PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on ____________, 2023 by and between **DOÑA ANA COUNTY, NEW MEXICO** (the "County"), a political subdivision of the State of New Mexico (the "State"), and **LOUISIANA PEPPER EXCHANGE, LLC** (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties 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 5-10-17 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 Doña Ana County Ordinance No. 246-2009 (the "Economic Development Plan Ordinance"), adopted on September 22, 2009, the County established the Doña Ana County Economic Development Plan (the "Plan") as the County 's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Economic Development Plan Ordinance, the County considered an application from the Company, which proposed that the County serve as local government conduit for an appropriation of up to $500,000 from the Legislature of the State of New Mexico (the "State Contribution") to go toward the Company's development of a value-added agricultural processing facility in Santa Teresa, New Mexico, in Doña Ana County , New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 20 full-time persons by December 31, 2028.

D. The County has adopted Ordinance No.________-2023 ("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 processing operations at in Santa Teresa in Doña Ana County, New Mexico (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 $24,370,000 by December 31, 2028 (the "Project Contribution").

c. **Job Creation.** The Company will directly employ a target of 20 full-time employees at the facility by December 31, 2028 (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.

d. **Sustainability.** Although the Company intends to have a long-term presence in the County, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2027.

3. <u>The State Contribution</u>

a. The County anticipates that the State Contribution will be delivered by the State to the County 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 County, after which time the County will request transfer of the State Contribution. Upon receipt, the County will place the State Contribution into a separate account established in connection with the Project, as required by law. The County 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 County and the State. The County 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 County. 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’s contribution is composed of a base LEDA award of $350,000 for the use of the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. If at least 50 per cent of the Company's construction expenditures are paid to New Mexico companies, it will be afforded an additional amount of $150,000. Upon completion of the Facility's construction activity, the Company shall submit a report itemizing its construction expenditures in order to access the additional LEDA contribution. The Company shall also instruct the contracted construction companies to use the correct New Mexico Taxation and Revenue Department Location Code of 07-007 for unincorporated Dona Ana County.

4. **The County Contribution.**

a. The County will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. There are no County funds included in the LEDA funds provided by the State. The County 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, County will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the County for reimbursement of LEDA Eligible Expenditures.

5. **Disbursement of State Contribution**

a. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in three (3) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) 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:

LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$150,000	Certificate of Occupancy, incur LEDA eligible expenses, and current with all reporting.
2	$150,000	Meet a 50% local construction spend requirement, incur LEDA eligible expenses and current with all reporting.
3	$50,000	Hire 4 employees, and maintain for one quarterly reporting period, LEDA eligible expenses and current with all reporting.

4	$75,000	Hire a total of 8 new employees and maintain for one quarterly reporting period, LEDA eligible expenses and current with all reporting.
5	$75,000	Hire a total of 12 new employees and maintain for 3 months, LEDA eligible expenses and current with all reporting.

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 County and the New Mexico Economic Development Department ("EDD") 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) 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 County may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request 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 calendar days of receipt of the Disbursement Request. The County 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 County costs.** The County 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 County with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $500,000. 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. No State Contribution will be transferred to the County until Security in the amount of the State Contribution is accepted.

   a. The County may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar 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 January 31, 2029, 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. <u>Clawbacks.</u> 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 County on or before December 31, 2028 the Company will repay to the County all LEDA Funds that the Company actually received from the County as of that date (the "Facility Closure Clawback") and the County shall have the right to execute reimbursement from the Security, but only after thirty (30) calendar days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) 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 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the County within 10 calendar 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 County which will be applied in the percentage set forth in the table below:

Job Creation Commitment and Schedule			
Job Measurement Date	***Cumulative Fulltime Target Job Number***	***Minimum Job Number***	***Clawback Due if Minimum Job Number not met***
December 31, 2024	4	4	100% of Clawback Penalty
December 31, 2028	20	18	50% of Clawback Penalty
Total	**20**		
Starting Headcount:	0	*As of*:	Ordinance approval

The "Clawback Penalty" is a penalty that the Company will be required to pay the County 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. See Attachment 1 hereto for examples of Clawback Calculations

"Cure Period" is the period of 180 calendar 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 County a Clawback Penalty determined in accordance with the table set forth above.

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 County. The Company may request specific modifications to the job creation schedule in writing within ten calendar 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 County and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

Louisiana Pepper Exchange, LLC shall complete an annual economic impact data sheet (EIA) provided by the State of New Mexico Economic Development Department; completion shall be no later than February 28 of each year beginning in 2024. This will reflect actual economic activity and job creation by Louisiana Pepper Exchange, LLC or the preceding calendar year. Failure to complete EIA data sheet by April 15th of any calendar year, Louisiana Pepper Exchange, LLC shall be subject to a 10% clawback of all funds received.

c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the County beginning with the July 31, 2023 and continuing every October 31, January 31, and July 31, thereafter until the completion of this agreement. The State will provide copies of all such reports to the County 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 County 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. **<u>Fees.</u>** 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. **<u>Annual Performance Review.</u>** 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 County or EDD staff beginning on June 30, 2024 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 County 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 County 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 County may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the County terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the County 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 January 31, 2029 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 20 employees for six (6) consecutive months prior to December 31, 2028, the Company may request release of the Security and termination of the agreement. Said request shall be made to the County 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, 2026. Upon receipt of such a request the New Mexico Economic Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received direct tax revenues from the activity of the company said request shall be granted.

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 Doña Ana County.

17. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

18. **Miscellaneous.** This Agreement binds and inures to the benefit of the County 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 County 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 County:

Doña Ana County with copy to the County Attorney
Attention: County Manager
845 North Motel Boulevard
Las Cruces, New Mexico 88007-8100
Tel: (575) 525-5802

If to the Company:

Louisiana Pepper Exchange, LLC
1755 Tchoupitoulas Street
New Orleans, LA 70130

Effective Date: __________________

Attachment:

1. Example of Clawback Calculations

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

DOÑA ANA COUNTY, NEW MEXICO
By the DOÑA ANA BOARD OF
COMMISSIONERS, a governmental
Entity organized and existing under
The laws of the State of New Mexico

By ____

Name Fernando R. Macias

Title County Manager

LOUISIANA PEPPER EXCHANGE, LLC

By ____

Name: ____________________________________

Title: ____________________________________

Attachment 1
Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = (1 - (actual jobs / cumulative hiring target))*100%

Example - 1 100%	End of year 1, inclusive of cure period		
Actual Employees	(a)		41
Cumulative Hiring Target	(b)		42
Job Creation % Shortfall =	(c) = 1-(a/b)		2.38%
LEDA Dollars Distributed	(d)	$	150,000.00
Clawback %	(e)		100%
Penalty	(f) = c*d*e	$	3,571.43

Example - 2 100%	End of year 2, inclusive of cure period		
Actual Employees	(a)		57
Cum Hiring Target	(b)		58
Job Creation % Shortfall =	(c) = 1-(a/b)		1.72%
LEDA Dollars Distributed	(d)	$	200,000.00
Clawback %	(e)		100%
Penalty	(f) = c*d*e	$	3,448.28

Example - 3 75%	End of year 3, inclusive of cure period		
Actual Employees	(a)		57
Cum Hiring Target	(b)		58
Job Creation % Shortfall =	(c) = 1-(a/b)		1.72%
LEDA Dollars Distributed	(d)	$	200,000.00
Clawback %	(e)		75%
Penalty	(f) = c*d*e	$	2,586.21