



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE



Robert M. Hitt III
Secretary

January 3, 2019

Mr. John Weaver
Interim Administrator
Beaufort County
Post Office Drawer 1228
Beaufort, South Carolina 29901

Re: C-18-2913 - Building Upfit - Beaufort County

Dear Mr. Weaver:

The South Carolina Coordinating Council for Economic Development has received the signed grant award and performance agreements for the above-referenced project. The agreements have been executed by the Council and your copies are enclosed. By execution of these agreements, funding has been approved in the amount of \$50,000 for this project. Beaufort County may proceed with the project as outlined in the approved application.

If I can be of further assistance, please contact me at (803) 734-0221.

Sincerely,

A handwritten signature in blue ink that reads "Dale Culbreth".

Dale Culbreth
Senior Program Manager – CCED Programs
Grants Administration

Enclosures

**SOUTH CAROLINA COORDINATING COUNCIL
FOR ECONOMIC DEVELOPMENT
1201 Main Street, Suite 1600
Columbia, South Carolina 29201**

GRANT AWARD AGREEMENT

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Beaufort County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

Section 1: DEFINITIONS:

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Grant Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grant Project means the portion of the Project that is within the scope of work as described in Section 2.0 hereof and approved by the Council to be reimbursed with Grant funds.
- (h) Grantee means the unit of government designated for the Grant and set forth above.
- (i) Project means the project identified and described in the Application.
- (j) State means the State of South Carolina and any agencies or offices thereof.

Section 2: PROJECT DESCRIPTION: Funds will be used for building upfit to assist Blue Sky Processing, LLC (Project Sky) which will create 16 new jobs and make a capital investment of \$2,808,241. The Grant Project has been approved by the Council and is included by reference as Economic Development Setaside Grant #C-18-2913 - Building Upfit.

Section 3: AWARD AMOUNT: The Council hereby commits an amount not to exceed \$50,000.00, to be used only for the Grant Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs within the scope of work approved by the Council.

3.1: Approval of Third Party Contracts: The Grantee must submit all agreements with a Contractor engaged to perform work within the scope of the Grant Project to the Council when it submits a reimbursement request relating to a payment to that Contractor.

3.2: Notice to Proceed: The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

3.3: Engineering Costs: Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

3.4. Administrative Fees: The Grantee may not charge an administration fee in connection with the Grant.

Section 4: AMENDMENTS: Any changes in the scope of work of the Grant Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

Section 5: PERFORMANCE: By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Grant Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Grant Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

Section 6: FUNDING UNDERRUNS: The Grantee agrees that it will return surplus Grant funds that result from Grant Project cost underruns.

Section 7: AUDIT: The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Grant Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in

the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available, and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Grant Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);
- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

Section 8: CONTRACTOR SELECTION:

- (a) In the event that the Grantee will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, then the selection of that Contractor by the Grantee must follow the applicable procurement laws, regulations and guidelines of the county. The use of the grant funds is not subject to the requirements of the State Procurement Code or the regulations promulgated thereunder. If the Grantee fails to adhere to procurement requirements as set forth herein, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

- (b) In the event that the Company will be engaging a Contractor to undertake all or any part of the scope of work of the Grant Project, the Grantee warrants that it will ensure that the selection of the Contractor complies with the requirements set forth in Exhibit A attached hereto.

Section 9: CONFIDENTIAL INFORMATION: Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement which the Council requests to be kept confidential shall not be made available

to any individual or organization by the Grantee without the prior written approval of the Council.

Section 10: DISCRIMINATION: The Grantee shall not, and in the event it engages Contractors it shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.

Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS: No elected or appointed State or federal official shall be admitted to any share or part of the Grant funds, this Agreement or to any benefit to arise from the same.

Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS: No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Grant Project or this Agreement. If the Grantee engages any Contractors for the Grant Project, the Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Grant Project and this Agreement this provision prohibiting such interest.

Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION: The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Grant Project costs.

Section 14: MAINTENANCE OF AND ACCESS TO RECORDS: The Grantee shall retain records for property purchased totally or partially with Grant funds and records relating to procurement matters for a period of three years after the final disposition of the Grant. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved. Upon request, the Grantee must make these records available to the Grantee's auditor, the Council, and its representatives.

Section 15: MBE OBLIGATION: The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Grant funds provided under this Agreement. In this regard, the Grantee and any Contractors shall take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts

Section 16: PROJECT COMPLETION: The Grantee must complete, or cause to be completed, the Grant Project within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

Section 17: SANCTIONS: If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

Section 18: APPLICABLE LAW: This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. The federal and state courts within the State shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

Section 19: APPROPRIATIONS: Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

Section 20: COPYRIGHT: No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

Section 21: TERMS AND CONDITIONS: The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

Section 22: REPORTING REQUIREMENTS: The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

Section 23: PROJECT START-UP: The Project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee

and terminate this Agreement. For purposes of this section, the Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

Section 24: LIABILITY: The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Grant Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

Section 25: PAYMENT: The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

Section 26: RESPONSIBILITY FOR MAINTENANCE: Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

Section 27: SEVERABILITY: If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.


[Signatures on following page]

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

12-6-18
Date of Award


Alan D. Young
Executive Director
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE


Signature of Official with Legal Authority
to Execute this Agreement for the Grantee

12/17/2018
Date

John L. Weaver, Interim County Administrator
Printed Name and Title of Authorized Official

ATTEST:


Signature of Elected City or County Council
Member, as appropriate

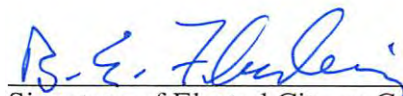

Signature of Elected City or County Council
Member, as appropriate

Exhibit A

Bidding Process to be used for Costs to be reimbursed with Grant Funds

1. Use full and open competition to the maximum extent practicable.
2. Permit acquisitions without competition only when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required timely supply, service, or construction item. A copy of such written determination must be included with any request to disbursement of grant funds to reimburse for the costs of such supply, service or construction item. In addition, the company must maintain a copy of such written determination as set forth in Section 12 of the Agreement.
3. Restrict competition, only when necessary to satisfy a reasonable public requirement.
4. Provide clear, adequate, and sufficiently definite information about project needs to allow bidders to enter the acquisition on an equal basis.
5. Use reasonable methods to publicize bidding requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).
6. State in solicitations the bases to be used for evaluating bids and proposals and for making the award.
7. Evaluate bids and proposals and make the award based solely on the criteria in the solicitation.
8. Grant maximum public access to procurement information subject to the Company's needs to protect its trade secrets, proprietary or confidential source selection information, and personal privacy rights.
9. Ensure that all parties involved in the bidding process participate fairly, honestly, and in good faith.
10. Recognize that adherence to these bidding process requirements is essential to maintenance of the integrity of the project.

Economic Development Setaside

Quarterly Status Report

Grantee:	Beaufort County	Grant #:	C-18-2913 - Building Upfit
Date:		Report #:	
Contact Person:		Phone:	
Grant Award Date:	December 06, 2018	Amount Awarded:	\$50,000.00

PROJECT STATUS

Engineering/Design:

is complete is approximately ___% complete has not begun

If engineering/design has not yet begun, please answer the following:

Engineering/design is scheduled to begin on: _____

- this is within 3 months of the award date
- this is **not** within 3 months of the award date

Construction:

Began on _____ **AND**

is complete

is approximately _____% complete and scheduled to be complete by _____

OR

has not begun

Construction is scheduled to begin on: _____ **AND** is scheduled to complete by: _____

Construction completion dates are:

- within 18 months of the award date
- not** within 18 months of the award date

If the project construction has been delayed for any reason, please provide an explanation below. If issues have not been resolved, provide a date that a resolution is expected. If delays will not allow grantee to comply with either the 3-month start date or 18-month completion date requirement, attach a letter explaining the delay and requesting an extension of the deadline(s). *Note: The Council must approve extension requests.*

Economic Development Setaside

Request for Payment

Grantee: Beaufort County Grant #: C-18-2913 - Building Upfit
 Date: _____ Federal ID #: _____
 Reimbursement Request#: _____ Phone: _____
 Contact Person: _____ Email: _____
 Address: _____
 City/State/Zip: _____
Total Award: \$50,000.00

Budget Item	Amt Approved	Amt Previously Drawn	Amt Requested this Draw	Remaining Balance
Building Upfit	\$50,000.00			
Total Amount Requested:			\$	

The above requested amount is for reimbursement of costs incurred by the grantee for the approved Setaside grant project. Documentation (i.e. paid invoices, AIA documents, etc.) supporting this draw request and sufficient proof of payment are attached.

Approved By: _____
(Authorized Signature)
(Title)

Submit to:
 SC Department of Commerce
 Coordinating Council for Economic Development
 Attn: Dale Culbreth
 1201 Main Street, Suite 1600
 Columbia, SC 29201

CCED Use Only:
Appropriate documentation submitted:
Documentation submitted supports approved budget:
Sufficient proof of payment provided:
Amount approved for payment:
Approved by:

Economic Development Setaside Program

Checklist

Before first reimbursement request will be processed, you must submit:

<u>Item</u>	<u>Due Date</u>	<u>Grantee Notes</u>
Signed Grant Agreement	Within 14 days of receipt	_____
Signed Performance Agreement	Within 14 days of receipt	_____
Signed Contracts	Within 14 days of execution	_____
Contract Amendments	Within 14 days of execution	_____
Initial Status Report	Submitted with first draw request	_____

When reimbursement requests are made, you must submit:

<u>Item</u>	<u>Grantee Notes</u>
Request for payment form	_____
Documentation supporting draw requests (Invoices, AIAs, etc.)	_____
Proof of payment (copies of cancelled checks, etc.)	_____
Status Reports (if applicable)	_____
A new detailed budget (<i>if costs fluctuate by more than 10% or \$10,000</i>)	_____

KEY DATES TO REMEMBER

<u>Activity</u>	<u>Timeframe</u>	<u>Your Trigger Dates</u>
Grant Effective Date	Date grant award is approved	12/06/2018
Project Start Date	Within 3 months of grant issuance	
Project Completion Date	Within 18 months of grant issuance	

Need to contact us?

Mail to: South Carolina Coordinating Council for Economic Development
 1201 Main Street, Suite 1600
 Columbia, SC 29201
 Fax to: (803) 734-0385

Dale Culbreth	(803) 734-0221	dculbreth@scommerce.com
Jennifer Newlands	(803) 734-0429	jnewlands@scommerce.com

PERFORMANCE AGREEMENT
(Economic Development Setaside Assistance)
C-18-2913

This **Performance Agreement** (“Agreement”) is made to be effective December 6, 2018 (the “Effective Date”), by and among Beaufort County, a political subdivision of the State of South Carolina and hereinafter referred to as the “Grantee,” Blue Sky Processing, LLC, hereinafter referred to as the “Company,” and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the “Council.”

W I T N E S E T H

That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above parties do hereby agree as follows:

- 1.0 **Agreement.** The parties recognize that this Agreement is based on a Economic Development Setaside (SA) grant award being awarded or made by the Council to the Grantee in an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000) for the purpose identified in Section 2.0 herein (the “Grant”).
- 2.0 **Use of Proceeds.** The Grantee will use the SA grant award to assist the Company with building upfit, hereinafter referred to as the “Assistance.” Any changes in the scope of work, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.
- 2.1 **Disbursement of Funds.** Funds will not be released until the company can demonstrate to the satisfaction of the staff of the Council that the Company has invested at least \$2,808,241 in the Project (as defined below) and created 16 new jobs. Acceptable expenditures include the costs to purchase and improve land and building, install equipment or construct infrastructure. This requirement does not include the purchase of raw materials or working capital. Once the investment requirement and job requirement have been satisfied, no Grant funds will be disbursed until the approval of expenditures, through submission of invoices and proof of payment to the Grantee.
- 2.2 **Third Party Contracts.** The Company must submit all agreements with third party contractors engaged to perform work within the scope of the Grant to the Council.
- 2.3 **Notice to Proceed.** The Company must obtain from the Council written notice to proceed prior to incurring any costs against the Grant. If the Company needs to incur expenses prior to the Council’s notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice

to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

- 2.4 **Engineering Costs.** Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.
- 2.5 **Compliance with SA Requirements.** The Grantee and the Company must comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of SA funds.
- 2.6 **Funding Overruns.** The Company agrees that it will commit and provide monies from its own resources for cost overruns that are required to complete the Project. This Agreement creates no obligation on the part of the Grantee, the Council or the State of South Carolina to provide funds for the cost overruns.
- 2.7 **Use of Grant Funds.** The Company must complete the portion of the Project to be funded in whole or in part with Grant funds within eighteen (18) months of the Effective Date. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.
- 3.0 **Project Description.** The Company will purchase and renovate a 15,000 SF facility for their processing operations located in Seabrook Island, South Carolina, hereinafter referred to as the "Project."
- 4.0 **Project Start-Up.** The project must begin within three months of the Effective Date. If the Company does not begin the Project within three months of the Effective Date, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds expended hereunder and terminate this Agreement. For purposes of this section, the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.
- 5.0 **Contractor Selection.** If the Company desires to select a private contractor to undertake all or any part of the scope of work of any portion of the Project to be funded by the Grant, then the selection of that contractor by the Company must follow at a minimum the bidding requirements set forth in Exhibit A attached hereto. The use of the grant funds is not subject to the requirements of the State Procurement Code or the regulations promulgated thereunder. Any county or municipal procurement laws, rules or regulations may apply depending on the terms of such local requirements.
- 6.0 **Minimum Investment Requirement.** The Company agrees to make and maintain a capital investment of not less than \$2,808,241 at the Project for building acquisition, building construction, and machinery and equipment, within a five (5) year period beginning on the Effective Date and ending on December 6, 2023 (the "Grant Period"). Such capital investment requirement shall hereinafter be referred to as the "Investment

Requirement.” The Company’s investment may be verified at the request of the Grantee or the Council.

- 7.0 **Minimum Job Requirement.** The Company agrees to create and maintain no fewer than 16 new, full-time jobs at the Project within the Grant Period. Such job creation requirement shall hereinafter be referred to as the “Job Requirement.”
- 8.0 **Access to Project Site and Records.** The Company agrees to provide the Grantee and the Council reasonable access to its facilities (i) to confirm that the work for which invoices have been submitted and reimbursed, or is scheduled to be reimbursed, through grant funds has been completed and (ii) to substantiate the employment and investment committed by this Agreement have been satisfied. This covenant shall continue until notified in writing by the Council that the Job Requirement and the Investment Requirement have each been met, the Grant Period and the Maintenance Period have each expired, and funds have been expended and documented, or until repayment of the Assistance occurs in accordance with this Agreement.
- 9.0 **Reporting.** The Company will be required to report to the Council annually as set forth below.
- 9.1 During the Grant Period, within thirty (30) days after each anniversary of the Effective Date, the Company shall provide the Council a written report, signed by an authorized representative of the Company and in the form of Exhibit B, as such form may be updated annually by the Council, to provide (i) the total number of new jobs filled and maintained by the Company at the Project as of such date; and (iii) the total investment of the Company at the Project as of such date.
- 10.0 **Compliance.** The Council will review the hiring records and notify the Company in writing of its compliance or non-compliance with this Agreement. Upon written notification from the Council that both the Job Requirement and the Investment Requirement have been fulfilled and the Grant Period and the Maintenance Period have each expired, this Agreement and all obligations of the Company, unless otherwise stated, hereunder shall terminate.
- 11.0 **Maintenance of Records.** The Company shall retain records for property purchased totally or partially with Grant funds for a period of three years after the final disposition of all Grant funds. The Company shall maintain records relating to the Grant and the Project, including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.
- 12.0 **Repayment of Assistance.** Failure to satisfy and maintain the Job Requirement and the Investment Requirement as set forth herein may result in repayment of all or a portion of

the SA Grant funds expended. The Company will make re-payments to the Grantee, who will immediately notify and reimburse the Council.

12.1 Upon the expiration of the Grant Period, the number of jobs created by the Company at the Project may not be less than the Job Requirement (16 jobs), and the investment by the Company at the Project may not be less than the Investment Requirement (\$2,808,241). If the Company does not locate in South Carolina or otherwise fails to create any new jobs and make any investment in South Carolina, repayment of all of the Assistance will be immediately due and payable. If the Company does create jobs and/or make investment but fails to meet the Job Requirement and/or the Investment Requirement or meets but then fails to maintain the Job Requirement and/or the Investment Requirement during the Grant Period, the Company will be required to repay a portion of the funds expended as follows:

12.1.1 **Pro-Rata Repayment.** The Company shall be required to repay a pro-rata amount of the funds expended under this Agreement based on the actual number of jobs created and/or investment level achieved as of the last day of the Grant Period. For purposes of this subsection 13.1, pro rata repayment for failure to meet either the Job Requirement or the Investment Requirement will be calculated independently with each calculation based on 50% of the grant funds expended hereunder.

12.1.2 If required, repayments are due and payable within thirty (30) days of the end of the Grant Period and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.

12.1.3 If the Company satisfies the Job Requirement and the Investment Requirement by the end of the Grant Period, it shall not have any repayment obligations under this Section 13.1.

13.0 **Amendments.** If (a) the Investment Requirement is not met or (b) the total number of full time jobs created is less than the Job Requirement or (c) the investment is not made or the jobs are not created within the Grant Period, the Company may provide detailed documentation that a good faith effort was made to achieve both the Job Requirement and the Investment Requirement. To the extent that extenuating circumstances prevent the Company from fulfilling its commitments contained herein, and the Grantee and the Council, in their sole discretion, acknowledge such circumstances in writing, this Agreement may be modified in writing by mutual agreement of the parties.

14.0 **Representations and Warranties.** The Company hereby makes the following representations and warranties and acknowledges and agrees that such representations and warranties have been material to the Council's decision to enter into this Agreement and further agrees that each representation and warranty is true, accurate and complete in all material respects as of the Effective Date and will remain true and correct throughout the term of this Agreement.

- 14.1 **Good Standing.** The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, has the power and authority to own its property and to carry on its business in each jurisdiction in which it does business, and has registered for and is duly qualified to conduct business in, and is in good standing in, the State of South Carolina.
- 14.2 **Authority and Compliance.** The Company has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided herein. No consent or approval of any public authority or other third party is required as a condition to the validity of this Agreement, and the Company is in compliance with all laws and regulatory requirements to which it is subject.
- 14.3 **No Conflicting Agreement.** There is no charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of the Company and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on the Company or affecting the Company's property which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Agreement.
- 14.4 **Litigation.** To the best of the Company's knowledge, there is no proceeding involving the Company pending or threatened before any court or governmental authority, agency or arbitration authority which if adversely decided would materially affect the Company's ability to meet its obligations under this Agreement and conduct its operations at the Project.
- 14.5 **Compliance with Laws.** To the best of its knowledge, the Company is in compliance with all federal, state and local laws, regulations and governmental requirements including, but not limited to, environmental laws and the applicable federal and state laws, executive orders and regulations concerning discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability, applicable to its facility including without limitation the property, business operations, employees, and transactions thereof.
- 14.6 **Binding Agreement.** Each part of this Agreement is a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights. This Agreement has been signed by an authorized Company representative and such signature is recognized by the Company as legally binding.
- 15.0 **Indemnification.** The Company agrees to defend, indemnify, and hold the Council and the Grantee harmless from and against the costs of any litigation (including reasonable attorney's fees) arising from this Agreement or the Assistance provided by the Council to the Grantee for the direct or indirect benefit of the Company. Please note that the SC Tort Claims Act, Section 15-78-10 et seq. of the S.C. Code of Laws, 1976, as amended (the "Code") provides full or limited immunity to governmental parties from third party

claims and prohibits recovery of punitive or exemplary damages. This provision shall survive the termination of this Agreement for any claim arising during the term of the Agreement.

- 16.0 **Assignability.** The terms of this Agreement may not be assigned to another entity without the written permission of the Grantee and the Council.
- 17.0 **Notification.** The Company must notify the Grantee and the Council if there are any changes in the status of the Company that will impact or alter the Company's ability to comply with this Agreement. All notices required or otherwise provided under this Agreement shall be deemed made upon mailing by first class mail, postage prepaid, and addressed to the other party as follows:

Notices to the Council shall be sent to:

Ms. Dale Culbreth
Senior Program Manager, CCED Programs
South Carolina Coordinating Council for Economic Development
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Notices to Grantee shall be sent to:

Mr. John Weaver
Interim Administrator
Beaufort County
Post Office Drawer 1228
Beaufort, South Carolina 29901

Notices to Company shall be sent to:

Ms. Jennifer Pfuhl
President
Blue Sky Processing, LLC
P.O. Box 24127
Hilton Head, SC 29925

- 18.0 **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.
- 19.0 **Governing Law and Jurisdiction.** This Agreement, any dispute, claim, or controversy relating to this Agreement, and all of the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. By executing this Agreement, the Company also agrees to submit to the jurisdiction of the courts of the State of South Carolina for all matters arising hereunder. In the event of a dispute, the Council shall have standing to represent the State of South Carolina.

20.0 **Freedom of Information.** The Company understands and agrees that (i) the Grantee and the Council are each a public body within the meaning of the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the Code; (ii) the Grantee and the Council are each required to comply with the provisions of that Act by disclosing certain public records upon receipt of a written request; and (iii) after execution of this Agreement, this Agreement and all documents and other information incidental to this Agreement are subject to disclosure pursuant to Sections 30-4-40(a)(9) and 30-4-40(a)(5) of the Code upon request. If disclosure of this Agreement and related information is required, pursuant to Section 30-4-40(a)(5)(c) of the Code, the Council agrees to redact any information in this Agreement or any documents incidental thereto that is clearly marked by the Company as confidential and proprietary and has been provided to the Council for economic development or contract negotiation purposes. However, the Grantee, the Council, and their respective members, employees, and staff shall not be liable for the inadvertent release of any information contained in the Agreement or any other documents related to the Project, absent gross negligence or willful misconduct.

To the extent an action at law or equity is brought to require the disclosure of any information related to the Project, the Council reserves the right to include the Company in such action and the Company hereby agrees to bear all costs associated with defending such action.

21.0 **Events of Default.** The following shall constitute events of default by the Company under this Agreement:

- 21.1 any representation or warranty made by the Company herein that is false or misleading in any material respect at the time made;
- 21.2 failure of the Company to comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of SA funds;
- 21.3 failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said thirty (30) days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.4 the Company vacating the Project property and/or discontinuing operation of all or a significant portion of the Project for 30 days or more without the written consent of the Council;
- 21.5 the Company's consenting to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or admitting in writing its inability

to pay its debts generally as they come due, or making a general assignment for the benefit of creditors;

- 21.6 the Company's filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect), or, by voluntary petition, answering or consenting, seeking relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;
 - 21.7 the entry of an order, judgment, or decree in any proceeding by any court of competent jurisdiction appointing, without the consent of the Company, a receiver, trustee or liquidator of the Company or of any substantial part of its property, or sequestering any substantial part of its property, and any such order, judgment or decree of appointment or sequestration remaining in force undismitted, unstayed, or unvacated for a period of 90 days after the date of entry thereof; or
 - 21.8 a petition against the Company in a proceeding under applicable bankruptcy laws or other insolvency laws as now or hereafter in effect is filed and not withdrawn or dismissed within 120 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Company, any court of competent jurisdiction shall assume jurisdiction, custody or control of it or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unexpired for a period of 120 days.
- 22.0 **Remedies.** If any event of default shall occur and be continuing, then the Council may undertake any of the remedial actions set forth in this Agreement. If any such event of default shall occur and be continuing, then the Council shall, to the extent permitted by law and without notice of any kind to the Company (except to the extent required by law or as expressly required herein), seek to enforce the rights of the Council hereunder by exercising any or all of the following remedies:
- 22.1 Refrain from extending any further assistance or Grant funds until such time as the Company is in full compliance with the terms and conditions of this Agreement;
 - 22.2 Require repayment of all or a portion of the funds expended under this Agreement;
 - 22.3 Cancel, terminate or suspend this Agreement; or
 - 22.4 Take such other reasonable action as may be necessary to protect its rights and interests hereunder.
- 23.0 **Additional Remedial Provisions.**

- 23.1 No remedy herein conferred or reserved to the Council is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or default under any provision hereof shall not operate as a waiver of any further or subsequent breach or default under such provision. The remedies herein provided are cumulative and not exclusive of any remedies provided by law, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council to exercise any remedy reserved to them in this Agreement, it shall not be necessary to give notice other than such notice as may be required in this Agreement.
- 23.2 Neither the Grantee nor the Council shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if an event of default shall occur hereunder.
- 24.0 **Counterparts.** This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

[Signatures on following page]


IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their authorized representation under seal to be effective as of the date first written above.

GRANTEE:

Beaufort County Council
Unit of Local Government


By:
Its: Chief Elected Official

Blue Sky Processing, LLC


By: Jennifer Pfuhl
Its: Managing member

**COORDINATING COUNCIL FOR
ECONOMIC DEVELOPMENT**

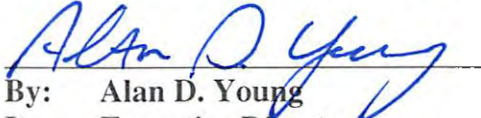

By: Alan D. Young
Its: Executive Director

Exhibit A

Bidding Process to be used for Costs to be reimbursed with Grant Funds

1. Use full and open competition to the maximum extent practicable.
2. Permit acquisitions without competition only when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required timely supply, service, or construction item. A copy of such written determination must be included with any request to disbursement of grant funds to reimburse for the costs of such supply, service or construction item. In addition, the company must maintain a copy of such written determination as set forth in Section 11 of the Agreement.
3. Restrict competition only when necessary to satisfy a reasonable public requirement.
4. Provide clear, adequate, and sufficiently definite information about project needs to allow bidders to enter the acquisition on an equal basis.
5. Use reasonable methods to publicize bidding requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).
6. State in solicitations the bases to be used for evaluating bids and proposals and for making the award.
7. Evaluate bids and proposals and make the award based solely on the criteria in the solicitation.
8. Grant maximum public access to procurement information subject to the Company's needs to protect its trade secrets, proprietary or confidential source selection information, and personal privacy rights.
9. Ensure that all parties involved in the bidding process participate fairly, honestly, and in good faith.
10. Recognize that adherence to these bidding process requirements is essential to maintenance of the integrity of the project.

Exhibit B

GRANT PERIOD ANNUAL REPORT

Grant #: C-18-2913

Grantee: Beaufort County

Report for the Year Ended: _____

Minimum Investment Requirement \$2,808,241

Minimum Job Requirement: 16

Inspection, Record Keeping and Reporting:

Total investment in real and personal property at the Project as of the date of this report: \$ _____

Total number of new fulltime jobs filled by the Company at the Project as of the date of this report: _____

Total amount of grant funds disbursed as of the date of this report: \$ _____

I declare the above information to be correct and complete, and that I am authorized to report this information.

Jennifer R. Fuhl
Authorized Company Representative (Signature)

12/17/2018
Date

Jennifer R. Fuhl
Authorized Company Representative (Printed)

Managing member
Title

843-422-3455
Telephone Number

Please return to:
Coordinating Council for Economic Development
1201 Main Street, Suite 1600 ▪ Columbia, SC 29201