations by the Company, the Company's failure to meet the Jobs Minimum for more than three (3) years, or the Company's violation, as determined by the City, of any statute, regulation, ordinance, or order applicable to the Company, the Project, or either of them, which termination option shall be executed by giving written notice to the Company.

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If any of these events occur any cost expended by the City in pursuance of its commitments shall be refunded to the City pursuant to the terms of this Article. The parties agree that the sum of Five Million Dollars shall be considered adequate liquidated damages in light of the difficulty in currently estimating the cost of installation and maintenance of the said utility extensions.

ARTICLE VI.

ASSIGNMENTS/SUCCESSORS ETC.

No party shall sell or assign any interest in or delegate any obligation under this Agreement without the prior express written consent of all the parties. Provided, however, that this Agreement may be assigned by the Company to a wholly owned subsidiary of the Company, without the consent of the City, provided that the Company will guarantee the performance by the subsidiary of the obligations due under this Agreement. Failure to perform obligations under this Agreement will require any benefit received by the Company and/or Subsidiary by the referenced dates shall be subject to recovery provisions outlined in Section 9.11

The terms, conditions, and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the parties, their personal representatives, successors or assigns, and shall run with the land.

A memorandum of agreement to the effect shall be executed contemporaneously with this agreement and recorded in the Transylvania County Register of Deeds upon execution of this agreement.

ARTICLE VII.

LIMITED OBLIGATION OF CITY

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE CITY'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE CITY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE CITY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS

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ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

ARTICLE VIII.

MISCELLANEOUS

8.01 Governing Law. The parties intend that this Agreement shall be governed by the law of the State of North Carolina.

8.02 Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

(b) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

(1) If to the Company, to: Dani Bailey, Site Manager
3222 Old Hendersonville Hwy
Pisgah Forest, NC 28768

(2) If to the County, to: Wilson Hooper, City Manager
95 W Main St.
Brevard, NC 28712

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section.

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8.03 **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right is not a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

8.04 **Severability**. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

8.05 **Entire Agreement; Amendments**. This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.

8.06 **Binding Effect**. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

8.07 **Time**. Time is of the essence in this Agreement and each and all of its provisions.

8.08 **Liability of Officers and Agents**. No officer, agent or employee of the City or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

8.09 **Counterparts**. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

8.10 **Governmental Immunity.** All of the City's duties and obligations required in this Agreement are traditional governmental functions. As such, nothing in this Agreement is intended to affect or abrogate the City's governmental immunity or any other affirmative defenses which are otherwise available to it.

8.11 **Clawback Provision.** The Company understands and hereby acknowledges this Agreement is subject to North Carolina General Statute §143B-435.1 which requires all or part of an economic development incentive to be returned or forfeited if the Company does not fulfill its responsibilities under the incentive law, this Agreement, or both.

8.12 **E-Verify.** The parties agree this contract complies with the requirements of North Carolina General Statute §64-25 et. seq. In this E-Verify Compliance Section, the words

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contractors, subcontractors, and comply shall have the meanings intended by applicable provisions of North Carolina General Statute Chapters §153A and 160A.

8.13 **Discrimination.** In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Agreement, no matter how remote. The parties further agree in all respects to conform to the provisions and intent of any applicable Ordinances of Transylvania County and the City of Brevard. This provision is hereby incorporated into this Agreement for the benefit of Transylvania County and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided.

8.14 **Statutory Requirements.** The Company covenants that it has not been identified on a list created by the North Carolina State Treasurer's office as a person engaging in investment activities in Iran pursuant to North Carolina General Statute §147-86.60. The Company further covenants that it has not been identified on a list created by the North Carolina State Treasurer's office as a restricted entity pursuant to North Carolina General Statute §147-86.82.

[*Signature Page Follows*]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

PISGAH LABORATORIES INC
a North Carolina corporation

By_____

ATTEST:

_____
Secretary

[SEAL]

CITY OF BREVARD,
NORTH CAROLINA

ATTEST:

By_____

_____
City Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

_____
Name:
Finance Officer, City of Brevard,
North Carolina

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