

# **RICHLAND COUNTY**

## **SPECIAL CALLED MEETING AGENDA**



**Tuesday, SEPTEMBER 10, 2019**

**6:00 PM**

**COUNCIL CHAMBERS**



# RICHLAND COUNTY COUNCIL 2019



Bill Malinowski  
District 1  
2018-2022



Joyce Dickerson  
District 2  
2016-2020



Yvonne McBride  
District 3  
2016-2020



Paul Livingston  
District 4  
2018-2022



Allison Terracio  
District 5  
2018-2022



Joe Walker, III  
District 6  
2018-2022



Gwendolyn Kennedy  
District 7  
2016-2020



Jim Manning  
District 8  
2016-2020



Calvin "Chip" Jackson  
District 9  
2016-2020



Dalhi Myers  
District 10  
2016-2020



Chakisse Newton  
District 11  
2018-2022





Richland County Special Called Meeting

September 10, 2019 - 6:00 PM  
Council Chambers  
2020 Hampton Street, Columbia, SC 29201

**1. CALL TO ORDER**

- a. Roll Call

**2. INVOCATION**

The Honorable Joyce Dickerson

**3. PLEDGE OF ALLEGIANCE**

The Honorable Joyce Dickerson

**4. APPROVAL OF MINUTES**

The Honorable Paul Livingston

- a. Special Called Meeting: August 1, 2019 [PAGES 10-33]
- b. Special Called Meeting - Business License Revocation Hearing: August 1, 2019 [PAGES 34-35]

**5. ADOPTION OF AGENDA**

The Honorable Paul Livingston

**6. REPORT OF ATTORNEY FOR EXECUTIVE SESSION ITEMS**

Larry Smith,  
County Attorney

- a. Marion Street Easement
- b. Club Laroice Agreement [PAGE 36]
- c. Pending Litigation: Richland County vs. AT&T

**7. CITIZENS' INPUT**

The Honorable Paul Livingston

- a. For Items on the Agenda Not Requiring a Public Hearing

**8. CITIZENS' INPUT**

The Honorable Paul Livingston

- a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at time.)

**9. REPORT OF THE COUNTY ADMINISTRATOR**

Leonardo Brown,  
County Administrator

**10. REPORT OF THE CLERK OF COUNCIL**

Kimberly Williams-Roberts,  
Clerk to Council

- a. REMINDER: Engage Richland: From Child Safety to Criminal Investigations - The Many Roles of Your Coroner's Office, September 19, 6:00 PM, Coroner's Office, 6300 Shakespear Road
- b. Pontiac Neighborhood Master Plan Charettes, September 25 and 26, 6:00 - 8:30 PM, Richland Library - Sandhills Branch, 763 Fashion Drive
- c. Columbia Chamber of Commerce Annual Gala, October 3, 5:00 PM, Columbia Metropolitan Convention Center, 1101 Lincoln Street

**11. REPORT OF THE CHAIR**

The Honorable Paul Livingston

- a. CAMA System Update

**12. OPEN/CLOSE PUBLIC HEARINGS**

- a. Providing for an installment plan of finance for certain economic development projects; identifying certain sources of revenue expected to be used by the County to make installment payments, including the proceeds of General Obligation Bonds, in one or more series, tax-exempt or taxable, in an amount not to exceed \$5,000,000; authorizing the commitment of certain County assets to the installment plan of finance; and other related matters
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Mars Petcare US, Inc., to provide for payment of a fee-in-lieu of taxes; and other related matters
- c. An Ordinance consenting to the conversion of an existing lease purchase agreement between Richland County (The "County") and Mars Petcare US, Inc., f/k/a Kal Kan Foods, Inc. (The "Company") to a fee in lieu of tax agreement pursuant to Title 12, Chapter 44, South

Carolina Code, 1976, as amended; authorizing the execution and delivery of a fee in lieu of tax (Conversion) agreement by and between the County and the Company; authorizing the reconveyance by the County to the Company of the property subject to such lease purchase agreement; and other related matters

**13. APPROVAL OF CONSENT ITEMS**

The Honorable Paul Livingston

- a. 19-026MA  
Paul Elias  
M-1 to HI (15 Acres)  
1700 Longwood Road  
TMS # R16100-02-02, 16 (Portion) & 21 (Portion)  
[THIRD READING] [PAGES 37-38]
- b. 19-029MA  
John Sells  
OI to RS-MD (.6 Acres)  
1323 Means Avenue  
TMS # R07307-05-07 [THIRD READING] [PAGES 39-40]
- c. 19-030MA  
Madison Pickrel  
RU to RS-LD (65.41 Acres)  
230-258 Sand Farms Trail  
TMS # R20400-01-05, 06, 07, 08, 14 & 15 [THIRD READING] [PAGES 41-42]
- d. 19-031MA  
Mildred B. Taylor  
M-1 to RS-MD (7.21 Acres)  
1216 Killian Loop  
TMS # R14700-06-05 & R14781-04-15 [THIRD READING] [PAGES 43-44]

The Honorable Paul Livingston

**14. THIRD READING ITEMS**

- a. Providing for an installment plan of finance for certain economic development projects; identifying certain sources of revenue expected to be used by the County to make installment payments, including the proceeds of General Obligation Bonds, in one or more series, tax-exempt or taxable, in an amount not to exceed \$5,000,000; authorizing the commitment of certain County assets to the installment plan of finance; and other related matters. [PAGES 45-123]
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Mars Petcare US, Inc., to

provide for payment of a fee-in-lieu of taxes; and other related matters [PAGES 124-155]

- c. An Ordinance consenting to the conversion of an existing lease purchase agreement between Richland County (The "County") and Mars Petcare US, Inc., f/k/a Kal Kan Foods, Inc. (The "Company") to a fee in lieu of tax agreement pursuant to Title 12, Chapter 44, South Carolina Code, 1976, as amended; authorizing the execution and delivery of a fee in lieu of tax (Conversion) agreement by and between the County and the Company; authorizing the reconveyance by the County to the Company of the property subject to such lease purchase agreement; and other related matters [PAGES 156-183]

**15. SECOND READING ITEMS**

The Honorable Paul Livingston

- a. An Ordinance Amending the Richland County Code of Ordinances, Chapter 1, General Provisions; so add Section 1-18 related to payment of fees and service charges by tax exempt entities [PAGES 184-185]
- b. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of an infrastructure credit agreement to provide for infrastructure credits to REI Automation, Inc. and REI Automation Land Company, LLC; and other related matters [PAGES 186-207]

**16. REPORT OF THE ADMINISTRATION AND FINANCE COMMITTEE**

The Honorable Joyce Dickerson

- a. Town of Eastover Inspections IGA [PAGES 208-221]
- b. Columbia Housing Authority Vehicle Donation [PAGES 222-226]
- c. Richland County Recreation Commission – Reprogramming of funds for Allen-Benedict Court Residents [TO DENY] [PAGES 227-231]

**17. REPORT OF THE RULES AND APPOINTMENTS COMMITTEE**

The Honorable Chakisse Newton

- a. NOTIFICATION OF APPOINTMENTS:
  - 1. Board of Zoning Appeals - Four (4) Vacancies:
    - a. LaTonya Derrick [PAGES 232-233]

- b. Marsha Carnegie [PAGES 234-236]
- c. Lonnie D. Daniels [PAGES 237-238]
- d. Jason McLees [PAGES 239-240]

**18. OTHER ITEMS**

The Honorable Paul Livingston

- a. A Resolution to appoint and commission Broderick Jerome Fleming, Ralph William Guyton, David Eugene Bagwell, Jr., and Tina Mills Robinette as Code Enforcement Officers for the proper security, general welfare, and convenience of Richland County [PAGE 241]
- b. FY20 - District 5 Hospitality Tax Allocations [PAGES 242-243]
- c. FY20 - District 2 Hospitality Tax Allocations [PAGES 244-245]

**19. EXECUTIVE SESSION**

Larry Smith,  
County Attorney

**20. MOTION PERIOD**

- a. I move that Richland County undertake a study regarding the existence/prevalence of PFAS in groundwater and soil throughout the County. If desired, the County should coordinate with all municipalities within its boundaries to derive a comprehensive study on these harmful chemicals, and if necessary or warranted, a plan for corporate remediation
- b. I move that the County Attorney's Office research State and Federal Law to determine all authority that South Carolina counties have to create gun safety ordinances
- c. FY20 - District 10 Hospitality Tax Allocations: \$20,000 - Olympia Museum

The Honorable Dalhi Myers

The Honorable Jim Manning

The Honorable Dalhi Myers

**21. ADJOURNMENT**





Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



## Richland County Council

SPECIAL CALLED MEETING  
August 1, 2019 – 6:00 PM  
Council Chambers  
2020 Hampton Street, Columbia, SC 29204

**COUNCIL MEMBERS PRESENT:** Paul Livingston, Chair; Dalhi Myers, Vice-Chair; Joyce Dickerson, Calvin “Chip” Jackson, Gwen Kennedy, Bill Malinowski, Jim Manning (via telephone), Yvonne McBride, Chakisse Newton and Joe Walker

**OTHERS PRESENT:** Michelle Onley, Ashiya Myers, Larry Smith, Michael Niermeier, Beverly Harris, Angela Weathersby, Art Braswell, Ismail Ozbek, Allison Stone, Chris Eversmann, Janet Claggett, Stacey Hamm, Leonardo Brown, Stephen Staley, Jennifer Wladischkin, Geo Price, Tyler Kirk, Pam Davis, and Donny Phipps

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 6:00 PM.
2. **INVOCATION** – The invocation was led by the Honorable Calvin Jackson
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Calvin Jackson
4. **APPROVAL OF MINUTES**
  - a. Special Called Meeting: July 9, 2019 – Ms. Dickerson moved, seconded by Ms. Kennedy, to approve the minutes as distributed.  
  
In Favor: Terracio, Malinowski, Jackson, Myers, Kennedy, Walker, Dickerson, Livingston and McBride  
  
Present but Not Voting: Newton  
  
The vote in favor was unanimous.
  - b. Special Called Meeting: July 23, 2019 – Ms. Dickerson moved, seconded by Ms. Terracio, to approve the minutes as distributed.  
  
In Favor: Terracio, Malinowski, Jackson, Myers, Kennedy, Walker, Dickerson, Livingston and McBride  
  
Present but Not Voting: Newton  
  
The vote in favor was unanimous.
  - c. Zoning Public Hearing: July 23, 2019 – Ms. Dickerson moved, seconded by Ms. Kennedy, to approve the minutes as distributed.  
  
In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

5. **ADOPTION OF THE AGENDA** – Mr. Livingston stated the Cherry Bekaert Report/Letter needed to be added under the Report of the Chair.

Mr. Brown stated Items 12(s) “Town of Eastover Inspections IGA” and 15(b) “Columbia Housing Authority Vehicle Donation” needed to be removed from the agenda.

Mr. Walker moved, seconded by Mr. Malinowski, to adopt the agenda as amended.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

6. **REPORT OF ATTORNEY FOR EXECUTIVE SESSION ITEMS**

- a. State Election Commission MOU
- b. SC Dept. of Revenue Letter
- c. Cherry Bekaert Letter

7. **CITIZENS’ INPUT**

- a. For Items on the Agenda Not Requiring a Public Hearing – No one signed up to speak.

8. **CITIZENS’ INPUT**

- b. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time) – Mr. Joe Heilig spoke regarding Item # 19(b) “Ashwood Drive Maintenance”.

9. **REPORT OF THE COUNTY ADMINISTRATOR** – No report was given.

10. **REPORT OF THE CLERK OF COUNCIL**

- a. REMINDER: Institute of Government Classes and Annual SCAC Conference, August 3-7 – Ms. Onley reminded Council of the upcoming SCAC Institute of Government Classes and Annual Conference.

Ms. Onley informed Council Ms. Roberts’ was not in attendance at tonight’s meeting due to the passing of her father.

11. **REPORT OF THE CHAIR**

- a. Internal Auditor Position – Mr. Livingston stated Council approved the creation of the Internal Auditor position. In addition, it was approved to hire an Administrative Assistant for the Internal Auditor. It is his intent to appoint a committee, in order to move forward with creating the job description and hiring the personnel.
- b. SC Department of Revenue Letter – This item was referred to Executive Session.
- c. Cherry Bekaert Letter – This item was referred to Executive Session.

Special Called Meeting

August 1, 2019

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12. **APPROVAL OF CONSENT ITEMS**

- a. 19-002MA, Sukhjinder Singh, RU to NC (2.9 Acres), 3500 Hardscrabble Road, TMS # R20100-04-08 [THIRD READING]
- b. 19-011MA, Ki O. Kwon, RU to OI (4.61 Acres), 4026 Hardscrabble Road, TMS # R20100-02-46 [THIRD READING]
- c. 19-014MA, Margaret Chichester, RU to RC (2.2 Acres), 2869 Congaree Road, TMS # R32404-01-01 (Portion) [THIRD READING]
- d. 19-017MA, Kevin E. Wimberly, RS-MD to RM-MD (37.12 Acres), Rabon Road, TMS # R17213-05-37 [THIRD READING]
- e. 19-018MA, Jervonta Walker, OI to GC (.4 Acres), 1606 Horseshoe Drive, TMS # R17011-02-16 [THIRD READING]
- f. 19-020MA, James M. McKenzie, RU/RU to GC (3.78 Acres), 245 Killian Road, TMS # R14781-01-34 & 54 [THIRD READING]
- g. 19-021MA, David B. Grant, M-1 to HI (5.02 Acres), 1200 Atlas Way, TMS # R16200-01-08 [THIRD READING]
- h. An Ordinance Amending the Richland County Code of Ordinances, Chapter 24, Utilities; Article III, Procedures for Construction of Water and Sewer Lines; Division 2, Sewer Construction; Section 24-28, Construction of Facilities within feasible reach of a planned portion of a public sewer interceptor; so add language regarding the Broad River Basin [SECOND READING]
- i. An Ordinance Authorizing Quit Claim Deeds to Paul D. Riley and South Carolina Real Estate Management and Development Corporation for parcels of land located in Richland County, known as the Olympia Alleyways; specifically the land abutting and between TMS # 08816-05-10 (406 Florida Street) and TMS # 08816-05-11 (402 Florida Street) [SECOND READING]
- j. An Ordinance Amending the Fiscal Year 2020 Road Maintenance Special Revenue Fund Annual Budget by \$500,000.00 to cover expenses from the Department of Public Works' Pavement Preservation Program with funds from the Road Maintenance Special Revenue Fund Balance [SECOND READING]
- k. 19-026MA, Paul Elias, M-1 to HI (15 Acres), 1700 Longwood Road, TMS # R16100-02-02, 16 (Portion) & 21 (Portion) [SECOND READING]
- l. 19-029MA, John Sells, OI to RS-MD (.06 Acres), 1323 Means Avenue, TMS # R07307-05-07 [SECOND READING]
- m. 19-030MA, Madison Pickrel, RU to RS-LD, (65.41 Acres), 230-258 Sand Farms Trail, TMS # R20400-01-05, 06, 07, 08, 14 & 15 [SECOND READING]
- n. 19-031MA, Mildred B. Taylor, M-1 to RS-MD (7.21 Acres), 1216 Killian Loop, TMS # R14700-06-05 & R14781-04-15 [SECOND READING]

Special Called Meeting  
August 1, 2019

- o. I move, to further address blight and nuisances in Richland County, that we instruct the County's lobbyists and legislative affairs personnel, in conjunction with the South Carolina Association of Counties, to request wo changes to State law as follows: First, to allow counties to regulate hotels, restaurants, cafes and lunch counters to provide for public health, comfort and convenience, in the same manner as State law already allows municipalities to so regulate, pursuant to Title 45, Chapter 3 of the South Carolina Code of Laws, and; Second, to allow counties to "provide by ordinance that the owner of any lot or property" in the county shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance, and to give counties the same authority municipalities already have in this area pursuant South Carolina Code of Laws Section 5-7-80 as amended, which has been a right of municipalities since at least the 1962 Code of Laws [MANNING]
  
- p. I move that Richland County provide the approval to transfer the ownership interest related to the garbage collection from Capital Waste Services, LLC (Currently operating in Areas 5a and 3) owned by Hawk Capital Partners selling its equity to the newly formed entity controlled by Kinderhook Industries. (Please understand the motion is conceptual by the maker, not technical legal terms as to structure) [MANNING] – Ms. Myers moved, seconded by Ms. Dickerson, to reconsider this item.  
  
 Opposed: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride  
  
 The motion for reconsideration failed.
  
- q. The COMET Interest Payments [TO DENY]
  
- r. Fund Balance for inside and outside departments/agencies receiving funds from Richland County should not exceed a certain percentage of their operating budget. This is required to address this matter and determine what reasonable percentage that should be [MALINOWSKI]

Mr. Malinowski moved, seconded by Ms. Dickerson, to approve the consent items.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Manning, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

**13. THIRD READING ITEMS**

19-015MA, David Parr, RU to RS-MD (14.79 Acres), Golden Rod Court, TMS # R12800-01-23 – Ms. Myers moved, seconded by Ms. Terracio, to approve this item.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

**14. SECOND READING ITEMS**

- a. An Ordinance Creating Chapter 18, Offenses; Section 18-7, Regulations and Requirements relating to the use of single-use plastic bags; so as to establish regulations and requirements relating to single-use plastic bags – Mr. Malinowski moved, seconded by Ms. Terracio, to approve 2<sup>nd</sup> Reading

Special Called Meeting

August 1, 2019

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and 3<sup>rd</sup> Reading will not come back until we have conducted a complete educational program. The program will include creating a stakeholders' roundtable that will consist of business, industry, and residents.

Mr. Malinowski stated we want to make sure that we get this correct, so we do not have to chase after it later on because we did not do our due diligence to do it correctly. We want to come back with something that is very desirable and workable for Richland County, and, if we cannot make it be that way then we do not approve this type of ordinance.

Ms. Myers inquired if Mr. Malinowski would be willing to set a timeframe from the matter to come back to Council. (i.e. 6 months, a year, etc.)

Mr. Malinowski suggested 6 months. At that point, if we need additional time we can request it.

Ms. Terracio stated she has had a lot of conversations, and feedback, since First Reading passed. She wants to be considerate about the different jurisdictions that we connect. The Town of Arcadia Lakes already has a bag ordinance, so we want to do our best to be in harmony with those other ordinances. We have also heard from the industry and we hear the people that are concerned. The spirit of the ordinance is to reduce plastic in our water and environment, and its impact.

Ms. McBride expressed concern that 6 months may not be adequate time for staff to do the public relations and receive input to bring back to Council. She suggested extending the time up to a year.

Mr. Malinowski accepted Ms. McBride's friendly amendment to extend the timeframe up to a year.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

- b. Providing for an installment plan of Finance for certain economic development projects; identifying, authorizing and pledging certain sources of revenue expected to be used by the County to make installment payments, including the proceeds of General Obligation Bonds, in one or more series, tax-exempt or taxable, in an amount not exceeding the County's constitutional bonded debt limit; authorizing the commitment of certain County assets to the installment plan of finance; and other related matters – Mr. Jackson moved, seconded by Ms. Myers, to approve this item.

Mr. Malinowski stated, on p. 119 of the agenda, it states, "...including the proceeds of General Obligation Bonds, in one or more series, tax-exempt or taxable, in an amount not exceeding the County's constitutional bonded debt limit". His concern is that we could put the entire County debt limit on the line for one particular department, for one particular item. He would think that we would want a specific dollar limit.

Mr. Jones stated they do not anticipate the County needing to issue General Obligation Bonds to support this plan of finance. The ability to issue it is there to support a bond rating for the bond issue. He would be fine with limiting it to \$28M. No bonds would be issued without a great deal of discussion among Council and staff.

Mr. Malinowski expressed some concerns with the language on p. 124, Section 2(a): "...such changes as may be approved by the Chair of the County Council ("Chair"), the County Administrator

or their designees". He would think something of this magnitude and importance that it would come back to Council.

Mr. Jones stated they would be willing to do the will of the Council, and would be glad to take any amendments between this version and the final version.

Mr. Malinowski made a substitute motion to approve this item with the following amendments: (1) the addition of "a maximum of \$28 Million"; and (2) that any material changes to the ordinance will come back to Council for approval.

Ms. Myers stated she did not think we were issuing GO Bonds for this.

Mr. Jones stated we are not. This is an installment purchase plan, but it is critical the County put its ability to issue GO Bonds behind the deal, in order for us to get a bond rating. There are no cash flows or projections presented, or prepared, by the County's financial advisor that shows a requirement for the issuance of General Obligation bonds. When we go to get a bond rating, if the bond rating agencies recognize, and if the County had to, it would, and has already authorized the issuance of its GO indebtedness. He stated they are willing to include a friendly amendment that any bond issue would have to come back before Council for approval by resolution.

Ms. Myers requested, at Third Reading, to have the ordinance reflect that it either GO Bonds or IPRBs.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Manning, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

15. **REPORT OF THE ADMINISTRATION AND FINANCE COMMITTEE**

- a. Town of Eastover Inspections IGA – This item was removed from the agenda during the Adoption of the Agenda.
- b. An Ordinance Amending the Richland County Code of Ordinances, Chapter 1, General Provisions; so to add Section 1-18 related to payment of fees and service charges by tax exempt entities – Ms. Dickerson stated the committee recommended approval.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

- c. Columbia Housing Authority Vehicle Donation – This item was removed from the agenda during the Adoption of the Agenda.
- d. South Edisto Project Funding : Use of CDBG Funds – Ms. Myers moved, seconded by Ms. Terracio, to approve this item.

Mr. Malinowski stated, at the committee meeting, it was stated the funds Richland County obligated for this project were to be used for infrastructure construction. Now, the backup

documentation indicates the funds will be used for land acquisition. He was not aware staff could arbitrarily change what Council initially agreed on regarding these projects.

Mr. Malinowski made a substitute motion, seconded by Ms. Dickerson, to refer this item back to committee in order to receive an explanation on what the \$350,000 is going to be used for.

In Favor: Malinowski, Jackson, Kennedy, Walker, Dickerson, McBride

Opposed: Terracio, Myers, Livingston

Abstain: Newton

The vote was in favor.

- e. Richland County Recreation Commission – Reprogramming of funds for Allen-Benedict Court Residents [TO DENY] – Ms. Dickerson stated the committee recommended denial of this request.

Ms. Myers stated she disagreed with the committee’s vote. The vote was based on a procedural issue. Her concern is that we approved funds to help the Allen-Benedict Court residents. While she understands, and agrees, it would have been helpful for the Recreation Commission to come back and request permission to do it in an alternate way. What they did was give the residents grocery vouchers. At this point, the funds have been expended, and the residents did get the grocery vouchers. She requested that Council approve the reimbursement.

Ms. Myers moved, seconded by Mr. Livingston, to approve the requested reimbursement.

Mr. Malinowski stated in the documentation it indicates the funding was used for “programming”. He requested a definition of “programming”.

Ms. Watkins stated they had to host a “program” to distribute the vouchers to over 28 families. She expressed that it was a procedural error. They thought they had done their due diligence through their connection with County staff. They were not aware they needed to make an additional plea. Their original intent was met with difficulties due to the widespread layout of where all of the residents were, as well as, confidentiality issues. They would not allow them to have direct contact information, so they could not do the vouchers by simply passing them out.

Mr. Malinowski inquired about the process for distributing the vouchers.

Mr. Darius Williams, Outreach Coordinator, stated they created household accounts through their system. They also verified with the Richland Library and the Columbia Housing Authority that they were Allen-Benedict residents. After that, they were issued vouchers to the Recreation Commission’s program, which included afterschool/summer and athletic programs. He stated they distributed \$6,975 in program vouchers, \$3,994 in household essentials, school supplies, etc., and \$5,000 in grocery gift cards.

Ms. Dickerson stated she did not realize the funding was going to be used for summer programs and that laundry services was being offered through another group we were working with.

Ms. Watkins stated she could not speak for the other groups, but the reprogramming information was submitted, and they were under the impression, based on communication with staff, that the



process for the re-approval was done, which is why they moved forward. If it had not been approved, they would have never moved forward.

Ms. Dickerson stated she had a problem with how this process worked. We need to know exactly where these funds are going and how they are being spent.

Mr. Malinowski stated we gave cards and vouchers away to approximately 75 people, but there was an attendance of about 400 people at the event. Obviously, there was a lot of money spent on non-residents, when it was intended for residents only.

Ms. Brandy James stated they submitted the revised proposal on May 16<sup>th</sup> to Council officials. They were not notified until July 1<sup>st</sup> that the proposal did not get to Council. She offered their apologies that Council did not receive the revised proposal.

Ms. Watkins stated only Allen-Benedict residents received the benefits. They can share that information with Council, if they desire to see it.

Mr. Manning made a substitute motion, seconded by Ms. Dickerson, to defer this item until the September 10<sup>th</sup> Council meeting.

In Favor: Terracio, Malinowski, Kennedy, Manning, Walker and Dickerson

Opposed: Jackson, Newton, Myers, Livingston and McBride

The vote was in favor.

Mr. Jackson stated he has no problem with deferring this. He is disappointed that we would have this kind of debate over a procedural error. It disturbs him that we have to come back and have another discussion where it is clear the intent of the funding process from the onset was to help the residents of Allen-Benedict Court, who were in a crisis situation, and were not sure the things they would need. In the midst of that situation, and having to make adjustments on the fly, the Recreation Commission, who volunteered to help them out, may not have conformed to the actual letter of the law, in terms of what they were expecting to do. Because they could not do it, we are now drawing this out and have staff come back and debate something that was clear, and acknowledged by the Recreation Commission.

- f. Solid Waste Rate Study – Ms. Dickerson stated the committee recommended approval of this item.

Mr. Malinowski stated, at the committee meeting, he requested to see some figures that showed where there was a negative net position, for the last 2 years, of \$5.7 and \$6.3 Million, but he did not see them in the agenda packet. He also stated, the consultant noted, "There are several city and county departments from which RCSWR does not collect revenues from waste delivered to the landfill (approximately \$2.4 million in FY 2018)." He believes that if we collect the revenues, that anyone else would have to pay, we would not have this deficit, and may not have to vote on an increase, or one this large. He would like to see this broken down into "what's the revenue amount that we are not getting from the City vs. what we are not getting from the County departments" rather than just saying, "Okay. Let's increase the fees by 25% to cover costs." He would like to see a little more specificity into what dollar amounts and percentages are needed to make us self-sustaining.

Mr. Braswell stated they do take waste from other departments within the County, which do not pay, but not the City. There was an error in the table included in the committee agenda; therefore, he updated the table to be included in the Council agenda. He stated their expenses are higher than their revenues and they are depleting the Enterprise Fund. They need funds to continue to operate our collection services. Approximately \$29M is under contract for managing the County's waste. The last increase took place in 2008. It would have been better to have incremental increases over the years, but they were not aware the fund was being depleted so rapidly. Until recently, the hauler contracts had a 3.5% increase every year. It has since been changed to the CPI.

Mr. Malinowski stated, in the original tables they were given at the committee meeting, we had annual revenues from fees. We also had a column that was annual revenue not fee related. In the new tables there is not a column for annual revenue not fee related. He inquired what the amount would be and what the impact would be on the projections.

Mr. Braswell stated the updated tables reflect a reduced revenue requirement, instead of showing the revenue not fee related in the table.

Mr. Malinowski stated he would like to see where we lost revenue. He stated there could be a problem with spending.

Mr. Braswell stated the hauler fees have gone up every year, but fees have not been raised since 2008. It was just a matter of time before we ran into a negative cash flow.

Mr. Malinowski stated it appears there are choices (i.e. Scenario 1 or Scenario 2).

Mr. Braswell stated Scenario 1 is a one-time increase of 25%, which will make the fund whole. Scenario 2 would spread the cost out over 2 years. If Council approves this scenario, it will require the 2<sup>nd</sup> year to be at a higher increase to make the fund whole.

In Favor: Dickerson, Livingston and McBride

Opposed: Malinowski, Myers and Walker

Abstain: Terracio, Jackson, Newton and Kennedy

The motion failed.

Ms. Myers moved, seconded by Ms. Dickerson, to accept the alternative to phase in the fee increase.

In Favor: Terracio, Jackson, Newton, Myers, Dickerson, Livingston and McBride

Opposed: Malinowski and Walker

The vote was in favor.

Ms. Myers moved, seconded by Ms. Dickerson, to reconsider this item.

In Favor: Malinowski and Walker

Opposed: Terracio, Jackson, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

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The motion for reconsideration failed.

16. **REPORT OF THE ECONOMIC DEVELOPMENT COMMITTEE**

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of an infrastructure credit agreement to provide for infrastructure credits; and other related matters [FIRST READING] – Mr. Jackson stated the committee recommended approval of this item.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson and Livingston

Present but Not Voting: McBride

The vote in favor was unanimous.

17. **REPORT OF THE RULES AND APPOINTMENTS COMMITTEE**

- a. Township Auditorium Board – Two (2) Vacancies – Ms. Newton stated the committee recommended re-appointing Ms. Abigail Rogers and appointing Mr. Harold Ward.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

18. **REPORT OF THE TRANSPORTATION AD HOC COMMITTEE**

- a. Items for Information:

1. Approval of Letters of Recommendation to Award Bid:

- a. Resurfacing Package Q – Mr. Jackson stated the package includes 52 roads and a length of approximately 16.4 miles. The proposed bids were opened in July, and reviewed, according to the appropriate procurement process. The committee recommends the awarding of the letter of recommendation for the bid.

Ms. Myers stated, at the committee meeting, a request was made for a list of roads in each of the packages.

Mr. Niermeier stated they could get the list for Council. The list is also included in the monthly report.

Mr. Malinowski suggested deferring this item until the end of the Report of the Transportation Ad Hoc Committee to allow staff time to provide the requested information.

Mr. Jackson stated he does not object to deferring the item. The only objection he has is that it has been handed out on more than one occasion. This is not a new report. It has been distributed more than once.

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Ms. Dickerson stated she is sure that she has the list, but she expects it to be in front of her. She does not expect to have to “fish” to get it. As evidenced earlier, things can change between meetings and she wants to ensure what she is voting for/against has not changed.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy and Livingston

Present but Not Voting: Walker, Dickerson and McBride

The vote in favor was unanimous.

- b. North Springs/Harrington Intersection – Mr. Jackson stated the bids were opened on July 17<sup>th</sup>. The proposed scope recommends that North Spring Road be widened, and also provide an additional widening along Harrington Road. These fall within the referendum amount and the committee recommends approval.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Dickerson and Livingston

Abstain: McBride

Present but Not Voting: Walker

The vote in favor was unanimous with Ms. McBride abstaining from the vote.

2. Approval to Increase Construction Contingency Amount: -- Mr. Jackson stated the request is to increase the construction contingency amount beyond the original approved amount of 10% due to changes in site conditions and modifications of the projects to minimize impacts to utilities. Increases will occur the Koon/Fairview Sidewalk and the Magnolia/Schoolhouse Road projects.

- a. Koon/Fairview Sidewalk Project (10%)  
b. Magnolia/Schoolhouse Road Project (10%)

In Favor: Terracio, Malinowski, Jackson, Newton, Kennedy, Livingston and McBride

Abstain: Myers and Dickerson

Present but Not Voting: Walker

The vote in favor was unanimous with Ms. Myers and Ms. Dickerson abstaining from the vote.

3. Approval of Penny Project Features Inside SCDOT Right of Way – Mr. Jackson stated there were several projects discussed at the work session regarding shared-use paths, landscaped medians, mast arms and street lighting. The committee recommends the removal of these items from future designs.

Mr. Malinowski inquired if these are the ones that had tremendous annual costs.

Mr. Jackson stated some of the costs would not be annual. The mast arms would only have to be replaced if they were damaged. The annual costs would be for the landscaping.

Mr. Malinowski inquired about the ordinance that said we would not put street lights anywhere unless they could be put everywhere.

Mr. Niermeier stated that was an exhibit in the committee packet. The recommendation from the committee is to remove these items from current designs. There are a couple of designs being held up pending inclusion/non-inclusion.

In Favor: Terracio, Malinowski, Jackson, Newton, Kennedy, Livingston and McBride

Present but Not Voting: Myers, Walker and Dickerson

The vote in favor was unanimous.

4. Approval of moving forward with 50 of the 56 Sidewalk projects in the Ordinance Referendum – Mr. Jackson stated the committee recommended moving forward with the 50 of the 56 sidewalk projects in the ordinance referendum. These are sidewalks that have been discussed, and recognized, that could be completed given the current dollars available.

Mr. Malinowski inquired if there was public input on these.

Mr. Jackson stated Mr. Beaty indicated there was public input.

In Favor: Terracio, Malinowski, Jackson, Kennedy, Dickerson, Livingston and McBride

Abstain: Newton and Myers

Present but Not Voting: Walker

The vote in favor was unanimous with Ms. Newton and Ms. Myers abstaining from the vote.

**POINT OF PERSONAL PRIVILEGE** – Ms. McBride stated she has spoken with the Administrator, but she wants to make it known publicly that they are still having problems with the sidewalks on Magnolia and Schoolhouse Road. There is no construction taking place. She has been promised by the Transportation Department Director that he would keep her abreast of what is going on, but she does not know what is going on. Her constituents have been calling her and she has been by both projects. There are 2 houses, where senior citizens are residing, in which they cannot use their front door and the mail carrier cannot deliver mail. If we need to fire the contractors and hire new contractors, that is what needs to be done.

Mr. Niermeier responded that he has a signed letter that will be mailed out tomorrow to the residents. In preparation of them beginning work, the contractor deployed equipment to their holding area off of Magnolia yesterday. He has been working with Procurement on how to address this contractually.

Mr. Malinowski inquired if Public Works is now under the Transportation Department.

Mr. Niermeier responded that Public Works and Transportation are 2 separate departments.

19. **OTHER ITEMS**

- a. Residential Utilities Assistance Program – Mr. Malinowski requested an explanation regarding the following statement: “The fund will be subject to County Council’s annual appropriations...” as he was not aware Council would be appropriating funding.

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Ms. Hamm stated the funds would come from people that round up or donate to the fund. It would not be County funds.

Mr. Malinowski stated the cost of administering the program has yet to be determined. He inquired who is going to make this determination.

Ms. Hamm stated they are looking at having the United Way administer the program, on behalf of the County, since they are familiar with dealing with these type situations.

Mr. Malinowski stated we had an Attorney General opinion that stated, "You cannot use taxpayer funds for reimbursements." If we cannot use taxpayer funds for that, then why can we use taxpayer funds, relating to County employees and equipment, for this program.

Ms. Hamm stated the money, and the fund, would be administered by the County. The agency would be reviewing the applications and determining who is qualified to receive the credit.

Mr. Malinowski stated he would like to be sure the County can legally do a portion of the work before the program gets into place and running.

Ms. Myers moved, seconded by Ms. Kennedy, to approve staff's recommendation.

In Favor: Terracio, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

Present but Not Voting: Malinowski, Jackson and Walker

The vote in favor was unanimous.

- b. Ashwood Drive Maintenance – Mr. Malinowski moved, seconded by Mr. Walker, to accept Ashwood Hill Drive into the County's road maintenance system.

Mr. Malinowski stated someone in the County told these individuals, in this community, that if they completed what was needed on their punch list, the County would take it over. These residents did complete it. It has been years and it still has not been taken over. Therefore, we need to uphold what they were told.

Ms. Myers stated the briefing memo says, "A cost estimate to hire an Engineer and Contractor to bring this roadway up to County Standards is approximately \$100,000." She inquired as to the length of the road.

Mr. Staley stated it is approximately ½ mile with 30 – 40 houses on it.

Ms. Myers stated she is concerned that we go through all these Penny projects, and we have people who have been waiting years to have things done with their roads. Then, for one road, we are hiring an external engineer for approximately \$100,000, when we have engineers doing projects for the County right now. This is not to pave a road, but to bring it up to County standards. She stated she is in favor of accepting the road and getting it to County standards. She is not in favor of us appropriating \$100,000 to hire an external engineer to tell us what to do to bring the road up to our standards when our engineers are in the business of doing this every day. It would seem the Public Works Department could repair a road.

Mr. Staley stated the \$100,000 includes the construction, engineering, construction administration, and a contingency. He stated he has an estimate that he could share with Council.

Ms. Myers stated she would like to be approving what it cost, not an estimate.

Mr. Malinowski stated he does not believe the County should be repairing the curbing in front of the driveways. He also stated that he agreed with Ms. Myers that we need a more definitive estimate.

Mr. Ozbek stated this is a high-level estimate and the actual cost should be much lower. However, the request is to either direct staff to do it or not to do it.

Ms. Dickerson requested a friendly amendment to defer this until we get additional information.

Mr. Malinowski stated the only reason he is supporting this is because this goes back many years, before many of the others, and a County representative told the people, the County would take this over. He believes, if it went to court, we would lose and incur additional costs.

Ms. Dickerson stated, hopefully, the new Administrator can address the problem of staff going out into the communities and making commitments without the issues coming to Council.

Ms. Myers suggested instructing staff to accept the road, and then instruct the Administrator, with the Public Works Department, to have the County engineers work to bring the road up to code, and not utilize the external engineer.

Ms. McBride inquired if these are private roads.

Mr. Ozbek stated these are private roads until the County takes it over. There a number of private roads the County has been asked to take over.

Ms. McBride inquired if there is anything in the writing that states the County promised to take over this road.

Mr. Ozbek responded that they were not able to locate anything.

Ms. McBride stated that we are going to pull one road out and accept that one road. We do not have a process and there is no prioritization.

Mr. Ozbek stated that is why this is before Council. Staff is requesting direction because the County engineer cannot recommend taking a road, which does not meet the County standards, into the County system.

Ms. Kennedy inquired if we repair private roads.

Mr. Ozbek stated the County does not repair private roads unless they are part of a declared State or Local emergency. These are subdivision roads that were under development by a developer and abandoned. There are approximately 100 similar subdivisions with the same situation. They were supposed to have been completed, and accepted by the County, but for one reason or another, they were not.

Mr. Malinowski made a substitute motion, seconded by Ms. Dickerson, to have the County accept the road, the County repair the road, but that it goes in a priority listing with other County roads that need repair.

Ms. Myers inquired if it sets a precedence, if we do this, and do we put ourselves in jeopardy with other constituents, who might come later.

Mr. Smith stated he does not have the ordinance in front of him, at this point. He thought the language of the ordinance said, that prior to accepting the road, it has to be up to standard. He believes the motion is to accept the road, then bring it up to standard.

Ms. Myers inquired as to what the real number for repair costs is.

Mr. Ozbek stated the estimate from the County Engineer is \$100,000. They would have to get a real estimate from a contractor.

Mr. Livingston stated, it is his understanding; the motion on the floor would violate the County's ordinance.

Mr. Malinowski stated that means the County will never be able to take any roads over.

Mr. Ozbek stated this is similar to what Council did in 2013. There was a list of 40 roads, and Council voted to accept those 40 roads prior to them meeting County standards.

Ms. Newton stated her understanding of the motion is to accept the road, then put it in the priority list and bring it up to standards. She inquired if there is a prioritized list of roads like these, and, if so, can it be provided to Council, as well as an understanding of the process is.

Mr. Ozbek stated the previous Planning Director and himself did a presentation on approximately 400 roads that are in similar conditions. The roads were prioritized, based on their conditions, and a discussion took place. The matter was referred to the Council Retreat, and it was supposed to come back to committee.

Ms. Newton inquired if that means we have not been systematically going through and repairing the roads, or is there just not a formal process in place.

Mr. Ozbek stated we are in the discussion stage of prioritizing the roads, but we cannot prioritize them until the County takes them over by Council action. The roads are unfinished and do not meet County standards.

Mr. Jackson stated he would caution his colleagues because developers will lose their incentive to complete roads, before they turn them over to us, if we come behind this and accept the roads that were never completed by the developers.

Ms. Dickerson stated, when she came on Council, there were many subdivisions where the roads were not completed by the developers. She thinks we need to put some strong stipulations on these new subdivisions regarding roads.

Mr. Livingston stated he recalls Council has made significant changes since many of the roads we are discussing came into play.



Mr. Ozbek stated these are all legacy issues, and the loopholes have been plugged.

Ms. Myers stated she does not want to be on the record that we have broken the precedence, and, therefore, we are going to bring accepting all of these roads. In addition, she certainly does not want to project to the public that the way to get Council to accept their road is to present that a developer gave you the shaft. She would be interested in some guidance on how we meet our obligation to the citizens, and balance it out with the fact that there are many roads, all over the County, with stories. She would also be interested if we have gotten any bond money from developers for roads they left abandoned, and if it can be mobilized to help.

Ms. Newton stated, for clarification, the priority list does not exist.

Mr. Ozbek stated the Public Works Department continuously maintains roads, as they come in. As far as there being a priority list, it does not exist.

Ms. Newton stated she is concerned about the roads across Richland County. She would like for us to have a broader conversation.

Ms. Terracio stated, for clarification, that we will not be repairing curbs.

Ms. McBride stated, for clarification, if we accept the road, we will be violating the ordinance.

In Favor: Malinowski and Dickerson

Oppose: Terracio, Jackson, Newton, Myers, Kennedy, Livingston and McBride

The motion failed.

Ms. Myers suggested we revive the document that listed the roads and estimates. In addition, that we find a way to have the conversation Mr. Ozbek is requesting, so they can get direction from Council on what we are going to do with these roads, and how they are going to be accepted.

Mr. Malinowski stated he thought normally when we had a Director of department we advertised for the position, people apply and another Director for the department is chosen. Yet, in the case of Public Works, it seems, for some reason, while the position, to his knowledge, was not there, we hired a Deputy Director, while the Director was still there. He wonders why that was done.

Mr. Ozbek stated they did not hire a Deputy Director. He believes Mr. Malinowski is referring to the Interim Director. The Deputy Director was already a position, after the reorganization.

Mr. Malinowski inquired why an Interim Director was hired when we still have a Director.

Mr. Brown stated, prior to working at Richland County, one of the things that had already been a good process to establish, for a private or public sector organization, is a line of succession. Specifically, to allow individuals to have a successful transition that will not negatively impact the operation of the organization. If you have staff that are currently your #2, or your projected #2, then what you want to begin to do is, if they have not been handling #1 decisions, is to allow them to handle #1 decisions under the auspicious of having direct contact, so that way the organization does not fail and you can make a good assessment if the interim will indeed be a good #1. He does not know if that is what Richland County did, but he would hope that it is a part of a larger succession

plan that Richland County was implementing. That is not something that he is unfamiliar with, and he would not be concerned if that was the intent.

Mr. Malinowski stated the Director of Public Works position states that you must possess designation as a registered Professional Engineer in South Carolina. Yet, the advertisement for the Director of Public Works, as posted by the HR Department does not list that particular qualification. He would like this looked into. In addition, he has some questions about the “proposed” organizational chart for the Transportation Department.

20. **EXECUTIVE SESSION** – Ms. Kennedy moved, seconded by Ms. Newton, to go into Executive Session.

In Favor: Newton, Kennedy, Dickerson, Livingston and McBride

Opposed: Malinowski, Jackson, Myers Manning and Walker

Present but Not Voting: Terracio

The motion failed to go into Executive Session.

- a. State Election Commission MOU – Mr. Smith stated a proposed MOU from the State Election Commission was presented to Council. The MOU placed certain legal requirements on the County, and required the County to enter into that particular agreement, in order for us to get the new voting system. At that point, Council directed him to see whether or not there were any differences that we could go back to the State Election, and the Richland County Election Commission, to discuss and come back with something that we thought was more workable. The document, in front of you, is the document that came out of the discussions. If you take a look at Section (b), that particular section has the County Election Commission assuming all of those responsibilities, based on the initial version. The Election Commission would assume title and ownership of the machines, and not Council. They would also contract with the vendor for maintenance. He has had a conversation with the attorney for the State Election Commission. They have no problem with this version. He has forwarded this version to Thad Hall and asked him to share it with the Election Commission to see if they had any concerns with it. He has not gotten a response, as of today’s meeting, as to whether or not the Election Commission has met, and if this version has been shared with them. He would request that Council approve this, subject to the Richland County Election Commission agreeing to this version, and authorizing the appropriate County person to execute the document. If you recall, there was a particular delivery date for the machines. We are going to be gone for a while before we meet again. If the Election Commission meets and decides that this version is something they can live with, then we could get to the business of executing the agreement and getting the machines delivered.

Ms. Myers inquired if Mr. Smith is in receipt of the letter Council received from the Election Commission.

Mr. Smith responded that he is not.

Ms. Myers requested Mr. Smith be given a copy of this letter to make sure nothing in the letter is inconsistent with what he is recommending.

Ms. Newton stated the previous version had significant liability, on the part of the County, for things that were not particularly under our purview. It seems those have been removed. From Mr. Smith’s

perspective, are there any areas that are still concerning, or a potential liability, that he want to direct Council's attention to.

Mr. Smith stated the part that he would direct their attention to would be p. 2, paragraph 3, which restates the County's obligation to appropriate the funds. If, for some reason, the funds are not appropriated, then it talks about continuing the contract, and so forth.

Mr. Malinowski inquired as to who purchased the machines and provided them to the Election Commission.

Mr. Smith stated he did have a discussion with the Director. It is his understanding that some of the machines may have been purchased through the State, and the County may have purchased some of the machines.

Mr. Malinowski stated he is wondering at the fact that we are supposed to turn them over to the vendor for disposal, and exactly what kind of money may the vendor be getting out of these machines. If these were funds that were Richland County taxpayer funds, then the County should receive some remuneration on this. After all, the County had no say in what company was being contracted with and what machines were going to be used.

Mr. Smith stated he had spoken with the Director of Elections and Voter Registration if there is a municipality or another county in the United States that could benefit from the machines, and whether they could be sold to recoup the funds. The Director did not have an answer to the question, or if there was a plan to take the machines to some other jurisdictions.

Ms. Myers stated #3, 4 and 5 seem to suggest that the Election Commission will have responsibility and control over the machines and they will be responsible for the storage and security measures. She noted the letter she passed to Mr. Smith specifically speaks to those items, and attaches a nearly \$400,000 line item to it.

Mr. Smith stated the Director told him that they were looking at placing these machines in "cage-like" security area. The operational side of places those machines and getting the appropriate contractor would be on the Election Commission. On the County-side, the issue would be appropriating the funds for that purpose.

Ms. Myers stated the Election Commission is requesting a new building, the cages and for rental assistance with delivery of the machines. She would suggest move on buying the machines and take up the other pieces at another time, which will allow Mr. Smith time to acquire the additional information.

Mr. Smith stated the letter from the State Election Commission suggested that all (3) parties had to execute the agreement before the machines were delivered.

Mr. Terry Graham, Interim Elections and Voter Registration Director, stated they will not receive the machines until the agreement is executed. They were supposed to have received the machines two weeks ago. Because they do not have the executed agreement it is holding up receipt of the machines, as well as, the required training. The Election Commission is still in discussions about the cages. They may have to take a step back from that, but from a security standpoint they were looking at the cages because it is more secure to take them to the precincts at one time versus the clerk's trying to carry them to the polls themselves. We are trying to make sure the voters get back

a sense of security. He stated it is his understanding that Richland County did not purchase the machines. They anticipate receiving 1,076 – 1,126 machines.

Mr. Malinowski inquired as to what the cages were.

Mr. Graham stated the cage would hold the machines, printer and make the transport of the machines easier.

Mr. Brown stated the cages are designed to keep all of the equipment together. As you transport items out to the voting site, then everything is together. When the equipment is returned, it is returned uniform, so the points of breakdown become less from a security standpoint.

Mr. Livingston stated, for clarification, the recommendation from Mr. Smith was to move forward on adopting the MOU, contingent upon the Election Commission also moving forward and executing the MOU.

Ms. Myers moved, seconded by Mr. Jackson, to accept the recommendation of Mr. Smith and direct him to continue having conversations with the Election Commission to ensure Council is kept appraise and any changes that need to be made.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Manning, Walker, Dickerson, Livingston and McBride

The vote in favor was unanimous.

- b. SC Department of Revenue Letter – Mr. Livingston stated he received a letter from the Department of Revenue stating the audit was being held up because they did not get information they needed from the COMET. He had been in contact with the COMET Director and their attorney. The COMET responded that they had provided all the requested information.

Mr. Smith provided a copy of the letter the DOR and the COMET's attorney to full Council. He stated he spoke with the DOR Director and he believes they have received all of the requested information from the COMET, but they have not had an opportunity to review the information to verify that.

Ms. Myers noted, for the public, the letter from the COMET states they provided the financial information, and all of its expenditures and general ledgers, for the last (3) years to DOR.

Mr. Manning moved, seconded by Mr. Malinowski, to accept this as information.

In Favor: Terracio, Malinowski, Newton, Kennedy, Manning, Walker, Dickerson and Livingston

Present but Not Voting: Jackson, Myers and McBride

The vote in favor was unanimous.

- c. Cherry Bekaert Letter – Mr. Livingston stated, you may recall, we requested the County Attorney to draft a letter in response to Cherry Bekaert on why we cannot get the information we are seeking. The draft letter was forwarded to Councilmembers for review. He believes one Councilmember did respond to the letter. He is requesting permission to proceed with forwarding the letter to Cherry Bekaert.

Ms. Myers inquired if our contract with the PDT allows us to request receipts, documents, etc. to all Penny expenditures.

Mr. Smith responded in the affirmative.

Ms. Myers inquired what precludes us from reciting that portion of the contract, and saying to the PDT to turn over all this information to us within "X" period of time, and forget about going through Cherry Bekaert, who is a third-party. Why can we not get it directly from the PDT, who is contractually obligated to provide it to the County.

Mr. Smith stated he does not believe there is anything precluding us from doing it. He stated, historically, when we have asked for information, we have not gotten it. There is specific information that we are looking for, which formed the basis of Cherry Bekaert's findings and conclusions. If we make a request of the PDT, he is not sure we know what it is we are going to ask them for.

Mr. Jackson stated, during Cherry Bekaert's presentation to Council, he recalls raising an issue regarding the change order, one of the items referenced in the presentation. Cherry Bekaert said, on the floor of this facility, that they were assured they had the documentation that would respond, in the affirmative, to the statement they made. Since that time, that has not materialized. He lost confidence in that report, made by them, when that assertion was made without any supporting documentation to back it up.

Ms. Dickerson stated this item is constantly before us, and we have asked for this information numerous time. The PDT is under contract with us. We provide them the money. If we request the receipts to show how the money was spent, and we are told they are not going to provide them, she has a serious problem with that. This is totally unacceptable to her. This is why we are where we are today because we cannot get adequate information, when we ask for it.

Mr. Livingston stated Council directed the County Attorney to draft a letter to forward to Cherry Bekaert. That letter was sent out to Councilmembers, and because he did not get feedback but from one Councilmember, he simply wanted to ensure the other Councilmembers were okay with the letter, prior to it being sent.

Ms. Myers stated she understands Mr. Livingston's question, but the question goes to source documents that are not held by the audit firm. The documents are held by the PDT, and the audit firm is a middleman. She understands Cherry Bekaert requested some of these documents from the PDT. The audit firm may have the documents, but the PDT has them too, and we do not have to sign a release to get them from the PDT.

Ms. Myers moved, seconded by Ms. Dickerson, to request the PDT to provide copies of all change orders that have been executed, and acted upon by the PDT, and all paid receipts that have been executed by the PDT, to this body by August 31<sup>st</sup>. The documents belong to Richland County and the citizens of Richland County have a right to the information.

Mr. Livingston stated, right now, he wants a motion in regards to the Cherry Bekaert letter.

Ms. Myers moved, seconded by Ms. Dickerson, to table the letter.

Ms. Newton requested a copy of the letter to review.

Ms. McBride stated, for clarification, the letter is to get the questions answered that were raised.

Mr. Smith stated the purpose of the letter was to respond to Cherry Bekaert's letter dated July 5<sup>th</sup>, wherein they indicated that in order for the County to get this information we would have to agree to certain stipulations. One of them being, the County will not use the information obtained from their review for any other purpose. Council will not comment orally, or in writing, to anyone as a result of our review. Their audit was engaged and conformed in accordance with the general accepted auditing standards. We would not provide any expert testimony or litigation support services, except an engagement to comment on issues relating to the quality of their audit engagement. We accept sole responsibility for the nature, timing and extent of our work performed, and the conclusions reached related to the June 30, 2017 financial statements of the joint venture.

Mr. Jackson inquired about the cost of the audit.

Ms. Myers inquired as to whom the requested documents originate with.

Mr. Smith stated he does not know where the documents originate.

Ms. Myers inquired where Cherry Bekaert get documents to do an audit.

Mr. Smith stated he is assuming they got some of the documents from the PDT, and potentially the PDT subcontractors.

Ms. Myers inquired if the change orders and documents that she specifically questioned Cherry Bekaert about would have come from the PDT.

Mr. Smith stated he believes the documents would either come from the PDT or through the PDT, by way of a subcontractor. Since we have not seen them, it is difficult to say.

Ms. Myers stated her point is that they are not Cherry Bekaert documents.

Mr. Smith stated the work product and the report, itself, is there. The documents, which underlie and support the conclusions, would be the documents that came from either the PDT or a vendor that worked with the PDT.

Ms. Myers inquired if Cherry Bekaert would be described as a middleman.

Mr. Smith stated he would describe Cherry Bekaert as a vendor that we hired to do a job.

Ms. Myers stated, for clarification, Cherry Bekaert is collecting information from our contractor. Our contractor is obligated to give us these documents, without restriction on use.

Mr. Smith stated he is not looking at the contract, but his recollection is that the PDT is required to either give us the documents or make the documents available to us upon request.

Mr. Livingston stated his reason for wanting to send a letter is that he is looking for more than just change orders. With an audit, you are looking at reasons and rationale for their conclusions. Otherwise, there is not a need to do an audit. If you did not need an audit, you could just request everybody you are dealing with to provide their records.

Ms. Newton stated we appear to be having a binary discussion. On the one hand, Ms. Myers made a motion to table the Cherry Bekaert. The motion that Ms. Myers made previously was that we request the documents directly from the PDT because those are in fact our documents. The point, that Mr. Livingston made, is that the reason we want this information from Cherry Bekaert is because you want their interpretation, and analysis, of the information that they have. Up until this point, they have not been forthcoming providing that. She suggested pursuing both paths. We can send the letter to Cherry Bekaert explaining our legal rationale, while we simultaneously request the same information from the PDT because all of their files and records are ours. This is the opportunity for us to get them, so they become a part of our permanent file. When the PDT dissolves, we want to make sure Richland County has all the documents that belong to Richland County.

Ms. Newton made a substitute motion, seconded by Ms. Kennedy, to send the letter to Cherry Bekaert and simultaneously request the information from the PDT.

Mr. Smith stated, several months ago, he sent a letter to the PDT's attorney about the retention of the documents. That was specifically for the purpose of the transition. Where we are, in terms of getting the information, as part of the transition, he does not know. That is an operational question. We may be in the process of doing this.

Ms. Newton stated from her perspective that would not prevent her motion from going forward. All we are saying is these documents belong to us; let us make sure we have them. If they come back and say they have already given us the documents, there is no conflict.

Ms. Dickerson inquired how she can be assured about how Cherry Bekaert came to the conclusion they came to. They need to be able to line up each document with their audit.

Ms. Myers withdrew her motion to table the letter. She noted that we could go back and forth, with Cherry Bekaert, with letters for the next 6 months, trying to get their audit information, but the PDT will be dead in 6 months.

Ms. Myers moved, seconded by Ms. Dickerson, to call for the question.

Ms. Dickerson offered a friendly amendment to have the requested information (i.e. change orders, general ledgers, including expenditures) provided by August 31, 2019.

Ms. Myers suggested to have the additional information provided by September 15, 2019.

Mr. Jackson moved, seconded by Mr. Malinowski, to divide the question.

Mr. Jackson stated the reason he requested to divide the question is that Mr. Smith indicated that he sent a letter asking for the very same thing that we are about to vote on, and he does not know the status of the request. Rather than sending a second letter, asking for the same thing within a (3) week time period, it might be helpful to find out the status of the information being gathered.

Mr. Smith stated the letter he sent was basically telling the PDT their obligation, under the contract, to retain the information for a certain period of time.

Mr. Malinowski suggested, in addition to the change orders, to have the PDT provide who approved the change orders.

In Favor: Terracio, Jackson, Livingston and McBride

Opposed: Malinowski, Newton, Myers, Walker, and Dickerson

The motion to divide the question failed.

Mr. Walker inquired if Mr. Smith his interpretation of the word “documents” would include email correspondence associated with this project.

Mr. Smith stated if the emails related to the program, then yes. He believes the languages says, “any and all documents related to the program” so he would think that includes correspondence.

Mr. Jackson inquired about which year the Cherry Bekaert audit covers.

Mr. Smith stated it is for 2017.

Mr. Jackson inquired if the expenditures we are requesting are for that same period, or for a greater period of time.

Mr. Smith stated his interpretation of the motion was that we are asking for all information related to the program, and is not limited to the timeframe of the audit.

Ms. Myers inquired if the motion includes Mr. Malinowski’s clarification that we would be asking for change orders, and who approved them.

Mr. Smith stated we are entitled to documents. If the documents themselves reflect who approved it that is fine, but it does not require them to answer questions.

In Favor: Terracio, Malinowski, Newton, Myers, Walker, Kennedy, Dickerson, Livingston and McBride

Opposed: Jackson

The vote was in favor.

Ms. Dickerson moved, seconded by Mr. Walker, to reconsider this item.

In Favor: Jackson and Livingston

Opposed: Terracio, Malinowski, Newton, Myers, Walker, Kennedy, Dickerson and McBride

The motion for reconsideration failed.

Mr. Smith stated, early this morning, they got a request from a member of the Legislative Delegation for copies of the County’s audit for the last (3) years, and copies of the Cherry Bekaert audit of the Penny for the last (3) years. Of course, the information related to the County’s audit is on the website, and he was informed of that. The request was forwarded to Mr. Brown and his staff is working on gathering the information. In addition, he has requested additional information related to an email that was sent by Mr. Seals in August 2017, which related to another matter that Cherry Bekaert was engaged to do. However, there is no written report related to that information.

Special Called Meeting

August 1, 2019

23



21. **MOTION PERIOD**

- a. A Resolution Honoring Judge Mel Maurer on the occasion of his retirement from Richland County – Ms. Dickerson moved, seconded by Ms. Myers, to adopt the resolution.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Dickerson and Livingston

Present but Not Voting: McBride

The vote in favor was unanimous.

- b. FY20 – District 10 Hospitality Tax Allocations [MYERS] – Ms. Dickerson moved, seconded by Mr. Malinowski, to approve this item.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

Present but Not Voting: Walker

Mr. Malinowski moved, seconded by Ms. Dickerson, to reconsider this item.

Opposed: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

Present but not Voting: Walker

The motion for reconsideration failed.

- c. FY20 – District 3 Hospitality Tax Allocations [McBRIDE] – Ms. Dickerson moved, seconded by Mr. Malinowski, to approve this item.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

Present but Not Voting: Walker

Mr. Malinowski moved, seconded by Ms. Dickerson, to reconsider this item.

Opposed: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Dickerson, Livingston and McBride

Present but not Voting: Walker

The motion for reconsideration failed.

22. **ADJOURNMENT** – The meeting adjourned at approximately 9:21 PM.



## Richland County Council

SPECIAL CALLED MEETING  
August 1, 2019 – 5:00 PM  
Council Chambers  
2020 Hampton Street, Columbia, SC 29204

**COUNCIL MEMBERS PRESENT:** Paul Livingston, Chair; Dalhi Myers, Calvin “Chip” Jackson, Gwen Kennedy, Bill Malinowski, Jim Manning (via telephone), Yvonne McBride, Chakisse Newton, Allison Terracio, and Joe Walker

**OTHERS PRESENT:** Michelle Onley, Kim Williams-Roberts, Donny Phipps, Ashiya Myers, Larry Smith, Ashley Powell, Leonardo Brown, Pam Davis, Brad Farrar and Geo Price

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 5:00 PM.
2. **ADOPTION OF THE AGENDA** – The agenda was adopted unanimously.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Walker, Livingston and Manning

Present but Not Voting: Kennedy

3. **APPEAL OF BUSINESS LICENSE REVOCATION: LAROICE, LLC** – Mr. Smith stated his office has been informed by the parties involved in this matter: the Sheriff’s Office, the Business Service Center Director and the County Administrator, that they have a proposed resolution to this issue they would like for Council to entertain, and put on the record. It is his understanding that this agreement will subsequently be reduced to writing.

Major Polis stated he has spoken with Taylor Bell, who is representing the owners of Laroice. They have agreed that Laroice has willing to surrender their business license and all alcohol licenses to the DOR and Business Service Center. They will also put in writing that Laroice, LLC has been dissolved, and will close permanently. The Sheriff’s Office believe this is an effective measure to the problems they have been having at Laroice.

Mr. Bell stated he is in agreement with Major Polis. He requested that this be held in abeyance until it can be reduced to writing.

Major Polis stated for the record the padlocks will stay in place until they receive written confirmation, and all obligations have been met.

Mr. Malinowski stated, in the ordinance, it states that in all cases of emergency abatement, regardless of any determination pursuant to Subsection 3, “there shall be an automatic review of the License Official’s determination by the Richland County County Council (“Council”) within seven (7) calendar days of that determination, or as soon thereafter as is practical, without the need for any party to request such review.” Based upon that, are we allowed to accept such a compromise.

Mr. Smith stated he believes the review can be in whatever form you elect for it to be in. He does not think that it is required that you necessarily have to go through all of the information that has been presented, if, in

fact, the parties themselves have indicated they have come to an amenable resolution, that also achieves the goal and purpose of the ordinance, which is the abatement of the nuisance.

Ms. McBride inquired if this review fulfills the requirements of ordinance.

Mr. Smith stated, at this point, what Mr. Bell has requested is a continuance of the matter. It does not necessarily mean there will not be a review. He has requested a continuance to allow them to take the agreement, that they have put on the record, and put it in writing. At that point, Council can review that, if they wish, to determine that it has met the purpose and intent of the ordinance, which is to abate the nuisance.

Mr. Malinowski moved, seconded by Ms. Myers, to approve a continuance of this matter, pending the Richland County Sheriff's Department coordinating with the County Administrator to bring this back to Council after all of the discussions have taken place.

In Favor: Terracio, Malinowski, Jackson, Newton, Myers, Kennedy, Walker, Livingston and McBride

The vote in favor was unanimous.

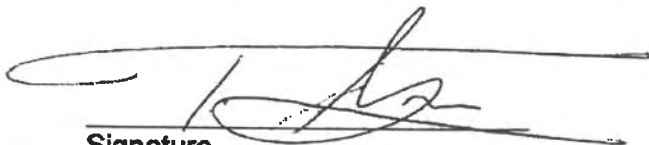
4. **ADJOURNMENT** – The meeting adjourned at approximately 5:09 PM

**Agreement to Surrender Richland County Business License & Alcohol Beverage Licenses**

1. This agreement is between Laroice, LLC (located at 119 Carrie Anderson Road Columbia, South Carolina 29203) and the Richland County Sheriff's Department (5623 Two Notch Road Columbia, South Carolina 29223).
2. Laroice, LLC through the personal representative of Mr. Leroy Green's estate hereby agrees to voluntarily surrender the Richland County Business License previously issued to Mr. Leroy Green for Laroice, LLC.
3. Furthermore, Laroice, LLC through the personal representative of Mr. Leroy Green's estate agrees to voluntarily surrender the two Alcohol Beverage License (Business Liquor by the Drink: 320144933-PLB and On Premise Beer & Wine: 320144933-PBW) previously issued to Mr. Leroy Green on September 1, 2018 and set to expire on August 31, 2020 for Laroice, LLC.

Laroice LLC will surrender the physical Liquor by the Drink License and Beer and Wine Permit to the Department of Revenue located at 300A Outlet Point Blvd, Columbia, South Carolina 29210 before Friday, August 16, 2019 at 5:00p.m.

4. The estate of Leroy Green agrees not to allow the property located at 119 Carrie Anderson Road, Richland County to be operated without proper licensure and in violation of any county ordinance or state law.
5. This agreement by Laroice, LLC through the personal representative of Mr. Leroy Green's estate is in consideration for the Richland County Sheriff's Department's and Richland County foregoing any relief under the public nuisance ordinances in Richland County Code of Ordinances Chapter 18, Section 7.
6. This written agreement is effective upon signature of all parties to the agreement.



Signature  
**Tina Green**  
Personal Representative of Mr. Leroy Green's Estate

August 15<sup>th</sup>, 2019  
Date



Signature  
**Leon Lott, Sheriff**  
Richland County, South Carolina

8/16/19  
Date

## Richland County Council Request for Action

**Subject:**

19-026MA  
Paul Elias  
M-1 to HI (15 Acres)  
1700 Longwood Road  
TMS # R16100-02-02, 16 (Portion) & 21 (Portion)

**Notes:**

First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading:  
Public Hearing: July 23, 2019

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-19HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R16100-02-02, 16 (PORTION OF), AND 21 (PORTION OF) FROM LIGHT INDUSTRIAL DISTRICT (M-1) TO HEAVY INDUSTRIAL DISTRICT (HI); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R16100-02-02, 16 (Portion of), and 21 (Portion of) from Light Industrial District (M-1) to Heavy Industrial District (HI).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2019.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Paul Livingston, Chair

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

\_\_\_\_\_  
Michelle M. Onley  
Deputy Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

Public Hearing: July 23, 2019  
First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading: September 10, 2019

## Richland County Council Request for Action

**Subject:**

19-029MA  
John Sells  
OI to RS-MD (.6 Acres)  
1323 Means Avenue  
TMS # R07307-05-07

**Notes:**

First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading:  
Public Hearing: July 23, 2019

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-19HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R07307-05-07 FROM OFFICE AND INSTITUTIONAL DISTRICT (OI) TO RESIDENTIAL SINGLE-FAMILY MEDIUM DISTRICT (RS-MD); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R07307-05-07 from Office and Institutional District (OI) to Residential Single-Family Medium District (RS-MD).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2019.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Paul Livingston, Chair

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

\_\_\_\_\_  
Michelle M. Onley  
Deputy Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

Public Hearing: July 23, 2019  
First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading: September 10, 2019



## Richland County Council Request for Action

**Subject:**

19-030MA  
Madison Pickrel  
RU to RS-LD (65.41 Acres)  
230-258 Sand Farms Trail  
TMS # R20400-01-05, 06, 07, 08, 14 & 15

**Notes:**

First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading:  
Public Hearing: July 23, 2019

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-19HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R20400-01-05, 06, 07, 08, 14, and 15 FROM RURAL DISTRICT (RU) TO RESIDENTIAL SINGLE-FAMILY LOW DISTRICT (RS-LD); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R20400-01-05, 06, 07, 08, 14, and 15 from Rural District (RU) to Residential Single-Family Low District (RS-LD).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2019.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Paul Livingston, Chair

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

\_\_\_\_\_  
Michelle M. Onley  
Deputy Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

Public Hearing: July 23, 2019  
First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading: September 10, 2019

## Richland County Council Request for Action

**Subject:**

19-031MA  
Mildred B. Taylor  
M-1 to RS-MD (7.21 Acres)  
1216 Killian Loop  
TMS # R14700-06-05 & R14781-04-15

**Notes:**

First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading:  
Public Hearing: July 23, 2019

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-19HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R14700-06-05 AND R14781-04-15 FROM LIGHT INDUSTRIAL DISTRICT (M-1) TO RESIDENTIAL SINGLE-FAMILY MEDIUM DISTRICT (RS-MD); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R14700-06-05 and R14781-04-15 from Light Industrial District (M-1) to Residential Single-Family Medium District (RS-MD).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2019.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Paul Livingston, Chair

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

\_\_\_\_\_  
Michelle M. Onley  
Deputy Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

Public Hearing: July 23, 2019  
First Reading: July 23, 2019  
Second Reading: August 1, 2019  
Third Reading: September 10, 2019

## Richland County Council Request for Action

**Subject:**

Providing for an installment plan of finance for certain economic development projects; identifying certain sources of revenue expected to be used by the County to make installment payments, including the proceeds of General Obligation Bonds, in one or more series, tax-exempt or taxable, in an amount not to exceed \$5,000,000; authorizing the commitment of certain County assets to the installment plan of finance; and other related matters

**Notes:**

First Reading: July 9, 2019

Second Reading: August 1, 2019

Third Reading:

Public Hearing:

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**RICHLAND COUNTY, SOUTH CAROLINA**

**ORDINANCE NO. \_\_\_\_\_**

**PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE FOR CERTAIN ECONOMIC DEVELOPMENT PROJECTS; IDENTIFYING CERTAIN SOURCES OF REVENUE EXPECTED TO BE USED BY THE COUNTY TO MAKE INSTALLMENT PAYMENTS, INCLUDING THE PROCEEDS OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$5,000,000; AUTHORIZING THE COMMITMENT OF CERTAIN COUNTY ASSETS TO THE INSTALLMENT PLAN OF FINANCE; AND OTHER RELATED MATTERS.**

**ADOPTED: SEPTEMBER 10, 2019**

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## AN ORDINANCE

**PROVIDING FOR AN INSTALLMENT PLAN OF FINANCE FOR CERTAIN ECONOMIC DEVELOPMENT PROJECTS; IDENTIFYING CERTAIN SOURCES OF REVENUE EXPECTED TO BE USED BY THE COUNTY TO MAKE INSTALLMENT PAYMENTS, INCLUDING THE PROCEEDS OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$5,000,000; AUTHORIZING THE COMMITMENT OF CERTAIN COUNTY ASSETS TO THE INSTALLMENT PLAN OF FINANCE; AND OTHER RELATED MATTERS.**

### THE RICHLAND COUNTY, SOUTH CAROLINA, COUNTY COUNCIL ORDAINS:

**SECTION 1. Findings.** The County Council (“County Council”) of the Richland County, South Carolina (“County”), finds and determines that:

(a) It is necessary and desirable to acquire, improve, equip certain real property on which the County will develop a commercial and industrial park (“Economic Development Project”) in order for the County to carry out its governmental purposes and for the benefit and enjoyment of the citizens of the County;

(b) The County desires to utilize an installment plan of finance (“Installment Plan”) to finance the Economic Development Project, whereby the County and a South Carolina nonprofit corporation, the sole purpose of which is to support the governmental mission of the County (“Corporation”), would enter into certain agreements pursuant to which the County and the Corporation would agree as follows: (i) the County would lease all or a portion of certain real property (“2019 Real Property”), as more particularly described on Exhibit C, and convey any improvements thereon (“2019 Facilities”) to the Corporation; (ii) the Corporation would provide funds for the acquisition, improvement and equipping of the Economic Development Project; and (iii) the County would make installment payments (“Installment Payments”) to the Corporation to acquire undivided interests in the 2019 Facilities;

(c) The County may use any available revenue source to make the Installment Payments to the Corporation, including revenues received from property located in the I-77 Corridor Regional Industrial Park (“Park”) the County has developed with Fairfield County or the proceeds of general obligation bonds issued by the County;

(d) To provide funds to pay for the costs of the Economic Development Project, the Corporation would issue its installment purchase revenue bonds in an amount not expected to exceed \$28,000,000 (“IPRBs”) pursuant to a Trust Agreement (“Trust Agreement”) between the Corporation and U.S. Bank National Association, as trustee (“Trustee”);

(e) The Corporation would use the Installment Payments received from the County to make the debt service payments on the IPRBs and pledge its right to receive the Installment Payments as security for the IPRBs; and

(f) The County desires to (i) authorize the Installment Plan for the Economic Development Project, (ii) identify certain revenues received from property located in the Park to make the Installment Payments, and (iii) authorize the issuance of general obligation bonds, if necessary, to make Installment Payments to the Corporation in order to acquire undivided interest in the 2019 Facilities.



**SECTION 2. *Authorization of the Installment Plan and Execution of Documents.***

(a) The County is authorized to pursue the Installment Plan for the Economic Development Project. The County affirms and ratifies that the Economic Development Project is necessary and desirable for the County to carry out its governmental purpose and is for the benefit and well-being of the citizens of the County. The County is authorized to enter into and carry out its obligations under the Base Lease and Conveyance Agreement and the Installment Purchase and Use Agreement, the forms of which are attached to this Ordinance as Exhibits A and B, respectively, and the form, terms and provisions of each are approved and authorized as if set forth in this Ordinance in their entirety with such material changes as may be approved by Council, and all other changes as may be approved by the Chair of the County Council (“Chair”), the County Administrator or their designees (collectively, the “Authorized Representative”):

(i) *Base Lease and Conveyance Agreement*: Pursuant to the Base Lease and Conveyance Agreement (“Base Lease”), the County will (A) lease the 2019 Real Property to the Corporation for a term of not to exceed 30 years, and (B) convey to the Corporation the 2019 Facilities. The Corporation will prepay the County rent for the 2019 Real Property to ensure, in an event of non-appropriation by the County, the Corporation’s right to occupy and use all or a portion of the 2019 Facilities for the entire term of the Base Lease.

(ii) *Installment Purchase and Use Agreement*. Pursuant to the Installment Purchase and Use Agreement (“Purchase and Use Agreement”), the Corporation will agree, among other things, to (A) use the proceeds of its IPRBs for the acquisition, improvement and equipping of the Economic Development Project, and (B) sell the 2019 Facilities to the County. The County will agree to (X) make annual Installment Payments, subject to the County’s right to not appropriate funds therefor, to the Corporation for (I) the acquisition of undivided interests in the 2019 Facilities, and (II) the use and occupancy of the 2019 Facilities to the extent not owned by the County, and (Y) maintain and operate the 2019 Facilities, including purchasing and maintaining insurance thereon.

(b) The Authorized Representative is authorized, empowered and directed to execute, acknowledge and deliver the Base Lease and the Purchase and Use Agreement to the Corporation. The final terms of the Base Lease and the Purchase and Use Agreement shall accomplish the Installment Plan and shall not be inconsistent with or contrary to such purposes. The execution of the Base Lease and the Purchase and Use Agreement shall constitute conclusive evidence of the approval by the Authorized Representative of the final terms of the Base Lease and the Purchase and Use Agreement.

(c) The Authorized Representative is further authorized to take such actions and make such other determinations as may be necessary or appropriate to carry out the Installment Plan and is directed and empowered to consult with the County Attorney, Bond Counsel (as defined herein) or the Financial Advisor (as defined herein) as the Authorized Representative determines, in his or her sole discretion, may be necessary or advisable regarding the Installment Plan.

**SECTION 3. *Approval of the Corporation and the Issuance and Sale of the Corporation’s IPRBs.***

(a) County Council acknowledges, approves and consents to:

(i) the organization of the Corporation for the purpose of supporting the governmental mission of the County and alleviating the burdens of the County in carrying out its governmental

purposes and providing for the benefit and well-being of its citizens and the governance by the Corporation of a self-perpetuating board of directors;

(ii) the Corporation's issuance, sale and delivery of its IPRBs in one or more series, taxable or tax-exempt, in an amount or amounts to be set pursuant to a resolution to be adopted by the board of directors of the Corporation, to provide funds for, among other things, (A) the costs of the Economic Development Projects, (B) capitalized interest and (C) the costs of issuing the IPRBs;

(iii) the issuance of the IPRBs pursuant to the Trust Agreement and the pledge of, among other things, the Installment Payments, for the payment of the debt service on the IPRBs; and

(iv) the hiring by the Corporation of certain professionals as may be necessary to facilitate the Installment Plan and the issuance of the IPRBs.

(b) In connection with the issuance and sale of the IPRBs, County Council authorizes the County to, and acknowledges the Corporation will:

(i) prepare and distribute, or caused to be prepared and distributed, a preliminary Official Statement in connection with the offer and sale of the IPRBs, which will include financial and operating data regarding the County and information regarding the Economic Development Project and the Installment Plan;

(ii) negotiate and execute a bond purchase agreement ("Bond Purchase Agreement") with the investment bank selected to underwrite the IPRBs in order to evidence the terms and conditions of the sale of the IPRBs;

(iii) deliver such documents, certificates, and other items as may be requested pursuant to the terms of the Bond Purchase Agreement; and

(iv) prepare, distribute and execute a final Official Statement.

#### **SECTION 4. *Identification of Sources of Revenue to Make Installment Payments.***

(a) The Installment Payments will be a current expense of the County. The County may utilize any available source of revenues to make Installment Payments. Subject to the County's right to not appropriate funds to make Installment Payments in any fiscal year, County Council will determine in each year the source or sources of revenues to be utilized to make the Installment Payments.

(b) County Council identifies and acknowledges that the County may use moneys in the Richland County Industrial Park Fund ("Fund") as a source of revenues to make Installment Payments to the Corporation. To the extent moneys are expended from the Fund for Installment Payments, such expenditures are deemed to be "expenditures made to attract to and locate particular property in the Park" as described in the "Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park" dated as of September 1, 2018, as may be amended or supplemented including as set forth herein ("Master Agreement"), and shall be reimbursed as set forth in Section 3.02 of the Master Agreement prior to any sharing or distribution of revenues from a taxpayer's real or personal property located at the Economic Development Project and within the Park.

(c) County Council identifies and acknowledges that the County may use revenues received from new or existing properties located in the Park ("Park Revenues") as a source of revenues to make Installment

Payments. Park Revenues are, pursuant to Article VIII, Section 13 of the South Carolina Constitution, 1895, as amended, payments-in-lieu of taxes and the County may utilize such payments as a source of revenue to make the Installment Payments to the Corporation.

(d) If the County chooses to use the Park Revenues to make Installment Payments, the County will by subsequent resolution amend Sections 1.02(c) and Section 3.03(b) of the Master Agreement pursuant to the authorization provided therein.

#### **SECTION 5. *Real Property Considerations.***

(a) County Council authorizes the lease of the 2019 Property and the transfer of the 2019 Facilities to the Corporation pursuant to the Base Lease. County Council further authorizes, subject to the County's right to not appropriate funds therefor, the acquisition of the 2019 Facilities from the Corporation pursuant to the Purchase and Use Agreement. The County will accept the 2019 Facilities at such time as the IPRBs are retired.

(b) County Council acknowledges that the Corporation, as security for the IPRBs, may pledge and mortgage its interest in the 2019 Facilities and County Council consents to such pledge and mortgage and the preparation and filing of such documents and instruments as may be necessary to create, evidence and perfect the security interest in the 2019 Facilities. The County Council further acknowledges that to the extent the County fails to appropriate funds or issue general obligations bonds to make the Installment Payments, such failure could result in a loss of the right to use or occupy the 2019 Facilities, as the case may be.

(c) County Council authorizes the acquisition of the Economic Development Project and its subsequent sale or transfer to taxpayers desiring to locate in the Economic Development Project.

**SECTION 6. *Authorization and Details of the General Obligation Bonds of the County for Installment Payments.*** Pursuant to Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, ("Constitution") and Title 4, Chapter 15 and Title 11, Chapter 27 of the Code of Laws of South Carolina, 1976, as amended (collectively, "Enabling Act"), the County is authorized to issue, without a referendum, general obligation bonds ("Bonds"), in an amount not to exceed \$5,000,000 outstanding at any time for the purposes of (i) making Installment Payments to the Corporation or (ii) paying the costs of the Economic Development Project. Following adoption by Council of a resolution determining the amount of Bonds to be issued at any one time, the Bonds may be issued in one or more series, taxable or tax-exempt, from time to time with such further designation of each series to identify the year in which such Bonds are issued.

The Bonds may be issued as fully registered bonds; dated the date of their delivery or such other date as may be selected by an Authorized Representative; may be in denominations of \$1,000 or any whole multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest, if any, from their date as may be accepted by an Authorized Representative; and shall mature as determined by an Authorized Representative.

**SECTION 7. *Delegation of Certain Details of the Bonds to the County Administrator.*** County Council expressly delegates to the County Administrator the power to make determinations regarding the Bonds as are necessary or appropriate to make Installment Payments or for any other lawful purpose, including the form of the Bonds. The County Administrator is further directed to consult with the County's bond counsel and financial advisor, if any, in making any such decisions.

**SECTION 8. Registrar/Paying Agent.** Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The County Treasurer's Office or a qualified financial institution shall serve as the Registrar/Paying Agent for the Bonds ("Registrar/Paying Agent") and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

**SECTION 9. Registration and Transfer.** The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name the fully registered Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on the Record Date (as defined herein) and ending on an interest payment date.

**SECTION 10. Record Date.** The County establishes a record date ("Record Date") for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

**SECTION 11. Lost, Stolen, Destroyed or Defaced Bonds.** In case the Bonds shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, new bonds of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute bond shall furnish the County and the Registrar/Paying Agent evidence or proof satisfactory to the County and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar/Paying Agent. Any

duplicate bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate bond is issued.

All expenses necessary for the providing of any duplicate bond shall be borne by the applicant therefor.

#### **SECTION 12. *Book-Entry Only System.***

(a) Notwithstanding anything to the contrary herein, so long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be effected pursuant to rules and procedures established by such securities depository. The initial securities depository for the Bonds will be The Depository Trust Company (“DTC”), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the “Securities Depository.” The Bonds shall be registered in the name of Cede & Co., as the initial securities depository nominee for the Bonds. Cede & Co. and successor securities depository nominees are hereinafter referred to as the “Securities Depository Nominee.”

(b) As long as a book-entry system is in effect for the Bonds, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) if the Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under this ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be taken by the holder of such Bonds, and for all other purposes whatsoever, and the County shall not be affected by any notice to the contrary.

(c) The County shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in the Bonds which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bonds.

(d) The County shall pay all principal, interest and premium, if any, on the Bonds issued under a book-entry system, only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and premium, if any, and interest on such Bonds.

(e) In the event that the County determines that it is in the best interest of the County to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the County shall notify the Securities Depository of such determination. In such event, the County shall appoint a Registrar/Paying Agent which shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with a Registrar/Paying Agent for the delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bonds by the County or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bonds, the County or the Registrar/Paying Agent, as the case may be, shall establish a

record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

**SECTION 13. *Execution of Bonds.*** The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chair and attested by the manual or facsimile signature of the Clerk to County Council under a facsimile of the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication manually executed by the Registrar/Paying Agent in substantially the form set forth herein.

**SECTION 14. *Form of Bonds.*** The Bonds shall be in the form as determined by the County Administrator.

**SECTION 15. *Security for Bonds.*** The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal and interest of the Bonds as it matures and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

**SECTION 16. *Exemption from Taxation.*** Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all State, County, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise fees or taxes.

**SECTION 17. *Sale of Bonds.*** The Bonds may be sold at a public or private sale, as authorized by and in accordance with Section 11-27-40(4) of the Enabling Act, as the County Administrator may determine.

**SECTION 18. *Deposit and Application of Proceeds.*** The proceeds of the Bonds or of Bond Anticipation Notes (“BANs”), as authorized under Section 20 of this Ordinance, when drawn, will be deposited in a bond account fund for the County and shall be expended and made use of as follows:

(a) accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds or BANs; and

(b) the remaining proceeds shall be expended and made use of to defray the cost of issuing the Bonds or BANs and to make Installment Payments. Pending the use of such proceeds, the same shall be invested and reinvested in such investments as are permitted under State law. Earnings on such investments shall be applied either to Installment Payments or, if not so required, to pay principal on the Bonds.

**SECTION 19. *Defeasance.***

(a) If a series of bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such series of bonds. A series of bonds shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If the Registrar/Paying Agent (or, if the County is the Registrar/Paying Agent, a bank or other institution serving in a fiduciary capacity) (“Escrow Agent”) shall hold, at the stated maturities of the

bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If default in the payment of the principal of such series of bonds or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Escrow Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of payment; or

(iii) If the County shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on such series of bonds and prior to the maturity date or dates of such series of bonds, or, if the County shall elect to redeem such series of bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the form of the bonds, on and prior to the redemption date or dates of such series of bonds, as the case may be; or

(iv) If there shall have been deposited with the Escrow Agent either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on such series of bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (a) (i), (ii), (iii), and (iv), in order for this Ordinance to be discharged with respect to a series of bonds, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance with respect to a series of bonds, the Escrow Agent shall continue to be obligated to hold in trust any moneys or investments then held by the Escrow Agent for the payment of the principal of, premium, if any, and interest on, such series of bonds, to pay to the owners of such series of bonds the funds so held by the Escrow Agent as and when payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Escrow Agent to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the performance of the powers and duties under this Ordinance.

(e) Any moneys which at any time shall be deposited with the Escrow Agent by or on behalf of the County for the purpose of paying and discharging any bonds shall be and are assigned, transferred, and set over to the Escrow Agent in trust for the respective holders of such bonds, and the moneys shall be and are irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of such bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Escrow Agent to transfer the funds to the County.

(f) In the event any bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 19(a)(iii) or (iv) is made, the County shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the

bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 19 has been made with the Escrow Agent, (ii) the bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are to be available for the payment of the principal of, and premium, if any, and interest on, the bonds, and (iii) stating whether the County has irrevocably waived any rights to redeem the bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The County covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

**SECTION 20. Authority to Issue Bond Anticipation Notes.** If the County Administrator should determine that issuance of BANs pursuant to Chapter 17 of Title 11 of the Code of Laws of South Carolina, 1976, as amended (“BAN Act”), rather than the Bonds would result in a substantial savings in interest under prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator is further requested and authorized, following the adoption of a resolution by Council determining the amount of BANs to be issued at any one time, to effect the issuance of one or more series of BANs pursuant to the BAN Act for the purposes as set forth in Section 6 of this Ordinance. If BANs are issued and if, upon the maturity thereof, the County Administrator should determine that further issuance of BANs rather than the Bonds would result in a substantial savings in interest under then prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator is authorized to continue the issuance of BANs until the County Administrator determines to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

**SECTION 21. Details of Bond Anticipation Notes.** Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate negotiated by the County Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Administrator.

(b) The BANs shall be numbered from one upwards for each issue and shall be in the denomination of \$1,000 or any whole multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of a bank designated by the County or, at the option of the County, by the purchaser thereof.

The BANs also may be issued as one or more fully registered “draw-down” style instruments in an aggregate face amount not exceeding the maximum amount permitted hereunder, to a lending institution under terms which permit the balance due under such note or notes to vary according to the actual cash needs of the County, as shall be determined by the County Administrator. In such event, the County may draw upon such note or notes as it needs funds so long as the maximum outstanding balance due under such note or notes does not exceed the aggregate face amount thereof.

(c) The County Administrator is authorized to negotiate or to arrange for a sale of the BANs and to determine the rate of interest to be borne thereby.

(d) The BANs shall be in the form as determined by the County Administrator.



(e) The BANs shall be issued in fully registered or bearer certificated form or a book-entry-only form as specified by the County, or at the option of the County, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the County may execute a new BAN of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the County, and in the case of any lost, stolen or destroyed BAN, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a duplicate BAN, the County may pay the same without surrender thereof. The County may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully-registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the County shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new BAN or BANs of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully-registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the County shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the County may make as provided in paragraph (i), be exchanged for a principal amount of BANs in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully-registered form is exercised, the County shall execute and deliver BANs in accordance with the provisions of such Ordinance. All BANs in fully-registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the County. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully-registered form except that the County may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 22. *Security for Bond Anticipation Notes.*** For the payment of the principal of and interest on the BANs as the same shall fall due, so much of the principal proceeds of the Bonds when issued shall and is directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the County covenants and agrees to effect the issuance of sufficient BANs or bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

**SECTION 23. Tax and Securities Laws Covenants.** (a) The following provisions shall apply in the event the IPRBs or Bonds are issued as tax-exempt obligations for purposes of Section 103 of the Internal Revenue Code of 1954 (“Code”), as amended.

(i) The County covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder or the IPRBs shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs or the IPRBs would have caused the Bonds or BANs or the IPRBs to be “arbitrage bonds,” as defined in the Code, and to that end the County shall comply with all applicable regulations of the Treasury Department previously promulgated under Section 103 of the Code, and any regulations promulgated under the Code so long as the Bonds or BANs and the IPRBs are outstanding.

(ii) The County further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(iii) The County covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(iv) To the extent the County and the Corporation do not issue more than \$10,000,000 of obligations, the interest on which is excludable from the gross income of the holders thereof under the Code (excluding private activity bonds (within the meaning of Section 141(a) of the Code) other than qualified 501(c)(3) bonds (within the meaning of Section 145 of the Code)) during any calendar year, the County designates such obligations, if issued as tax-exempt bonds, as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code.

(b) Pursuant to Section 1-11-85 of the Code of Laws of South Carolina, 1976, in connection with the issuance of the IPRBs or the Bonds, the County covenants that it will file (a) its annual independent audit within 30 days of its receipt, and (b) event-specific information within 30 days of an event adversely affecting more than five percent of its revenue or tax base with a central repository for availability in the secondary bond market.

**SECTION 24. Reimbursement Provisions.** The following provisions shall apply in the event the IPRBs are issued as tax-exempt obligations for purposes of Section 103 of the Internal Revenue Code of 1954, as amended . The County is authorized and has paid or may pay for certain costs and expenditures relating to the Economic Development Project from its general fund or capital project fund, in an amount not exceeding \$[ ], prior to the issuance of the IPRBs or the Bonds (collectively, “Initial Expenditures”). Such Initial Expenditures are (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Treasury Regulation §1-150-2) under general federal income tax principles; or (b) certain *de minimis* or preliminary expenditures satisfying the requirements of Treasury Regulation §1.150-2(f).

The County and the Corporation may agree for the Corporation to repay the County for these Initial Expenditures, the source of such repayment to be the proceeds of the IPRBs, or the County may reimburse itself from the proceeds of the Bonds for the Initial Expenditures. To the extent the Corporation repays the County for the Initial Expenditures from the proceeds of the IPRBs or the County reimburses itself from the proceeds of the Bonds, pursuant to Treasury Regulation §1.150-2, this Ordinance is an official declaration by the County of its intent with respect to the repayment of the Initial Expenditures incurred and paid on or after the date occurring 60 days prior to the date of adoption of this Ordinance, from the proceeds IPRBs.

**SECTION 25. *Further Authorization for Authorized Representatives; Ratification of Prior Acts.*** County Council authorizes each Authorized Representative to negotiate, execute and deliver such other documents, agreements, certificates and instruments and to take such further actions as may be necessary to effect the Installment Plan, the acquisition of the Economic Development Project, including the modification of the scope thereof, the issuance of the IPRBs, and subject to non-appropriation, the payment of Installment Payments to the Corporation, including the issuance of the Bonds therefor, as may be necessary or desirable. Any actions taken by the Authorized Representative prior to the date of this Ordinance in furtherance of the transactions described in this Resolution, including the expenditure of funds and the execution of documents, are hereby approved, ratified and confirmed in all respects.

**SECTION 26. *Publication of Notice of Adoption of Ordinance pursuant to Section 11-27-40, Paragraph 8, of the Code of Laws of South Carolina, 1976, as amended.*** Pursuant to the provisions of Section 11-27-40 of the Code of Laws of South Carolina, 1976, as amended, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

**SECTION 27. *Retention of Bond Counsel and Financial Advisor.*** County Council authorizes and consents to the retention of the law firm of Parker Poe Adams & Bernstein LLP as bond counsel (“Bond Counsel”), and the firm of First Tryon Advisors, as financial advisor (“Financial Advisor”) in connection with the Installment Plan.

County Council further authorizes the Authorized Representative or such other County staff as is normally charged with the hiring of the applicable professionals, to enter into such contractual arrangements, in accordance with the County’s procurement policy, with suppliers of goods and services necessary to effect the Installment Plan, the issuance and sale of the IPRBs, or the sale, execution and delivery of the Bonds as is necessary and desirable.

**SECTION 28. *General Repealer.*** All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bond are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston, Chair  
Richland County Council

*(SEAL)*  
ATTEST:

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Clerk of Council  
Richland County, South Carolina

First Reading: July 9, 2019  
Second Reading: August 1, 2019  
Third Reading: September 10, 2019  
Public Hearing: September 10, 2019

**EXHIBIT A**  
**FORM OF BASE LEASE AND CONVEYANCE AGREEMENT**

**BASE LEASE AND CONVEYANCE AGREEMENT**

**between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**as lessor**

**and**

**RICHLAND FACILITIES CORPORATION**

**as lessee**

**Dated as of: [] 1, 2019**

**ALL RIGHTS, TITLE AND INTEREST OF RICHLAND FACILITIES CORPORATION IN THIS BASE LEASE AND CONVEYANCE AGREEMENT HAVE BEEN ASSIGNED TO [U.S. BANK NATIONAL ASSOCIATION], AS TRUSTEE (“TRUSTEE”), UNDER A TRUST AGREEMENT DATED OF EVEN DATE HERewith (“TRUST AGREEMENT”), AND ARE SUBJECT TO THE SECURITY INTEREST OF THE TRUSTEE.**

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## BASE LEASE AND CONVEYANCE AGREEMENT

**THIS BASE LEASE AND CONVEYANCE AGREEMENT**, dated as of October 1, 2019 (“Base Lease”), is between the Richland County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina, as lessor, and Richland Facilities Corporation (“Corporation”), a nonprofit corporation duly organized under the laws of the State of South Carolina, as lessee.

### WITNESSETH

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31 of Code of Laws of South Carolina 1976, as amended;

WHEREAS, the County is a body politic and corporate and a political subdivision of the State of South Carolina, and is authorized under the provisions of Title 4, Chapter 9, Code of Laws of South Carolina 1976, as amended (“Act”), to enter into this Base Lease;

WHEREAS, pursuant to the terms of this Base Lease and an Installment Purchase and Use Agreement dated of even date herewith (“Purchase and Use Agreement”), between the Corporation and the County, the County desires to lease the 2019 Real Property (as defined in the Purchase and Use Agreement) and convey 2019 Facilities (as defined herein) to the Corporation so that the Corporation may (i) provide funds for the acquisition and construction of the 2019 Projects (as defined in the Purchase and Use Agreement) and (ii) sell and convey the 2019 Facilities to the County;

WHEREAS, the payments to be made under the Purchase and Use Agreement and the rights of the Corporation thereto (except for certain reserved rights as provided therein) are to be assigned to [U.S. Bank National Association], as trustee (“Trustee”), pursuant to the terms of a Trust Agreement dated of even date herewith (“Trust Agreement”), between the Corporation and the Trustee, to secure and provide a source of payment for certain bonds, the proceeds of which are to be used to defray the costs of the 2019 Projects and the cost related to the issuance of bonds under the Trust Agreement; and

WHEREAS, the County desires to enter into this Base Lease to achieve the foregoing purposes.

NOW, THEREFORE, in consideration of the payment of the Base Lease Rent (as hereinafter defined) and the premises and the mutual covenants and agreements herein set forth, the County and the Corporation do hereby covenant and agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

**SECTION 1.1. Definitions of Words and Terms.** Capitalized terms not otherwise defined herein are used either with the meanings provided therefore in the Trust Agreement or the Purchase and Use Agreement or shall have the following meanings, unless some other meaning is plainly intended:

“2019 Facilities” means the improvements located on the 2019 Real Property and any Additional Real Property, all as described in Exhibit B.

“Base Lease Rent” means those items referred to as such in Section 3.4 of this Base Lease.

“Base Lease Term” means the term of this Base Lease which ends on March 1, 2050.

“Board of Directors” means the Board of Directors for Richland Facilities Corporation, as the governing body of the Corporation, and any successor body.

“Corporation” means Richland Facilities Corporation, a nonprofit corporation formed under the laws of the State of South Carolina, and its successors and assigns.

“Corporation Representative” means the person or persons at the time designated to act on behalf of the Corporation in matters relating to this Base Lease, the Purchase and Use Agreement and the Trust Agreement as evidenced by a written certificate furnished to the County and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Corporation by its President or any Vice President. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Corporation Representative.

“Corporation Resolution” means the Resolution adopted by the Board of Directors on [], 2019, authorizing the Corporation’s execution and delivery of this Base Lease, the Purchase and Use Agreement and the Trust Agreement.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the County or the Corporation.

“County Council” means the County Council of the Richland County, South Carolina, as the governing body of the County, and any successor body.

“Event of Default” means (a) with respect to the Purchase and Use Agreement, any Event of Default as defined in Section 8.1 of the Purchase and Use Agreement, and (b) with respect to the Trust Agreement, any Event of Default as defined in Section 7.1 of the Trust Agreement.

“Fiscal Year” means the 12-month period adopted by the County as its fiscal year for financial reporting purposes. Currently, such Fiscal Year for the County begins on July 1 of each year.

“Installment Payments” means those payments required to be made by the County by Sections 4.1, 4.2 and 4.4 of the Purchase and Use Agreement.

“Ordinance” means the Ordinance adopted by the County Council on [], 2019, authorizing the County’s execution and delivery of this Base Lease and the Purchase and Use Agreement and consenting to the Trust Agreement.

“Purchase and Use Agreement” shall mean the Installment Purchase and Use Agreement dated of even date herewith between the Corporation and the County.

“State” means the State of South Carolina.

“Trust Estate” means the Trust Estate described in the Granting Clauses of the Trust Agreement.

“Trustee” means [U.S. Bank National Association], a national banking association chartered under the laws of the United States of America, and its successor or successors and any other trustee which at any time may be substituted in its place pursuant to and at the time serving as trustee under the Trust Agreement.

**SECTION 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

The table of contents hereto and the headings and captions herein are not a part of this document.

**SECTION 1.3. Accounting Terms.** Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by accounting principles generally accepted in the United States as from time to time in effect.

## **ARTICLE II REPRESENTATIONS**

**SECTION 2.1. Representations by the County.** The County represents, warrants and covenants as follows:

(a) The County is a duly constituted body politic and corporate and a political subdivision of the State.

(b) The conveyance of title to the 2019 Facilities and the demise and lease of the 2019 Real Property by the County to the Corporation, as provided in this Base Lease, to allow the Corporation to provide for the construction of the 2019 Projects, and the sale of the 2019 Facilities to the County pursuant to the Purchase and Use Agreement has been undertaken to enable the County to provide suitable governmental, recreational and community facilities in the County.

(c) County Council has full power and authority to adopt the Ordinance and to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(d) Neither the execution and delivery of this Base Lease, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the County is now a party or by which the County is bound.

(e) The County has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the County's interests in the 2019 Real Property and the 2019 Facilities shall be or may be impaired, changed or encumbered in any manner whatsoever, except as permitted by this Base Lease or the Purchase and Use Agreement.

(f) The County is the fee owner of the 2019 Real Property existing on the date hereof. Prior to the conveyance of the 2019 Facilities to the Corporation pursuant to Section 3.1 hereof, any improvements on the 2019 Real Property existing on the date hereof are free and clear of all liens, encumbrances and restrictions (including, without limitation, leases) other than Permitted Encumbrances.

**SECTION 2.2. Representations by the Corporation.** The Corporation represents, warrants and covenants as follows:

(a) The Corporation is a nonprofit corporation duly incorporated under the laws of the State and has corporate power to enter into this Base Lease, the Purchase and Use Agreement and the Trust Agreement. By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Base Lease, the Purchase and Use Agreement and the Trust Agreement.

(b) The execution and delivery of this Base Lease, the Purchase and Use Agreement and the Trust Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(c) The Board of Directors of the Corporation has full power and authority to adopt the Corporation

Resolution and the Corporation has full power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(d) To provide funds to defray the cost of the 2019 Projects, the Corporation will enter into the Trust Agreement pursuant to which it will issue the Series 2019 Bonds payable from and secured by the Installment Payments under the Purchase and Use Agreement.

**ARTICLE III  
LEASE OF THE 2019 REAL PROPERTY  
AND CONVEYANCE OF IMPROVEMENTS**

**SECTION 3.1. Transfer of 2019 Facilities and Lease of the 2019 Real Property.** The County hereby demises and leases to the Corporation and the Corporation hereby leases from the County the 2019 Real Property for the Base Lease Term for the rentals and other consideration set forth in Section 3.4 hereof and in accordance with the provisions of this Base Lease. The County hereby conveys the 2019 Facilities to the Corporation and the Corporation hereby accepts such conveyance from the County. The parties hereto agree to amend Exhibit A to this Base Lease from time to time, as the County acquires new real property (“Additional Real Property”) which should become subject to this Base Lease.

**SECTION 3.2. Purchase of the 2019 Facilities.** Pursuant to the terms of the Purchase and Use Agreement, the Corporation will acquire and construct the 2019 Projects and will convey title to the 2019 Facilities to the County, but subject to the terms of the Trust Agreement and the reservation of certain rights under this Base Lease.

**SECTION 3.3. Assignments, Subleases and Mortgages.** Except as contemplated by the Trust Agreement or permitted by the Purchase and Use Agreement, the Corporation may not (a) mortgage or otherwise encumber, or assign its rights in, the 2019 Real Property or the 2019 Facilities or any portion thereof under this Base Lease, (b) lease, assign, transfer or otherwise dispose of its interest in the 2019 Real Property or the 2019 Facilities or any portion thereof or (c) remove, modify or alter the 2019 Real Property or the 2019 Facilities or any portion thereof, without the consent of the County.

**SECTION 3.4. Rent and Other Consideration.** As and for rental hereunder and in consideration for the leasing of the 2019 Real Property to the Corporation hereunder, the Corporation agrees (i) to pay to the County from the sources identified in Section 5.1 of the Trust Agreement the sum of \$[30.00] as a prepayment of the annual Base Lease Rent of One Dollar per year for periods beginning on each [September 1] and ending on each [August 31] with an initial period beginning [ ], 2019, and ending on [August 31], 2020, and (ii) to fulfill its obligations with respect to the 2019 Facilities as provided in the Purchase and Use Agreement. The payments required hereunder shall be made as provided in Section 5.3(a) of the Trust Agreement.

**SECTION 3.5. Taxes and Insurance.** The County shall pay and have responsibility for all taxes on and insurance of the 2019 Real Property and the 2019 Facilities. All insurance shall provide that the proceeds shall be payable to the County, the Corporation or the Trustee as their interests may appear.

**SECTION 3.6. Granting of Easements, Rights of Way, Releases and Substitutions of Property.** From time to time during the term hereof and so long as there is not an existing Event of Default under the Purchase and Use Agreement and there has not occurred an Event of Nonappropriation that has not been waived by the Corporation or the Trustee, the Corporation, at the request of the County, may execute such instruments as are necessary to provide for the granting of easements or rights of way for road construction, utilities or in such other instances as the County certifies are not inconsistent or incompatible with the continued use of the balance of the 2019 Real Property for their intended purposes. Such instruments may, with the prior written consent of the Trustee, include a termination of this Base

Lease with respect to such portion of the 2019 Real Property as is affected thereby or an acceptance or acknowledgment of the right of the grantee of any such easement or right-of-way to continue to use such property notwithstanding the exercise of any rights or remedies afforded to the Corporation hereunder or under the Purchase and Use Agreement. Any request from the County hereunder shall be accompanied by copies of any instruments proposed to be executed together with a certificate from the County to the effect that (a) the continued use of the 2019 Real Property affected thereby will not be impaired or hampered thereby; (b) access to 2019 Real Property for ingress and egress will be adequate for the purposes for which the 2019 Real Property is intended to be used; and (c) the value of the 2019 Real Property to the County will not be significantly diminished thereby.

The Corporation may, with the prior written consent of the Trustee, if any, also terminate this Base Lease with respect to any portion of the 2019 Real Property deemed excessive or unneeded for the continued operation of the 2019 Facilities and the related facilities for the purposes for which they were designed or are then being used, and release its interest in such portion to the County, upon receipt by the Corporation of the following: (a) a plat showing the location of the 2019 Facilities and related facilities and the portion of the 2019 Real Property deemed excessive or unneeded; (b) an amendment to Exhibit A hereto revising the description of the affected parcel of property; (c) a certificate from an engineer or architect stating that the remaining 2019 Real Property will be adequate for the continued operation of the 2019 Facilities and related facilities for the purpose for which they were designed or are then being used, including a certification that there will be adequate access to the remaining 2019 Real Property for ingress and egress; and (d) a certification from the County that the portion of the 2019 Real Property being released from the provisions hereof is in excess to or unneeded for the continued operation of the 2019 Facilities and related facilities for the purposes for which they were designed or are then being used.

The County and the Corporation agree to amend Exhibit A to this Base Lease to substitute or release parcels of 2019 Real Property or portions thereof in accordance with the provisions of this Section 3.6.

With respect to any particular item of 2019 Real Property, the County may, with the prior written consent of the Trustee, if any, substitute another item of 2019 Real Property under the conditions set forth in Section 5.1(c) of the Purchase and Use Agreement.

The County shall not be obligated to compensate the Corporation for the removal of any property or for any conveyance or grant of an easement or right-of-way under the provisions hereof and any consideration paid in connection therewith by a third party shall be turned over to the County so long as there is not an existing Event of Default under the Purchase and Use Agreement and no Event of Nonappropriation has occurred that has not been waived by the Trustee. The Corporation shall have no obligation or responsibility to prepare or record any instrument authorized hereunder.

**ARTICLE IV  
TERMINATION**

**SECTION 4.1. Termination.**

(a) This Base Lease shall terminate upon the completion of the Base Lease Term; provided, however, in the event the County exercises the option to purchase the 2019 Facilities as provided in Section 9.1(a) of the Purchase and Use Agreement and satisfies the conditions thereof, then this Base Lease shall be considered terminated through merger of the leasehold interest with the interest of the County and, provided further, that upon any partition of the 2019 Facilities pursuant to Section 2.4 of the Purchase and Use Agreement, this Base Lease shall be terminated with respect to that portion of the 2019 Real Property (“County Real Property”) relating to any County Facilities (as defined in the Purchase and Use Agreement) and the County Real Property shall no longer be subject to this Base Lease and the Corporation shall have no interest therein. Notwithstanding the termination of the Purchase and Use Agreement as a consequence of an Event of Default or Event of Nonappropriation, the County may thereafter purchase the 2019 Facilities not previously purchased by it upon payment of the applicable Purchase Option Price and the satisfaction of all other terms and conditions set forth in Section 9.1(a) of the Purchase and Use Agreement

(b) The Corporation agrees, upon any termination or completion of the Base Lease Term or the exercise by the County of its option to purchase as provided in Section 9.1(a) of the Purchase and Use Agreement, to quit and surrender the 2019 Real Property and that all title and interest in the 2019 Facilities and the 2019 Real Property shall vest in the County free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances. The Corporation agrees, upon any partition of the 2019 Facilities provided for in Section 2.4 of the Purchase and Use Agreement, to quit and surrender the County Real Property and that all title and interest in the County Facilities and the County Real Property shall vest in the County free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances.

If an Event of Default under the Purchase and Use Agreement occurs or if the County fails to continue the Purchase and Use Agreement for the entire term thereof for any reason, the Corporation shall have the right of possession of the portion of the 2019 Real Property (“Corporation Real Property”) relating to the Corporation Facilities (as defined in the Purchase and Use Agreement) as the result of a partition as provided for in Section 2.4 of the Purchase and Use Agreement for the remainder of the Base Lease Term and shall have the right to sublease the Corporation Facilities or transfer its leasehold interest in the Corporation Real Property and in this Base Lease upon whatever terms and conditions it deems prudent; provided that the Corporation Facilities shall always be operated for a civic or public purpose to the extent such requirement continues to be applicable under State law and in compliance with all applicable governmental rules, regulations and orders. Both parties acknowledge that the County has an insurable interest in the Corporation Facilities but not in any additions, alterations, furnishings and fixtures provided in connection with the use of the Corporation Facilities by the Corporation or any person to whom the Corporation enters into a lease, license or other such agreement providing for occupancy temporary or long-term. Therefore, the County’s obligation to provide insurance and pay taxes under the provisions of Section 3.5 hereof shall be limited to the 2019 Real Property and the 2019 Facilities as they existed as of the Partition Date (as defined in the Purchase and Use Agreement) and the Corporation shall provide the County with adequate public liability and comprehensive risk insurance covering any use of the Corporation Facilities, and shall pay all taxes relating to any additions, alterations, furnishings and fixtures located therein for the remainder of the Base Lease Term and will furnish the County with evidence thereof. In the event that the Corporation shall receive a payment for the transfer of its leasehold interest or total rental payments for subleasing that are, after the payment of the Corporation’s expenses in connection therewith, including fees and expenses of the Trustee, in excess of

the principal amount of the Outstanding Series 2019 Bonds at the time of termination or default and the interest and premium, if any, due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Corporation, its assigns or its lessee.

**SECTION 4.2. Default by the Corporation.** The County shall not have the right to exclude the Corporation from the 2019 Real Property or the 2019 Facilities or to take possession of the 2019 Real Property or the 2019 Facilities (except pursuant to the Purchase and Use Agreement) or to terminate this Base Lease prior to the termination of the Base Lease Term notwithstanding any default by the Corporation hereunder; except that if, upon exercise of the option to purchase the Corporation's entire interest in the 2019 Facilities granted to the County in Article IX of the Purchase and Use Agreement and after the payment of the purchase price specified therein and the other sums payable under the Purchase and Use Agreement, the Corporation fails to convey its interest in the 2019 Facilities to the County pursuant to said option, then the County shall have the right to terminate this Base Lease, such termination to be effective 30 days after delivery of written notice of such termination to the Corporation. However, in the event of any default by the Corporation hereunder, the County may maintain an action, if permitted in equity, for specific performance.

**SECTION 4.3. Quiet Enjoyment.** Subject to the Purchase and Use Agreement, the Corporation at all times during the term of this Base Lease shall peaceably and quietly have and enjoy the 2019 Real Property and the 2019 Facilities.

**SECTION 4.4. No Merger.** Except as expressly provided herein, no union of the interests of the County and the Corporation herein or in the Purchase and Use Agreement shall result in a merger of this Base Lease and the title to the 2019 Facilities. The Corporation and the County confirm that the 2019 Facilities shall be property of the Corporation and title thereto shall remain vested in the Corporation as 2019 Facilities are renovated, expanded or constructed and shall not merge into the leasehold estate of the Corporation in the 2019 Real Property subject to the provisions of this Base Lease and the Purchase and Use Agreement; except that title to a portion of the 2019 Facilities shall revert to and be vested in the County upon an Event of Nonappropriation or Event of Default under the Purchase and Use Agreement. The Corporation shall have the power to convey undivided interests in the 2019 Facilities to the County from time to time as Installment Payments are made as contemplated by the Purchase and Use Agreement.

**SECTION 4.5. Waiver of Personal Liability.** All liabilities under this Base Lease on the part of the Corporation are fully corporate liabilities of the Corporation in its capacity as corporate entity, and, to the extent permitted by law, the County hereby releases each and every incorporator, member, director and officer of the Corporation of and from any personal or individual liability under this Base Lease, including without limitation the obligation to make payment of the Base Rent. No incorporator, member, director or officer of the Corporation shall at any time or under any circumstances be individually or personally liable under this Base Lease for anything done or omitted to be done by the Corporation hereunder.

**SECTION 4.6. Maintenance of Premises.** Subject to the provisions of the Purchase and Use Agreement, the Corporation covenants that it will maintain or cause to be maintained the 2019 Real Property, and will not cause, permit or suffer to be caused or permitted waste thereto. At the conclusion of the term hereof, the 2019 Real Property shall be returned to the County, together with the 2019 Facilities and any other improvements thereto, in substantially the condition thereof as of the date hereof or the date the Additional Real Property is added hereto, subject to normal wear and tear. Except as contemplated under the Purchase and Use Agreement, the Corporation shall not make or consent to any other improvements, modifications or alterations to the 2019 Real Property or the 2019 Facilities or any portion

thereof, or remove any part thereof without the written consent of the County. Prior to an Event of Nonappropriation that has not been waived in the event of any damage, destruction or condemnation of any of the 2019 Real Property, the provisions of Article VII of the Purchase and Use Agreement shall be deemed to apply with respect to the 2019 Real Property in like manner as provided therein with respect to 2019 Facilities, and the net proceeds from any insurance policies, performance bonds or condemnation awards shall be applied in the same manner for the benefit of 2019 Real Property as are Net Proceeds under Section 7.2 of the Purchase and Use Agreement. After an Event of Nonappropriation that has not been waived in the event of any damage, destruction or condemnation of any of the 2019 Real Property, the proceeds of any insurance policies, performance bonds or condemnation awards allocable to the Corporation's interest in the 2019 Real Property shall be applied as directed by the Trustee either in the manner provided in Section 7.2 of the Purchase and Use Agreement or to the retirement of any Series 2019 Bonds and the balance, if any, remaining thereafter to such use as the County may direct.

**ARTICLE V  
CONTROL OF 2019 REAL PROPERTY AND 2019 FACILITIES  
DURING BASE LEASE TERM**

**SECTION 5.1. Control of 2019 Real Property and 2019 Facilities During Base Lease Term.** Subject to the Purchase and Use Agreement and Section 4.6 hereof, during the Base Lease Term the Corporation shall have complete control over the 2019 Real Property and the 2019 Facilities and their operation.

**ARTICLE VI  
MISCELLANEOUS**

**SECTION 6.1. Civic or Public Purpose.** Notwithstanding anything in this Base Lease to the contrary, during the term of this Base Lease, neither the Corporation nor any assignee of the Corporation's interest hereunder nor any sublessee of the Corporation shall operate the 2019 Facilities for any purpose which is not a civic or public purpose and in compliance with all applicable governmental rules, regulations and orders.

**SECTION 6.2. Covenants Running with the 2019 Real Property.** All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the 2019 Real Property and shall attach and bind and inure to the benefit of the County and the Corporation and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

**SECTION 6.3. Binding Effect.** This Base Lease shall inure to the benefit of and shall be binding upon the County, the Corporation and their respective successors and assigns. The Trustee, if any, is a third-party beneficiary to this Base Lease.

**SECTION 6.4. Severability.** In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**SECTION 6.5. Amendment, Changes and Modifications.** This Base Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee except to the extent anticipated in Section 3.1 hereof to reference any after-acquired property which shall be included in the 2019 Real Property or to make any Additional Real Property subject to this Base Lease, and Section 3.6 hereof in connection with the granting of easements, releases and substitutions. The Base Lease may not be amended without the prior written consent of the Trustee, if any.



**SECTION 6.6. Supplemental Base Leases.** The County and the Corporation may, with notice to and the prior consent of the Trustee, if any, enter into Supplemental Base Leases from time to time to provide for the lease by the County to the Corporation of Additional Real Property and the conveyance by the County to the Corporation of Additional Facilities which, together with any Additional New Facilities, will be acquired, constructed, renovated and expanded by the Corporation with the proceeds of Additional Bonds and sold to the County pursuant to the Purchase and Use Agreement, as supplemented by a Supplemental Installment Purchase and Use Agreement. Such Supplemental Base Lease shall provide for the extension of the term of this Base Lease as necessary and for the payment of Base Lease Rent by the Corporation to the County.

**SECTION 6.7. Execution in Counterparts.** This Base Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

**SECTION 6.8. Applicable Law.** This Base Lease shall be governed by and construed in accordance with the laws of the State.

**SECTION 6.9. Captions.** The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**SECTION 6.10. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Base Lease to be given to or filed with the County, the Corporation, or the Trustee if the same is given or filed in the manner and at the addresses specified in the Trust Agreement.

**SECTION 6.11. Memorandum.** The County and the Corporation shall, upon the request of either party, execute a memorandum of this Base Lease for recording in the records of the Richland County, South Carolina.

**SECTION 6.12. Successors and Assigns.** All covenants, promises and agreements contained in this Base Lease by or on behalf of or for the benefit of the County or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

[ONE SIGNATURE PAGE FOLLOWS]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]

WITNESS the due execution of this Base Lease, effective as of the date first above written.

(SEAL)

LESSOR:  
RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
County Council Chair  
Richland County, South Carolina

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of Council  
Richland County, South Carolina

(SEAL)

LESSEE:  
RICHLAND FACILITIES CORPORATION

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary



STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF RICHLAND            )        ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that [ ], President of the Richland Facilities Corporation, and [ ], Secretary of the Richland Facilities Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of [ ], 2019.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE 2019 REAL PROPERTY AND ANY ADDITIONAL REAL PROPERTY  
(AS MAY BE AMENDED ACCORDING TO SECTION 3.1 OF THIS BASE LEASE)**

TMS No. R11406-04-01  
2020 Hampton Street (County Administration Building)

[Legal Description to Come]

TMS No. R11614-07-06  
3220 Two Notch Rd. (Richland County Department of Social Services Building)

[Legal Description to Come]

**EXHIBIT B**

**2019 FACILITIES**

All existing improvements located on the 2019 Real Property and any Additional Real Property.

**EXHIBIT B**  
**FORM OF INSTALLMENT PURCHASE AND USE AGREEMENT**

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**INSTALLMENT PURCHASE AND USE AGREEMENT**

**between**

**RICHLAND FACILITIES CORPORATION**

**as Seller**

**and**

**RICHLAND COUNTY, SOUTH CAROLINA**

**as Buyer**

---

**§[]**  
**Richland Facilities Corporation**  
**Installment Purchase Revenue Bonds**  
**(Blythewood Business Park)**  
**Taxable Series 2019**

---

**Dated as of: [] 1, 2019**

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**ALL RIGHTS, TITLE AND INTEREST OF RICHLAND FACILITIES CORPORATION IN THIS  
INSTALLMENT PURCHASE AND USE AGREEMENT (WITH CERTAIN EXCEPTIONS) HAVE  
BEEN ASSIGNED TO [U.S. BANK NATIONAL ASSOCIATION], AS TRUSTEE (“TRUSTEE”)  
UNDER A TRUST AGREEMENT DATED OF EVEN DATE HERewith, AND ARE SUBJECT  
TO THE SECURITY INTEREST OF THE TRUSTEE.**

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## INSTALLMENT PURCHASE AND USE AGREEMENT

This **INSTALLMENT PURCHASE AND USE AGREEMENT**, dated as of [] 1, 2019 (“Purchase and Use Agreement”), is between Richland Facilities Corporation (together with its successors and assigns, “Corporation”), a nonprofit corporation formed under the laws of the State of South Carolina (“State”), as seller, and Richland County, South Carolina (“County”), a body politic and corporate and a political subdivision organized under the laws of the State, as buyer.

### WITNESSETH

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31, Code of Laws of South Carolina 1976, as amended;

WHEREAS, the County is a body politic and corporate and a political subdivision of the State and is authorized under the provisions of Title 4, Chapter 9, Code of Laws of South Carolina 1976, as amended (“Act”), to enter into this Purchase and Use Agreement;

WHEREAS, the Corporation and the County have entered into a Base Lease and Conveyance Agreement dated of even date herewith (“Base Lease”), pursuant to which the County has leased the 2019 Real Property and conveyed the 2019 Facilities (as such terms are defined herein), to the Corporation so that the Corporation may provide for the acquisition, construction, installation and equipping of certain public facilities and equipment, which facilities and equipment are more particularly defined and described herein as the 2019 Projects;

WHEREAS, to defray the costs of the 2019 Projects, the Corporation will provide for the issuance of \$[] of its Installment Purchase Revenue Bonds (Blythewood Business Park) Taxable Series 2019 (“Bonds”), under and by the terms of a Trust Agreement dated of even date herewith (“Trust Agreement”) by and between the Corporation and [U.S. Bank National Association], as trustee (“Trustee”);

WHEREAS, the County has agreed to make certain payments (“Installment Payments”) for the acquisition of the 2019 Facilities (as defined herein) and, pending such acquisition thereof, shall be entitled to the use and occupancy of the 2019 Facilities and certain other rights; and

WHEREAS, the rights to receive Installment Payments are being assigned by the Corporation to the Trustee under the Trust Agreement as security and the source of payment for the Bonds;

NOW, THEREFORE, for and in consideration of the undertaking of the Corporation to acquire, improve, construct and equip the 2019 Projects, the undertaking of the County to pay the Installment Payments hereunder, the mutual covenants and agreements of the parties, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Corporation and the County, intending to be legally bound, do hereby agree as follows:

### ARTICLE I DEFINITIONS

**SECTION 1.1 Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided therefor in the Trust Agreement or as set forth below:

“2019 Facilities” means: (a) the existing improvements located on the 2019 Real Property and any Additional Real Property, and (b) any fixtures and future additions, modifications and substitutions to any facilities located on the 2019 Real Property. The 2019 Facilities do not include the 2019 Projects.

“2019 Projects” means the acquisition of certain real property using proceeds of the Bonds, all as described on Exhibit A hereof, as the same may be amended from time to time. Neither the improvements comprising the 2019 Projects nor the real property on which the 2019 Projects are situated are included in the Trust Estate or subject to the Base Lease and the security and partition provisions of this Purchase and Use Agreement.

“2019 Real Property” means the respective parcels of real property upon which the 2019 Facilities are located, situated in the County and the legal description of which is shown in Exhibit B hereof, as the same may be amended from time to time.

“Acquisition and Construction Contracts” means any acquisition or construction contract between the County, on behalf of the Corporation, and any contractor or other person and between any contractor or subcontractor with respect to any of the 2019 Projects.

“Additional Bonds” shall have the meaning set forth in the Trust Agreement.

“Additional Facilities” means any facilities of the County in addition to the 2019 Facilities, proposed to be acquired, improved, refinanced, renovated or constructed by the Corporation and made subject to this Purchase and Use Agreement.

“Additional Payments” means that portion of the Installment Payments specified in Sections 4.1, 4.2 and 4.4 hereof as Additional Payments.

“Additional Real Property” means any real property in addition to the 2019 Real Property that is or will become the site of Additional Facilities.

“Base Lease” means the Base Lease and Conveyance Agreement dated of even date herewith, between the County and the Corporation, as it may be amended or modified from time to time.

“Base Payments” means that portion of the Installment Payments specified in Section 4.1 hereof as Base Payments.

“Bond Fund” means the fund of such name established pursuant to Section 5.5 of the Trust Agreement.

“Bond Proceeds” means the gross proceeds received from the issuance and sale of the Bonds.

“Bonds” means the Series 2019 Bonds and any Additional Bonds, issued under and by the terms of a Trust Agreement, dated of even date herewith by and between the Corporation and [U.S. Bank National Association], as trustee.

“Certificate of Acceptance” means the Certificate of Acceptance filed with the Trustee in accordance with Section 3.4 hereof.

“Code” means the Internal Revenue Code of 1986.

“Completion Date” means the date on which the County provides a Certificate of Acceptance.

“Corporation Facilities” means that portion of the 2019 Facilities allocated to the Corporation as the result of a partition under the provisions of Section 2.4 hereof.

“County Council” means the County Council of Richland County, South Carolina, as the governing body of the County and any successor body.

“County Facilities” means that portion of the 2019 Facilities allocated to the County as the result of a partition under the provisions of Section 2.4 hereof.

“Environmental Laws” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidances, orders and consent decrees relating to health, safety and environmental matters, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superfund and environmental cleanup programs and laws and U.S. Department of Transportation regulations.

“Event of Default” means any of the events set forth in Section 8.1 of this Purchase and Use Agreement.

“Event of Nonappropriation” means the County’s failure, for any reason, to specifically budget and appropriate moneys to pay, or adopt an ordinance authorizing the issuance of general obligation bonds for the purpose of paying, all Installment Payments due under this Purchase and Use Agreement, by [August 15] of the then current Fiscal Year or the County shall have provided written notice of its intention to do the same by [June 30] of the previous Fiscal Year. The existence or nonexistence of an Event of Nonappropriation shall be deemed to occur on (a) [August 15] of a year in which no such budget or ordinance shall have been adopted, or (b) any earlier date on which the County gives officials, specific written notice to the Corporation and the Trustee that the County will not appropriate funds in the next succeeding Fiscal Year for payment of Installment Payments; provided, however, that an Event of Nonappropriation may be waived as provided for in Section 4.7 herein.

“Facilities Component” means an entire portion of the 2019 Facilities or an entire facility, including the main building or buildings and any related auxiliary buildings (and any furnishings and equipment located therein) together with the portion of the 2019 Real Property on which such facility is located.

“Fiscal Year” means the fiscal year of the County, currently beginning on each July 1 and ending on the succeeding June 30.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Hazardous Material” means and includes any pollutant, contaminant, or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead), the generation, handling, storage, transportation, disposal, treatment, release, discharge or emission of which is subject to any Environmental Law.

“Installment Payments” means the payments to be paid by the County pursuant to Sections 4.1, 4.2 and 4.4 hereof, including Base Payments and Additional Payments.

“Net Proceeds” when used with respect to any proceeds from policies of insurance required hereby or any condemnation award, or any proceeds resulting from default under, or recovery under performance and payment bonds related to, any Acquisition or Construction Contract relating to the 2019 Projects, or

proceeds from any liquidation of any part of the 2019 Facilities, means the amount remaining after deducting from the gross proceeds thereof all expenses, including, without limitation, reasonable attorney's fees and costs, incurred in the collection of such proceeds or award.

"Partition Consultant" means a person, firm or corporation selected by the Trustee, who or which is experienced in public finance and in the valuation of public County Facilities and is not a full-time employee of the Trustee, the County or the Corporation.

"Partition Date" shall have the meaning given such term in Section 2.4 hereof.

"Permitted Encumbrances" means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Sections 4.1 and 4.2, respectively, of this Purchase and Use Agreement; (ii) the Security Documents; (iii) utility, access and other easements and rights-of-way, restrictions and exceptions which do not interfere with or impair the use of the 2019 Facilities, including rights or privileges in the nature of easements; (iv) any financing statements filed to perfect security interests pursuant to this Purchase and Use Agreement or the Trust Agreement; and (v) the matters described on Exhibit C.

"Project Fund" means the fund of such name established pursuant to Section 5.2 of the Trust Agreement.

"Purchase Option Price" means an amount equal to the amount required to defease or otherwise discharge the Bonds under the Trust Agreement plus the amount of any Additional Payments which are due or accrued hereunder at the time which any purchase option hereunder is exercised.

"Purchase Price" means the sum of all Base Payments to be made hereunder, which Purchase Price may be recalculated in the event of any prepayment of Base Payments provided for in Section 9.1 hereof.

"Security Documents" means this Purchase and Use Agreement, the Base Lease, the Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Holders of the Bonds.

"Series 2019 Bonds" means the Corporation's \$[] Installment Purchase Revenue Bonds (Blythewood Business Park) Taxable Series 2019.

"State" means the State of South Carolina.

"Waiver Period" means the period of time commencing on the date an Event of Nonappropriation is deemed to occur and ending and including the date on the later of (i) the next following September 1 or (ii) the date on which the 2019 Reserve Account becomes fully depleted by the Trustee pursuant to the provisions of Section 5.5 of the Trust Agreement (provided, however, that such 2019 Reserve Account is deemed to be fully depleted when insufficient funds remain therein to make the payments required to be made to the Holders of the applicable Bonds on the subsequent Bond Payment Date); provided, however, that the Waiver Period shall in no event extend beyond the September 1 next following the date of the occurrence of an Event of Nonappropriation.

**SECTION 1.2 Terms Defined in the Trust Agreement.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement unless the context clearly indicates to the contrary.

**SECTION 1.3 County Representations, Warranties and Covenants.** The County makes the following representations, warranties and covenants:

(a) The County is a body politic and corporate, and a political subdivision of the State and has full power and legal right to enter into this Purchase and Use Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The County's actions in making and performing its obligations under this Purchase and Use Agreement and the Base Lease have been duly authorized by all necessary governmental action and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the County or its properties are bound.

(b) The County is a political subdivision within the meaning of Section 103(c)(1) of the Code.

(c) The County will take such action as is necessary to assure that the 2019 Projects are acquired, constructed, improved and equipped. In the event the amounts available from proceeds from the Bonds appear to be insufficient for such purpose, the County will use its best efforts to take one or more of the following steps: (i) cooperate with the Corporation to make such modifications or changes in the 2019 Projects as will allow the cost thereof to be funded within the amount available from such Bond Proceeds, provided that the prior written consent of the Trustee shall be required to substantially reduce or alter the scope of the 2019 Projects; (ii) make arrangements with the Corporation for the sale of Additional Bonds; or (iii) provide for the payment of such costs from other sources legally available to the County.

(d) The County will take such action as is necessary to ensure that proceeds of the Bonds, other than amounts set aside in the Trust Agreement for payment of costs of issuance, funding of reserves or payment of interest, are applied solely for the payment of the costs of the 2019 Projects.

(e) Except as provided in the last paragraph under Section 2.1 hereof, no portion of the 2019 Facilities will be used in the trade or business of a person who is not a "political subdivision" within the meaning of Section 103(c)(1) of the Code, without the written approval of Bond Counsel.

(f) The amounts, if any, spent by the County from its own funds to pay costs of the acquisition, renovation, improvement and construction of the 2019 Projects for which the Corporation will repay the County from the tax-exempt portion of the Bond Proceeds, if any, were not expended more than 60 days prior to the date of adoption by the County Council of the ordinance authorizing the financing of the 2019 Projects, enacted [], 2019 ("Ordinance"), and expressing the intent to enter into this Purchase and Use Agreement, except with respect to certain preliminary expenditures for architectural, engineering, surveying, soil testing and similar costs.

(g) There is no fact that has not been disclosed to the Initial Purchaser or the Corporation which will materially and adversely affect the properties, activities, operations, revenues, prospects or condition (financial or otherwise) of the County, its status as a political subdivision of the State within the meaning of Section 103(c)(1) of the Code, its ability to own and operate its property in the manner such property is currently operated or its ability to perform its obligations under this Purchase and Use Agreement or the Base Lease.

(h) There are no proceedings pending or, to the knowledge of the County, threatened against or affecting the County, except as disclosed to the Initial Purchaser and the Corporation, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, operations, prospects or condition (financial or otherwise) of the County, or the corporate existence or powers or ability of the County to enter into and perform its obligations under this Purchase and Use Agreement or the Base Lease.

(i) The execution and delivery of this Purchase and Use Agreement and the Base Lease (collectively, the "County Agreements"), and the consummation of the transactions provided for herein and therein, and compliance by the County with the provisions of the County Agreements:



(1) are within the governmental powers and have been duly and validly authorized by all necessary governmental and other action on the part of the County;

(2) do not and will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, loan agreement or other agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the County other than this Purchase and Use Agreement or any governmental restriction to which the County is a party or by which the County, its properties or operations may be bound or with the giving of notice or the passage of time or both would constitute such a breach or default or result in the creation or imposition of any such lien, charge or encumbrance, which breach, default, lien, charge or encumbrance could materially and adversely affect the validity or the enforceability of the County Agreements or the County's ability to perform fully its obligations under the County Agreements; nor will such action result in any violation of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the County, its properties or operations are subject.

(j) No event has occurred and no condition exists that constitutes an Event of Default or which, upon the execution and delivery of this Purchase and Use Agreement, and/or the passage of time or giving of notice or both, would constitute an Event of Default. The County is not in violation in any material respect, and has not received notice of any claimed material violation (except such violations as do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the County with the terms hereof, or the Security Documents), of any terms of any court order, statute, regulation, ordinance, agreement, or other instrument to which it is a party or by which it, its properties or its operations may be bound.

(k) This Purchase and Use Agreement is a legal, valid and binding obligation and agreement of the County, enforceable against the County in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity; anything herein to the contrary notwithstanding, this Purchase and Use Agreement is subject in its entirety to the right of the County to terminate this Purchase and Use Agreement and all the terms and provisions hereof by failing to budget and appropriate moneys specifically to pay Installment Payments, as provided in Sections 2.2, 4.6 and 4.7 hereof.

(l) The use and the operation of the 2019 Facilities in the manner contemplated will not conflict in any material respect with any zoning, water or air pollution or other ordinance, order, law, rule, or regulation applicable to the 2019 Facilities including, without limitation, Environmental Laws. The County has caused or will cause the 2019 Facilities to be designed in accordance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, planning, building, safety and environmental quality. The County will operate or will cause the 2019 Facilities to be operated in compliance with the requirements of all such laws, ordinances, rules and regulations, including, without limitation, Environmental Laws. The County further covenants and agrees to comply in all material respects with, or use its reasonable efforts to cause other persons whose obligations it is to so comply by contract or pursuant to law to comply in all material respects with and materially conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and every applicable governmental authority, including Environmental Laws applicable to the 2019 Facilities, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the 2019 Facilities, including building and zoning codes and ordinances (collectively, the "Legal Requirements"), provided that the County shall not be in default hereunder so long as the County promptly after receiving an actual written notice of any noncompliance, files a copy thereof with the Trustee and the County commences and uses its diligent efforts to cause compliance with such Legal

Requirements, so long as the failure to comply does not subject the 2019 Facilities to any material danger of being forfeited or lost as a result thereof. The County possesses or will possess, and the County hereby agrees to maintain and obtain in the future, all necessary licenses and permits, or rights thereto, to operate the 2019 Facilities as proposed to be operated, and all such licenses, permits or other approvals required in connection with the operation of the 2019 Facilities have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals that are not yet required and that will be duly obtained not later than the time required or the failure to obtain which will not materially and adversely affect the operation of the 2019 Facilities. The County covenants and agrees to do all things necessary to preserve and keep in full force and effect its franchises, rights, powers and privileges as the same relate to the 2019 Facilities.

(m) The County has approved the Corporation and the issuance by the Corporation of the Bonds.

(n) The County has not terminated any lease, lease-purchase agreement or installment purchase agreement by nonappropriation.

(o) The officer of the County at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the County Council in any Fiscal Year in which this Purchase and Use Agreement shall be in effect, budget items sufficient to pay all Installment Payments required for such Fiscal Year under this Purchase and Use Agreement.

(p) Reserved.

(q) Within 210 days of the end of the County's fiscal year, a copy of the audited financial statements of the County and a copy of an annual budget of the County shall be sent to the Trustee, provided, however, that if the County has knowledge that said audited financial statements will not be available within that timeframe, the County shall promptly so advise the Trustee, and shall further advise the Trustee of the expected date on which the same shall be available.

(r) The Trustee shall have the right to receive such additional information as it may reasonably request.

(s) The County will allow the Trustee to discuss the affairs, finances and accounts of the County or any information which the Trustee may reasonably request regarding the security for the Bonds with appropriate officers of the County, and will grant the Trustee access to the facilities, books and records of the County on any business day upon reasonable prior notice.

(t) The Trustee shall have the right, if the Trustee has a reasonable basis to believe that the financial position of the County has materially deteriorated or financial irregularities have occurred since the date of the most recently provided annual audit, or that such audit fails to accurately set forth the financial position of the County, to direct the County to cause to be prepared a financial report at the County's expense in form and content acceptable to the Trustee, and the County shall comply with such direction within 30 days after written notice of such direction from the Trustee; provided, however, that if compliance cannot occur within such period, then such period will be extended with the prior consent of the Trustee so long as compliance is begun within such period and diligently pursued.

**SECTION 1.4 Corporation Representations, Warranties and Covenants.** The Corporation makes the following representations, warranties and covenants:

(a) The Corporation is a duly organized and validly existing nonprofit corporation created under the laws of the State, has the requisite power to carry on its present and proposed activities, and has full power, right and authority to enter into this Purchase and Use Agreement, the Trust Agreement and the

Base Lease and to perform each and all of the obligations of the Corporation provided therein.

(b) The Corporation has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each of the Acquisition and Construction Contracts to which it is or will be a party.

(c) By proper corporate action, the officers of the Corporation have been duly authorized to execute and deliver this Purchase and Use Agreement, the Base Lease and the Trust Agreement.

(d) The execution and delivery by the Corporation of this Purchase and Use Agreement, the Base Lease and the Trust Agreement and the consummation by the Corporation of the transactions contemplated hereby and thereby have not and will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(e) Each of this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each Acquisition and Construction Contract to which the Corporation is or will be a party has been or will be duly executed and delivered by the Corporation and constitutes or will constitute a legal and valid obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as enforcement may be limited by laws affecting creditors' rights generally and except as equitable remedies may be limited by judicial discretion.

(f) Other than as disclosed to the Initial Purchaser and the County, there is no litigation pending and served on the Corporation that challenges the Corporation's authority to execute, deliver or perform its obligations under this Purchase and Use Agreement and the Corporation has disclosed any threatened litigation with respect to such matters of which the Corporation is aware.

(g) The Corporation is in material compliance with all applicable laws, regulations and ordinances, including but not limited to those applicable to the Corporation's activities in connection with this Purchase and Use Agreement.

(h) The Corporation is a South Carolina nonprofit, public benefit corporation, no part of the net income of which inures to the benefit of any private individual or organization.

(i) To finance the 2019 Projects, the Corporation will enter into the Trust Agreement, pursuant to which it will issue the Bonds payable from and secured by the Installment Payments under this Purchase and Use Agreement.

(j) The Corporation covenants that it will not alter its Articles of Incorporation or its By-Laws in any manner without first providing the County and the Trustee an opinion of nationally-recognized bond counsel that such alteration will not cause the Bonds to become subject to registration under the Securities Act of 1933.

## **ARTICLE II INSTALLMENT SALE AND USE OF 2019 FACILITIES AND TERM HEREOF**

**SECTION 2.1 Installment Sale and Use of 2019 Facilities; Term.** The Corporation hereby agrees to sell the 2019 Facilities to the County in accordance with the provisions hereof. On the date hereof, the Corporation has a valid leasehold interest in the 2019 Real Property and holds fee title, or will hold fee title upon the acquisition and construction thereof, to the 2019 Facilities. Upon each payment of Base Payments title to an undivided interest in the 2019 Facilities equal to that percentage of the Purchase

Price represented by such payment will transfer from the Corporation to the County without further action by either party.

In conjunction therewith, the Corporation hereby conveys and grants to the County an undivided interest in the 2019 Facilities, which undivided interest shall increase pro rata based on the percentage of the Purchase Price represented by each Base Payment. At the request of the County, the Corporation agrees to execute such quitclaim or special warranty deed(s) or bills of sale to the County indicating the undivided interest so acquired by the County.

Any prepayment of Base Payments which is used to redeem the Bonds will result in a recalculation of the Purchase Price to take account of such prepayment and, upon the making of such prepayment, the County shall be credited with an undivided interest in the 2019 Facilities equal to that percentage of the total Purchase Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.

Subject to the provisions of Article VIII hereof, the County shall have the exclusive right to occupy and use the 2019 Facilities during the term hereof. Subject to the provisions of Sections 2.2 and 2.3 hereof, this Purchase and Use Agreement shall be for a term beginning with the date of execution and delivery hereof, and ending on March 1, 2045.

During the term hereof, the County may permit other civic or charitable organizations or agencies of the State or any political subdivision thereof to use portions of the 2019 Facilities subject to the following limitations: (i) no agreement may be for a term in excess of one year; (ii) the 2019 Facilities shall not be used in any manner that interferes with the use of such property by the County for the purposes for which it was designed or is then being used; (iii) any such agreement shall expressly terminate upon the occurrence of an Event of Default or an Event of Nonappropriation hereunder; and (iv) the County shall monitor all such use to ensure continued compliance with the provisions of the Tax Certificate and Section 5.3 hereof.

**SECTION 2.2 Termination.** The term of this Purchase and Use Agreement shall terminate upon the earliest of any of the following events:

(a) The occurrence of an Event of Nonappropriation, such occurrence to be determined in accordance with the definition of such term given in this Purchase and Use Agreement, which Event of Nonappropriation is not thereafter duly waived;

(b) The purchase by the County of the 2019 Facilities as provided in Article IX of this Purchase and Use Agreement;

(c) The occurrence of an Event of Default under and termination of this Purchase and Use Agreement by the Corporation or Trustee under Article VIII of this Purchase and Use Agreement; or

(d) March 1, 2045, which date constitutes the last day of the term hereof, or such later date as all Installment Payments due hereunder shall be paid.

Termination of this Purchase and Use Agreement shall terminate all obligations of the County under this Purchase and Use Agreement, including its obligations to pay future Installment Payments and other amounts that have not been appropriated (excluding, however, amounts payable under Section 2.3 hereof and other amounts specifically provided for herein), subject to identification as provided in Section 2.4 hereof, shall terminate the County's rights of possession under this Purchase and Use Agreement of the Corporation Facilities (except to the extent of any conveyance pursuant to Article IX of this Purchase and

Use Agreement); but all other provisions of this Purchase and Use Agreement, including all obligations of the Corporation with respect to the Holders of the Bonds and the receipt and disbursement of funds and all rights and remedies of the Corporation specifically provided herein, shall be continuing until the Trust Agreement is discharged as provided therein. Notwithstanding the foregoing, termination of the term of this Purchase and Use Agreement shall not impair the County's rights as landlord or the Corporation's rights as tenant under the Base Lease, except as provided in the Base Lease.

**SECTION 2.3 Holdover Terms.** In the event the County fails to deliver possession to the Corporation of the Corporation Facilities or any part thereof pursuant to Section 2.4 hereof, the County shall be unconditionally liable for the payment of all Installment Payments, including Additional Payments, for successive six month periods commencing on the Bond Payment Date following the last due date of Base Payments hereunder until the County delivers possession of the Corporation Facilities to the Corporation. The obligations of the County under this Section 2.3 shall not in any manner constitute a pledge of the full faith, credit or taxing power of the County within the meaning of any State constitutional or statutory provision.

**SECTION 2.4 Surrender of Possession Upon Termination; Partition of Undivided Interests.** Upon the occurrence of an Event of Default or an Event of Nonappropriation which results in termination hereof or upon termination of all rights of the County hereunder and at the written direction of the Trustee, the County and the Corporation shall proceed to partition the 2019 Facilities so that the percentage of undivided interests in the title to the 2019 Facilities will be converted, to the extent feasible, into like percentages of title to entire Facilities Components in accordance with Exhibit E hereof and the following provisions. The date upon which the Trustee gives such written direction shall be the "Partition Date."

Division of 2019 Facilities. Within a reasonable time after the Partition Date, the Trustee shall propose the division of the 2019 Facilities. The Trustee may in its sole discretion select a Partition Consultant to assist, consult with and make recommendations to the Trustee in the division of the 2019 Facilities. The Trustee and the Partition Consultant, if selected, shall endeavor, to the extent practicable, to allocate 2019 Facilities between the County and the Corporation in a fair and equitable fashion taking into account the following factors: (1) entire Facilities Components, if possible, will be assigned to each of the County and the Corporation; and (2) if portions of the 2019 Facilities and Facilities Components will be assigned to each of the Corporation and the County, the Trustee and the Partition Consultant, if selected, shall propose such partition as will, in the aggregate, best protect the interests of the Holders (subject to the provisions of this Section 2.4).

Valuation of Facilities Components and 2019 Facilities. For purposes of any partition, the 2019 Facilities are valued in the respective amounts as set forth on Exhibit E and the percentage of the 2019 Facilities being purchased on an annual basis are also set forth on Exhibit E hereof, each subject to adjustment as stated on Exhibit E. In allocating the 2019 Facilities to the percentage of undivided interests in the entire 2019 Facilities to be conveyed to the County or retained by the Corporation, such values and percentages shall be used rather than the current market or other valuation of Facilities Components associated therewith.

Partial Divisions. In the event that the Trustee and the Partition Consultant, if selected, are unable to devise a partition that results in complete Facilities Components being assigned to the County or the Corporation, then such partition shall be made so as to provide the County's and the Corporation's respective interests to be allocated to Facilities Components in a manner consistent with other provisions of this Section 2.4. The portion of a Facilities Component which is property allocated to the County but is not a complete Facilities Component shall be designated as a "County Partial Facilities Component." With respect to a County Partial Facilities Component, the County may (i) continue to occupy the entire

Facilities Component which includes a County Partial Facilities Component if it agrees to make payments (as specified in Section 2.3) in amounts to be determined by the Trustee and the Partition Consultant, if selected, as the proper charge for use of the Corporation's interest in such Facilities Component ("Corporation Partial Facilities Component"); (ii) purchase the Corporation's interest in such Corporation Partial Facilities Component by the payment of the amount determined by the Trustee and Partition Consultant, if selected; or (iii) cede occupancy rights in the County Partial Facilities Component to the Corporation for the duration of the term of the Base Lease. In determining the purchase price if the County elects to purchase the Corporation's interest in a Corporation Partial Facilities Component, the Trustee and Partition Consultant, if selected, shall determine the prepayment amount that would be required under the second paragraph of Section 2.1 to result in a complete allocation of such Facilities Component to the County. In setting the payments to be made by the County if it chooses to continue to occupy the entire Facilities Component the Trustee and Partition Consultant, if selected, shall set a payment that is not less than the amount of total Base Payments allocable to such Facilities Component that would have been payable from and after the Partition Date if this Purchase and Use Agreement or the rights of the County hereunder had not been terminated.

Partition Report; Finality. The Trustee, and Partition Consultant, if selected, shall make a report regarding the division of the 2019 Facilities as soon as practicable after the Partition Date. In the discretion of the Trustee, the partition report shall be final and binding on all parties.

Instruments of Conveyance. Within a reasonable time (but in no event sooner than 30 or later than 60 days) after the partition report becomes final, the County and the Corporation shall exchange deeds or other instruments vesting title to such of the 2019 Facilities as is required to effect such partition; provided, however, that any conveyance deed or other instrument made by the Corporation shall be made in the manner and subject to the conditions set forth in Section 9.2 hereof. Immediately thereafter, the County shall deliver up or cause to be delivered up peaceable possession of the Corporation Facilities to the Corporation, together with the related portion of the 2019 Real Property, without delay, in good repair and operating condition, excepting reasonable wear and tear; provided, however, that in the event of a partial division, the terms relating to County Partial Facilities Components described above shall control. Any Facilities Component delivered to the Corporation in connection with such partition shall remain, at all times, subject to the terms of the Base Lease.

### **ARTICLE III THE 2019 PROJECTS; FINANCING**

**SECTION 3.1 Purchase and Installation or Construction of the 2019 Projects.** The Corporation and the County acknowledge that the County will be responsible for any and all Acquisition and Construction Contracts necessary or appropriate for the purchase and installation, or for any renovation, construction, installation, restoration, and reconstruction, to be performed in connection with the completion of the 2019 Projects and the County shall be the agent of the Corporation for all such purposes. The County may install machinery, equipment and other tangible personal property in the 2019 Facilities and all such machinery, equipment and other tangible personal property acquired after the [Closing Date] will remain the sole property of the County.

**SECTION 3.2 Administration of Acquisition and Construction Contracts.** The County shall be responsible for preparing, administering, amending and enforcing the Acquisition and Construction Contracts to be entered into with respect to the 2019 Projects and for litigating or settling all claims thereunder. The County and the Corporation, as their interests may appear, will be entitled to the benefit of all warranties, guaranties and indemnities provided under the Acquisition and Construction Contracts and by law.

**SECTION 3.3 Notices and Permits.** The Corporation shall cooperate with the County to give or cause to be given all notices and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of public authorities applying to or affecting the conduct of any work relating to the 2019 Projects. The County will defend and save the Corporation, the Trustee and their respective members, directors, officers, agents and employees harmless from all liabilities, damages or fines due to failure to comply therewith.

**SECTION 3.4 Disbursements from the Project Fund.**

(a) The Bond Proceeds shall be deposited by the Trustee into the Project Fund in accordance with Section 5.1 of the Trust Agreement. Thereafter, disbursements from the Project Fund shall be made for costs of the 2019 Projects and for such other purposes contemplated by Section 5.3 of the Trust Agreement.

(b) As provided in Section 5.3(c) of the Trust Agreement, the final requisition from the Project Fund shall contain, among other things, a Certificate of Acceptance of the County stating that the 2019 Projects have been substantially completed in accordance with the applicable Acquisition and Construction Contracts and other terms and conditions of the Purchase and Use Agreement and the 2019 Projects comply in all material respects with all applicable governmental regulations. Upon receipt of such Certificate of Acceptance, the Trustee shall apply any balance then remaining in the Project Fund in the manner provided in Section 5.4 of the Trust Agreement. As used in this paragraph, “substantial completion” of the 2019 Projects shall mean [title to the 2019 Projects has been transferred to the County], notwithstanding the fact that certain minor items of work remain to be done.

**SECTION 3.5 Defaults Under Acquisition and Construction Contracts.** In the event of any material default by a supplier, contractor or subcontractor under any of the Acquisition and Construction Contracts, or in the event of a material breach of warranty with respect to any property, fixtures, materials, workmanship or performance under any Acquisition and Construction Contract, the County and the Corporation shall promptly proceed, and may do so in conjunction with others, to pursue diligently such remedies as are available against the applicable supplier, contractor or subcontractor and/or against any surety of any bond securing the performance of the Acquisition and Construction Contracts. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney’s fees and costs), and after reimbursement to the County or the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement.

**SECTION 3.6 Worker’s Compensation Insurance.** The County and the Corporation shall take such steps as are necessary to ensure that worker’s compensation insurance is in force with respect to any Acquisition and Construction Contracts.

**SECTION 3.7 Contractor’s Performance and Payment Bonds.** The County and the Corporation shall take such steps as are necessary to ensure that performance and payment bonds regarding contractor’s performance and payment are provided in the same manner as would be applicable to any contracts of the County.

The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the performance and payment bonds remaining after deduction of expenses incurred in

such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the County and the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement.

**SECTION 3.8 Contractor's General Public Liability and Property Damage Insurance.** The County and the Corporation shall take such steps as are necessary to ensure that comprehensive general public and property damage liability insurance with respect to the 2019 Projects are provided in the same manner as would be applicable to any contracts of the County.

**SECTION 3.9 Proceeds of Insurance Policies.** The Net Proceeds of any insurance policies required by Section 3.8 hereof or any amounts recovered by way of damages, refunds, adjustments, proceeds or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the County or the Corporation of any amounts not to exceed \$100,000 theretofore paid by the County or the Corporation and not previously reimbursed to the County or the Corporation for actions taken by the County or the Corporation to restore damaged portions of the 2019 Facilities to a condition necessary to secure the 2019 Facilities and prevent further loss shall be paid into the Project Fund before the Completion Date or, if received thereafter, shall either be deposited as provided in Section 7.2 of this Purchase and Use Agreement or otherwise applied as provided in Section 7.3 of this Purchase and Use Agreement; provided, however, such deposit shall not exceed the amount necessary to fulfill the obligations of the County under this Purchase and Use Agreement as determined by the Trustee.

**SECTION 3.10 No Merger of 2019 Facilities.** The Corporation and the County confirm that the 2019 Facilities shall be property of the Corporation and title thereto shall remain vested in the Corporation and shall not merge into the leasehold estate of the Corporation in the 2019 Real Property, except that title to said 2019 Facilities shall revert to and be vested in the County upon termination of the Base Lease. Undivided interests in the 2019 Facilities shall be conveyed to the County from time to time as Base Payments are made as contemplated hereby in accordance with Section 2.1, or following termination hereof pursuant to Section 2.4 hereof.



**ARTICLE IV  
INSTALLMENT PAYMENTS; ASSIGNMENT TO TRUSTEE**

**SECTION 4.1     Installment Payments.**

(a) Installment Payments to Constitute a Current Expense of the County. The Corporation and the County understand and intend that the obligation of the County to pay Installment Payments hereunder shall constitute a current expense of the County and is dependent upon lawful appropriations of funds being made by the County Council to pay Installment Payments due in each fiscal year hereunder, and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the County.

(b) Payment of Base Payments. (i) Subject to an Event of Nonappropriation as described in Section 4.7 hereof, on or before the 15th day prior to each Bond Payment Date during the period this Purchase and Use Agreement is in effect, the County shall pay to the Trustee as assignee of the Corporation, Base Payments exclusively from moneys specifically budgeted and appropriated for such purpose, including proceeds of any general obligation bonds issued by the County for such purpose, in lawful money of the United States of America, which payments shall be made to the Trustee as assignee of this Purchase and Use Agreement, in the amounts set forth on Exhibit D. Each payment of Base Payments shall be in consideration for the conveyance of title to an undivided interest in the 2019 Facilities as and to the extent provided in Section 2.1 hereof. As further consideration for the receipt of Base Payments, the County shall be entitled to the use and occupancy of all of the 2019 Facilities during the applicable Fiscal Year in which such payments are or will be made.

(c) Payment of Additional Payments. The County agrees to pay, subject to the provisions of Section 4.7 hereof, the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in Sections 4.2 and 4.4 hereof to the parties referred to therein;

(ii) Upon receipt of written notice from the Trustee pursuant to Section 5.5(e) of the Trust Agreement of a transfer from a subaccount of the Reserve Account established for a particular series of Bonds (as defined in the Trust Agreement) to the applicable subaccount of the Facilities Purchase Account, within the period of time specified in Section 5.5(e) of the Trust Agreement, or payment by the Trustee on the Reserve Policy, an amount equal to the amount so transferred from the applicable subaccount of the Reserve Account to the applicable subaccount of the Facilities Purchase Account;

(iii) Within the period of time specified in Sections 5.5(e) and 5.7(i) of the Trust Agreement, the amount of moneys necessary to re-establish a subaccount of the Reserve Account established for a particular series of Bonds at the applicable Reserve Requirement as may be required pursuant to said Sections 5.5(e) and 5.7(i);

(iv) All reasonable costs and expenses incurred or to be paid by the Corporation or the Trustee, as the case may be, under the terms of this Purchase and Use Agreement or the Trust Agreement, including without limitation the amounts specified in Section 4.4 hereof and amounts payable by the Corporation pursuant to or contemplated by repurchase, forward delivery or other investment agreements which are Permitted Investments under the Trust Agreement; and

(v) Amounts owed to the Trustee as provided for in the Trust Agreement.

The Corporation may, but shall be under no obligation to, advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the 2019 Facilities, (ii) for the discharge of mechanic's and other liens relating to the 2019 Facilities, (iii) to obtain and maintain insurance for the 2019 Facilities and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the County fails to do so as required by this Purchase and Use Agreement or the Base Lease. As provided in Section 6.11 of the Trust Agreement, the Trustee may take any such action. Any such advances shall continue to be due as Additional Payments hereunder.

(d) Credits. The County shall be entitled to a credit against payments of Base Payments in the amount of any deposits in the Bond Fund provided for in the Trust Agreement. In addition to the credit provided in the preceding sentence, the amount payable by the County as Base Payments will be reduced by the amount of money in the applicable subaccount of the Facilities Purchase Account to be credited against those payments and representing Base Payments, including without limitation accrued interest on the Bonds to the extent such amounts will be used to make payments on the Bonds. In this connection, if applicable, when amounts remaining in a subaccount of the Reserve Account equal or exceed the remainder of the applicable Base Payments due, such amounts shall be transferred to the applicable subaccount of the Facilities Purchase Account as and when needed for payment of such Base Payments, and, pursuant to Section 5.5(f) of the Trust Agreement, when amounts remaining in a Reserve Sub-account exceed the applicable Reserve Requirement, such excess amounts shall be transferred to the applicable Facilities Purchase Sub-account as and when needed for payment of such Base Payments.

(e) Continuation of Term by the County. The County has no reason to believe, as of the date hereof, that it will not continue making Installment Payments through the entire term of this Purchase and Use Agreement, and reasonably believes that (1) it will pay the Installment Payments due or coming due hereunder to continue to use the 2019 Facilities and (2) it presently has legal authority to budget and appropriate such amounts in its annual budget, as limited by applicable law, and it presently has, and will have, adequate capacity to issue general obligation debt that does not require voter approval in amounts sufficient and at times to pay Base Payments when due. The County further represents that it presently intends to maintain its capacity to issue general obligation debt that does not require voter approval, in amounts and at times sufficient to make Base Payments when due; provided, however, that nothing herein shall be construed to limit the County from providing funds from other sources to pay Base Payments. The representations contained herein are subject to the ability of the County to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof.

#### **SECTION 4.2      Installment Payments Not Subject to Reduction, Offset or Other Credits.**

(a) The County and the Corporation intend that this Purchase and Use Agreement shall yield, net, the Base Payments specified in Section 4.1 hereof during the term of this Purchase and Use Agreement, and that all costs, expenses, liabilities and obligations of any kind and nature whatsoever including, without limitation, any ad valorem taxes or other taxes levied against holders of real or personal property, insurance premiums, utility charges and assessments and all operation, maintenance, repair and upkeep expenses relating to the 2019 Facilities and the use of the 2019 Facilities which do not constitute Base Payments, or other obligations relating to the 2019 Facilities which may arise or become due during the term of this Purchase and Use Agreement and which the Corporation, except for this Purchase and Use Agreement or the terms of the Base Lease, would ordinarily be required to pay as owner of the 2019 Facilities (regardless of whether the County as owner would be so required to pay) shall either be paid under the provisions of the Base Lease or be included in the Installment Payments and paid by the County as Additional Payments. The County acknowledges that, under the provisions of the Base Lease, it has retained responsibility for the payment of taxes and insurance on the 2019 Facilities and the property associated therewith and the obligations of the County under the Base Lease are not subject to the limitations of Section 4.6 hereof.

(b) All payments of Additional Payments referred to in Section 4.2(a) above shall be made by the County in immediately available funds on a timely basis directly to the person or entity to which such payments are owed; provided, however, subject to the terms of the Security Documents, that the County shall not be required to pay, discharge or remove any tax, lien, or assessment, or any mechanic's, laborer's or materialman's lien or encumbrance, or any other imposition or charge against the 2019 Facilities or any part thereof, or comply with any law, ordinance, order, rule, regulation or requirement, as long as the County shall, after prior written notice to the Corporation and the Trustee, at the County's expense, contest the same or the validity thereof in good faith, by action or inaction which shall operate to prevent the collection of the tax, lien, assessment, encumbrance, imposition or charge so contested, or the enforcement of such law, ordinance, order, rule, regulation or requirement, as the case may be, and the sale of the 2019 Facilities or any part thereof to satisfy the same or to enforce such compliance; provided further, that the County shall have given reasonable security as may be demanded by the Corporation, the Trustee, or both, to insure such payment and prevent any sale or forfeiture of the 2019 Facilities or any part thereof by reason of such nonpayment or noncompliance.

(c) To the extent permitted by law, the County hereby agrees to indemnify, defend and hold the Corporation harmless from the payment of Additional Payments which may be deemed the obligation of the Corporation.

**SECTION 4.3 Prepayment of Installment Payments.** The County may prepay Installment Payments in whole or in part as provided in, and under the conditions prescribed under, Sections 7.3 and 9.1(b) hereof, for the purpose of providing for the redemption of Bonds as provided in Sections 4.1(a) and Section 4.1(b) of the Trust Agreement. The County shall notify the Trustee in writing of the dates on which the Bonds corresponding to any prepayment hereunder are to be redeemed and the amount to be redeemed on each such date, all in accordance with the provisions of the Trust Agreement. The Trustee may request such reasonable information and reports as may be necessary to establish the sufficiency of the payments to be made at the time of such prepayment.

**SECTION 4.4 Administrative Expenses.** Subject to the provisions of Section 4.7 hereof, the County shall pay as Additional Payments (i) the periodic fees and reasonable expenses from time to time of the Trustee and any Paying Agent incurred in administering the Trust Agreement and the Bonds, and (ii) any reasonable expenses, including reasonable attorneys' fees, incurred by the Corporation or the Trustee to compel full and punctual performance of this Purchase and Use Agreement in accordance with the terms hereof.

**SECTION 4.5 Assignment of Purchase and Use Agreement, Manner of Payment.** As security for and the source of payment of the Bonds, pursuant to the Trust Agreement, the Corporation has assigned to the Trustee all of its right, title and interest in and to this Purchase and Use Agreement, except for the right of the Corporation to receive indemnity against claims and payment of its fees and expenses pursuant to Sections 4.2, 4.4 and 5.5 hereof. The County consents and agrees to the assignment of this Purchase and Use Agreement as provided herein. The County covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Purchase and Use Agreement, and to make all payments required by the County under this Purchase and Use Agreement (other than payment for indemnity and fees and expenses of the Corporation) directly to the Trustee, all without set-off, defense or counterclaim by reason of any dispute which the County may have with the Corporation or the Trustee.

**SECTION 4.6 Limited and Special Obligation of the County.** UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION, THIS PURCHASE AND USE AGREEMENT MAY BE TERMINATED AS OF THE END OF THE LAST FISCAL YEAR WHICH IS NOT AFFECTED BY SUCH EVENT OF NONAPPROPRIATION, AND THE COUNTY SHALL NOT BE OBLIGATED TO

MAKE PAYMENT OF THE INSTALLMENT PAYMENTS PROVIDED FOR IN THIS PURCHASE AND USE AGREEMENT BEYOND THE END OF SUCH FISCAL YEAR (EXCEPT AS OTHERWISE PROVIDED HEREIN). If this Purchase and Use Agreement is terminated under this Section 4.6 or as provided in Section 4.7 or Section 2.2 hereof, the County agrees to peaceful delivery of that portion of the 2019 Facilities to be retained by the Corporation or its assigns as provided in Section 2.4 hereof.

THE OBLIGATIONS OF THE COUNTY TO MAKE INSTALLMENT PAYMENTS REQUIRED UNDER THIS ARTICLE IV AND OTHER SECTIONS HEREOF, AND TO PERFORM AND OBSERVE THE COVENANTS AND AGREEMENTS CONTAINED HEREIN, SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS, EXCEPT AS EXPRESSLY PROVIDED UNDER THIS PURCHASE AND USE AGREEMENT. Notwithstanding any dispute involving the County and any of the Corporation, contractor, subcontractor, or supplier of materials or labor, or any other person, the County shall make all Installment Payments when due and shall not withhold any Installment Payments pending final resolution of such dispute, nor shall the County assert any defense or right of set-off, recoupment, or counterclaim against its obligation to make such payments required under this Purchase and Use Agreement. The County's obligation to make Installment Payments during the term of this Purchase and Use Agreement shall not be abated through accident or unforeseen circumstances. The County agrees not to suspend, reduce, abrogate, diminish, postpone, modify, discontinue, withhold, or abate any portion of the payments required pursuant to this Purchase and Use Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the 2019 Facilities, failure of the Corporation to complete the acquisition, construction, or installation of the 2019 Projects, failure of the County to occupy or to use the 2019 Facilities as contemplated in this Purchase and Use Agreement or otherwise, any change or delay in the time of availability of the 2019 Facilities, any acts or circumstances which may impair or preclude the use or possession of the 2019 Facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the 2019 Facilities or in the suitability of the 2019 Facilities for the County's purposes or needs, failure of consideration, the invalidity of any provision of this Purchase and Use Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the 2019 Facilities, the taking by eminent domain of title to or the use of all or any part of the 2019 Facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Purchase and Use Agreement. Nothing contained in this paragraph shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained. In the event the Corporation should fail to perform any such agreement on its part, the County may institute such action against the Corporation as the County may deem necessary to compel performance so long as such action does not abrogate the County's obligations under this Purchase and Use Agreement. The County may, however, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the County deems reasonably necessary to secure or protect its right of possession, occupancy, and use under this Purchase and Use Agreement, and in such event the Corporation hereby agrees to cooperate fully with the County and to take all action necessary to effect the substitution of the County for the Corporation in any such action or proceeding if the County shall so request. It is the intention of the parties that the payments required by this Purchase and Use Agreement will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the County's obligation to pay installment payments hereunder as set forth above.

THE OBLIGATIONS OF THE COUNTY UNDER THIS PURCHASE AND USE AGREEMENT SHALL NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF

THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY PROVISION.

**SECTION 4.7 Event of Nonappropriation.** Upon the occurrence of an Event of Nonappropriation, the following provisions shall apply:

(a) If an Event of Nonappropriation occurs and is not waived, the County shall not be deemed to be in default under this Purchase and Use Agreement and shall not be obligated to make payment of any future Installment Payments due hereunder or any other payments provided for herein which accrue after the beginning of the Fiscal Year with respect to which there has occurred an Event of Nonappropriation; provided, however, that, subject to the limitations of Section 4.6 hereof and this Section 4.7, the County shall continue to be liable for Installment Payments (a) accrued prior to the beginning of such Fiscal Year, and due hereunder, and (b) allocable to any period during which the County shall continue to occupy the Corporation Facilities as provided in Section 2.3 hereof.

(b) If the County delivers official, specific written notice to the Corporation and the Trustee that it will not appropriate funds in the next succeeding Fiscal Year for payment of Installment Payments, the Trustee shall immediately give written notice to the County and the Corporation stating that an Event of Nonappropriation has occurred; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.

(c) Subject to Article VIII hereof and the provisions of subsections (d) and (e) hereof, this Purchase and Use Agreement will be terminated pursuant to Section 2.2 hereof.

(d) Subject to Article VIII hereof and the provisions of subsection (e) hereof, the Corporation or the Trustee may waive any Event of Nonappropriation which is cured by the County within a reasonable time if the Waiver Period has not expired and in the Trustee's judgment such waiver is in the best interest of the Holders of the Bonds.

(e) Subject to Article VIII hereof and notwithstanding the provisions of subsection (d) hereof, the Trustee shall waive any Event of Nonappropriation (but only an Event of Nonappropriation which occurs pursuant to clause (a) of the second sentence of the definition thereof) which is cured by the County's specifically budgeting and appropriating, prior to expiration of the Waiver Period, moneys sufficient to pay Installment Payments coming due hereunder for such Fiscal Year.

The County, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under Section 2.4 hereof and shall vacate and deliver over to the Trustee the Corporation Facilities by the later of (a) the expiration of the Fiscal Year during which an Event of Nonappropriation occurs if such Event of Nonappropriation occurs by specific written notice thereof or the [November 16] following the [November 15] on which the County shall fail to specifically budget and appropriate sufficient moneys (including the adoption of an ordinance authorizing the issuance of general obligation bonds, proceeds of which will be used) to pay the Installment Payments hereunder or (b) when required by the last paragraph of Section 2.4 hereof.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the Trust Agreement for the benefit of the Holders of the Bonds. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, if such occurs by notice, or the [November 16] following the [November 15] on which the County fails to specifically budget and appropriate sufficient moneys (including the adoption of an ordinance authorizing the issuance of general obligation bonds, proceeds of which will be used) to pay the Installment Payments hereunder, the Trustee may or shall, as the case may be, proceed to exercise its remedies, liquidate its

interest in this Purchase and Use Agreement or lease the 2019 Facilities as provided in Section 8.2 of this Purchase and Use Agreement, provided, however, that the 2019 Facilities shall always be operated for a civic or a public purpose as provided in Section 4.1 of the Base Lease to the extent such requirement continues to be applicable under State law. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Holders of the Bonds as set forth in the Trust Agreement.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees and expenses of the Trustee, and all other amounts which are payable hereunder, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Trustee, its assigns or its lessee.

## **ARTICLE V COVENANTS OF THE COUNTY**

### **SECTION 5.1 Maintenance and Operation of 2019 Facilities; Transfers.**

(a) Subject to Sections 4.6 and 4.7 herein, the County covenants and represents that during the term of this Purchase and Use Agreement, it shall, at its own cost or expense, operate the 2019 Facilities in a sound and economical manner, in compliance with all present and future laws and governmental regulations applicable thereto, and maintain, preserve and keep the 2019 Facilities in good repair, working order and condition, and that it shall from time to time make or cause to be made all necessary and proper repairs and renewals so that at all times the operation of the 2019 Facilities may be properly and advantageously conducted. This covenant shall not prevent the County from discontinuing operation of the 2019 Facilities at any time.

(b) Except as otherwise provided in this Section 5.1 and Section 2.1 hereof, prior to payment of the Bonds in full, the County shall not sell, transfer, lease, sublease or otherwise dispose of all or any portion of the 2019 Facilities, or its interests under this Purchase and Use Agreement, except to another governmental entity, as defined under the laws of the State, which assumes in writing all obligations of the County under this Purchase and Use Agreement and shall enter into no such transaction without the written consent of the Trustee.

(c) Notwithstanding any other provision hereof to the contrary, the County may provide for the exchange of any asset comprising the 2019 Facilities ("Released Facility") for another County facility and the real estate on which such facility ("Exchange Facility") is located if: (i) the County provides the Trustee an appraisal showing that the proposed Exchange Facility has a value equal to or greater than the proposed Released Facility; (ii) the County certifies to the Trustee that the Exchange Facility is necessary or desirable to the operations of the County and that the remaining useful life of the Exchange Facility is not less than the remaining useful life of the Released Facility; (iii) the County certifies to the Trustee that the exchange is necessary to facilitate either the sale or other disposition of the Released Facility or the conversion of its use to another purpose other than use by the County as a county facility; and (iv) the Trustee consents in writing thereto.

**SECTION 5.2 Liens on 2019 Facilities.** The County shall not create, incur or suffer to exist any lien, charge or encumbrance on the 2019 Real Property or the 2019 Facilities or its rights under this Purchase and Use Agreement other than any Permitted Encumbrance.

**SECTION 5.3 Reserved.**

**SECTION 5.4 Reports and Opinions; Inspections.**

(a) The County shall deliver to the Trustee and the Corporation, within 90 days after the end of each Fiscal Year, a certificate stating that no Event of Default under this Purchase and Use Agreement has occurred and is continuing and that the 2019 Facilities are being used in accordance with the terms of this Purchase and Use Agreement.

(b) The County shall permit the Corporation and the Trustee to examine, visit and inspect, at any reasonable time, the 2019 Facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Trustee may reasonably require.

**SECTION 5.5 Immunity of Corporation and Trustee; Indemnification.** In the exercise of the powers of the Corporation and the Trustee and their members, directors, officers, employees and agents under the Trust Agreement or this Purchase and Use Agreement including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Corporation nor the Trustee shall be accountable to the County for any action taken or omitted with respect to the 2019 Facilities or this Purchase and Use Agreement by either of them or their members, directors, officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred under this Purchase and Use Agreement. The Corporation and the Trustee and their members, officers, employees and agents shall be protected in its or their acting upon any paper or documents believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the County for any claims based on the Trust Agreement or this Purchase and Use Agreement against any member, director, officer, employee or agent of the Corporation or the Trustee alleging personal liability on the part of such person. To the extent permitted by law, the County shall defend the Corporation and any of its members, directors, officers, employees or agents and save them harmless against any liability, including expenses and legal or other fees, intended to be precluded by this Section 5.5 resulting from acts or omissions of the County or from acts or omissions of the Corporation or any of their members, directors, officers, employees or agents in connection with any acts taken pursuant to this Purchase and Use Agreement, except for fraud, deceit, or acts taken in bad faith or which are negligent.

**SECTION 5.6 Compliance with Laws; Consolidation or Merger.**

(a) With respect to the 2019 Facilities and any additions, alterations, or improvements thereto, the County will at all times comply with all applicable requirements of federal and state laws and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that the County shall be deemed in compliance with this Section 5.6 so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

(b) Nothing in this Purchase and Use Agreement shall be construed to prevent the County from combining with one or more counties (as defined under the laws of the State) not parties to this Purchase and Use Agreement to form a consolidated or a merged county, provided that the consolidation or merged county enters into a written supplement, joined in by the Corporation, whereunder the consolidated or merged county assumes payment of Installment Payments and all other obligations of the County hereunder, thereupon such consolidated or merged county shall replace and become the County for all purposes of this Purchase and Use Agreement.

**SECTION 5.7 Insurance and Condemnation Proceeds.** The County shall not make any disposition nor direct the disposition of insurance or condemnation payments with respect to the 2019 Facilities in excess of \$250,000 without the written consent of the Trustee except as may be required by the terms of the Security Documents or of any Permitted Encumbrances existing on the date hereof.

**SECTION 5.8 Filing of Budget with Trustee.** During the term of this Purchase and Use Agreement, the County shall file with the Trustee, within 15 days after the beginning of each Fiscal Year, a copy of the annual budget of the County for that Fiscal Year and, within fifteen days of adoption thereof, a copy of any bond ordinance, proceeds of which are to be used to pay Installment Payments.

**SECTION 5.9 Alterations of the 2019 Facilities; Removals.** The County, in its discretion and at its expense, may remodel or make such additions, modifications and improvements to the 2019 Facilities as it may deem to be desirable; provided, that no such additions, modifications or improvements shall adversely affect the structural integrity or strength of, or materially interfere with the use and operations of, the 2019 Facilities. Any such changes shall not become and shall not be deemed to constitute part of the 2019 Real Property or the 2019 Facilities as the case may be.

In this connection, the County may remove any items of personal property constituting a part of the 2019 Facilities financed by a source of funds other than Bond Proceeds, provided that such removal of the personal property shall not materially diminish the value of the 2019 Facilities.

In the case of any removal as provided above or any removal of County property not constituting 2019 Facilities, the County shall repair any damage resulting from such removal.

**SECTION 5.10 Annual Disclosure.** [To be updated depending on method of sale.]

## **ARTICLE VI INSURANCE**

### **SECTION 6.1 Types of Insurance and Coverage Requirements.**

(a) The County shall, commencing with the date that any items of personal property comprising the 2019 Facilities are delivered, or in the event that progress payments are to be made to the manufacturer thereof prior to the date of such delivery, commencing with the date of this Purchase and Use Agreement, and upon completion of any construction, reconstruction, renovation or remodeling incidental to the completion and installation of the 2019 Facilities, on all such improvements to the 2019 Facilities, maintain, as applicable, all-risk fire, extended coverage, vandalism, and malicious mischief insurance on the 2019 Facilities, with such deductible provisions as are acceptable to the Trustee. Such insurance shall name the Corporation and the Trustee as additional insureds or loss payees, as their interests may appear, be maintained for the term of this Purchase and Use Agreement and each policy shall be in an amount equal to the replacement value of the 2019 Facilities; provided that, on the third anniversary of the execution of this Purchase and Use Agreement and every three years thereafter, the County shall cause the preparation and pay for the expense of a certification of the maximum full insurable value of the 2019 Facilities by an independent insurance agent or a person or company knowledgeable in such matters and shall deliver the same to the Trustee.

(b) The County shall, to the extent required by law or good business practice, maintain for the term of this Purchase and Use Agreement, general liability insurance, worker's compensation insurance, disability insurance, and any other form of insurance, covering loss resulting from injury, sickness,



disability or death of employees in amounts at least equal to those carried by institutions of similar size and nature.

(c) The County shall maintain, for the term of this Purchase and Use Agreement, general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than \$800,000 per occurrence and not less than \$1,000,000 in the aggregate for claims made in any one year on account of injury of any one person, and \$250,000 for property damage per occurrence with an aggregate property damage limitation of not less than \$500,000, excluding liability imposed upon the County by any applicable worker's compensation law. Such insurance shall name the Corporation and the Trustee as additional insureds or loss payees, as their interests may appear.

(d) All policies of insurance required hereunder shall be written by the South Carolina Insurance Reserve Fund, companies rated not lower than "A" by A. M. Best Company or in one of the three highest rating categories by S&P Global Ratings ("S&P") or Moody's Investors Service, Inc. ("Moody's"), or by companies acceptable to the Trustee, in each case qualified to do business in the State and each policy shall provide at least 30 days prior written notice to the Corporation and the Trustee before such policy is canceled. The County may provide any part or all of the insurance required hereby under the terms of a policy insuring other facilities or risks or any "blanket" policy. The County covenants that it will take all action, or cause the same to be taken, which may be necessary to enable recovery under the aforesaid insurance policies.

(e) All policies of insurance required hereby shall be open to inspection by the Corporation and the Trustee at all reasonable times. Certificates of insurance describing such policies shall be furnished by the County to the Corporation and the Trustee when such policies are required to be obtained by this Section 6.1 and at least 10 days prior to the expiration of each of such policies. The County shall certify that it is in compliance with the provisions hereof at or prior to the execution and delivery of this Purchase and Use Agreement. If any change shall be made in such insurance as to either amount or type of coverage, a description and notice of such change shall be furnished immediately to the Corporation and the Trustee by the County or it shall cause the same to be so furnished. In the event that the County fails to maintain any insurance as provided in this Section 6.1, the Trustee may, upon such notice to the County as is reasonable under the circumstances, procure and maintain such insurance at the expense of the County (reimbursable as provided hereinbefore), but the Trustee shall not be under an obligation to do so.

**SECTION 6.2 Self-Insurance Approval.** If, at the time of execution of this Purchase and Use Agreement, the County self-insures or at any time hereafter desires to self-insure to the extent permitted by law, the entry into such self-insurance program shall require the written approval of the Corporation and the Trustee.

## **ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**SECTION 7.1 Damage, Destruction and Condemnation.** If, during the term of this Purchase and Use Agreement, (i) the 2019 Facilities or any portion thereof shall be destroyed (in whole or in part), or be damaged by fire or other casualty, or (ii) title to, or the temporary or permanent use of, the 2019 Facilities or any portion thereof or the estate of the County or the Corporation (as applicable) in the 2019 Facilities or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or (iii) a

material defect in construction or installation of the 2019 Facilities or any portion thereof shall become apparent, or (iv) title to or the use of all or any portion of the 2019 Facilities shall be lost by reason of a defect in title thereto, then the County shall be obligated, subject to the option provided in Section 7.3 hereof and the provisions of Sections 4.6 and 4.7 hereof, to continue to pay the amounts specified as Installment Payments under this Purchase and Use Agreement.

**SECTION 7.2 Obligation to Repair or Replace the 2019 Facilities.** Subject to the provisions of Section 7.3 hereof, the County, the Corporation and the Trustee shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards made available by reason of any occurrence described in Section 7.1 hereof, to be deposited as provided in Sections 3.5, 3.7 or 3.8, as the case may be, hereof prior to the Completion Date or, after the Completion Date, in a separate trust fund designated as the “Net Proceeds Fund” which the Trustee is hereby directed to establish in such event. Except as set forth in Section 7.3 hereof, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the 2019 Facilities by the County upon receipt of requisitions acceptable to the Trustee signed by an authorized official of the County stating with respect to each payment to be made: (i) the requisition number; (ii) the name and address of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; and (iv) that each obligation mentioned therein has been properly incurred, is properly payable from the Net Proceeds held in the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. In carrying out any of the provisions of this Section 7.2, the County shall have all power and authority granted under Article III of this Purchase and Use Agreement; and the Trustee shall cooperate with the County in the administration of such fund and shall not unreasonably withhold its approval of requisitions required by this Section 7.2. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be applied to any lawful and authorized purpose of the County as directed in writing by the County. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be included as part of the 2019 Facilities under this Purchase and Use Agreement and the Trust Agreement.

If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the 2019 Facilities referred to above, the County shall be responsible, subject to the option contained in Section 7.3 hereof, for the completion of the work and the payment of any cost in excess of the amount of the Net Proceeds. In this connection, the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this paragraph, the County shall not be entitled to any reimbursement therefor from the Trustee or the Holders of the Bonds, nor shall the County be entitled to any diminution of any Installment Payments payable under this Purchase and Use Agreement.

**SECTION 7.3 Discharge of Obligation to Repair or Replace the 2019 Facilities.** If, as a result of the occurrence of an event described in Section 7.1 hereof, (a) any part of the 2019 Facilities is totally destroyed or is damaged to such an extent that the rebuilding or repairing of such part of the 2019 Facilities would be impracticable, (b) there is discovered a material defect in the construction of the 2019 Facilities or any portion thereof that renders the 2019 Facilities or such portion unusable by the County for its intended purposes, (c) all or substantially all of the 2019 Facilities relating to a particular building is taken by eminent domain or (d) the County is deprived of the use of any part of the 2019 Facilities by reason of a defect in title thereto, the County may elect to apply the Net Proceeds of applicable insurance policies, performance bonds or condemnation awards as a prepayment of Installment Payments and the discharge of its obligations with respect to Sections 7.1 and 7.2 hereof. Such an election may be made by written notice to the Corporation and the Trustee within 90 days of the occurrence of an event described in (a) through (d) above. Upon any such prepayment, the amount thereof shall be applied to redeem the

Bonds at the earliest practicable date pursuant to Section 4.1(b) of the Trust Agreement, the Purchase Price shall be recalculated to take account of such prepayment. Upon any such prepayment of the Bonds, title to the affected part of the 2019 Facilities shall be deemed transferred to the County and in the event of any future partition under Section 2.4 hereof, such affected part of the 2019 Facilities shall be automatically assigned to the County. If at any time the amount to be applied as a prepayment hereunder shall exceed the redemption price of all Bonds, all Bonds shall be redeemed, title to all the 2019 Facilities shall be transferred to the County and any amounts not required for the redemption of the Bonds and payment of other expenses and amounts under the Trust Agreement shall be paid to the County.

**SECTION 7.4 Cooperation of the Parties.** The Corporation, the County and the Trustee shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 7.1 of this Purchase and Use Agreement, in making the Net Proceeds available in accordance with Section 7.2 or 7.3 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the 2019 Facilities or any portion thereof and in the enforcement of all warranties relating to the 2019 Facilities. The Corporation hereby designates the County as its agent for the purpose of making collections under such policies, such amounts to be held in trust and applied in accordance herewith. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding with respect to the 2019 Facilities or any portion thereof without the written consent of the County and the Trustee.

## **ARTICLE VIII DEFAULTS AND REMEDIES**

**SECTION 8.1 Events of Default.** Each of the following events is hereby defined as, and declared to be and shall constitute, an “Event of Default”:

(a) failure by the County to make any payment required to be made pursuant to Section 4.1(b) hereof within five days after the same is due (provided, however, that an Event of Nonappropriation shall not result in an Event of Default under this provision);

(b) failure by the County to timely comply with the provisions of Section 2.4 hereof relating to partition and vacating of 2019 Facilities at the times required;

(c) failure by the County to make any payment required to be made pursuant to Section 4.1(c), 4.2 or 4.4 hereof or under the provisions of the Base Lease within 10 days after the same is due;

(d) failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Purchase and Use Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the County by the Trustee;

(e) if any of the representations and warranties of the County hereunder shall prove to be false or misleading in any material respect as of the date such representations and warranties were made;

(f) failure by the County promptly to stay or lift any execution, garnishment or attachment of such consequence as will, in the reasonable judgment of the Trustee, materially impair its ability to carry out its obligations under this Purchase and Use Agreement (provided that the County shall not be in default so long as it is diligently prosecuting a bona fide appeal from any such execution, garnishment or attachment);

(g) if the County shall (i) apply for or consent to the appointment of a receiver, trustee, or the like of the County or of property of the County, or (ii) admit in writing the inability of the County to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated as bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code; or

(h) if there shall have occurred an event of default under any Supplemental Purchase and Use Agreement or with respect to any series of Additional Bonds.

The foregoing provisions of this Section 8.1 are subject to the following provision: If, by reason of Force Majeure, the County shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the County contained in Articles IV and VI of this Purchase and Use Agreement, the County shall not be deemed in default during the continuance of such inability. The County agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the County from carrying out its agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County.

**SECTION 8.2 Remedies.** Subject at all times to the rights of the County under Section 2.1 hereof as to portions of the 2019 Facilities it has so acquired, whenever any Event of Default referred to in Section 8.1 of this Purchase and Use Agreement shall have happened and be continuing, the Corporation (with written notice promptly given to the Trustee) and the Trustee may terminate the term of this Purchase and Use Agreement and shall give notice to the County to vacate the Corporation Facilities within 30 days from the date of such notice. Whenever an Event of Nonappropriation shall be deemed to occur, the term of this Purchase and Use Agreement shall terminate pursuant to Section 2.2(a) hereof and the County shall vacate and deliver over to the Trustee possession of the Corporation Facilities by the time specified in the third paragraph of Section 4.7 hereof.

The Trustee may also (i) take whatever action at law or in equity which may appear necessary or desirable to enforce its rights in and to the 2019 Facilities under the Security Documents, subject, however, to the limitations set forth herein, and (ii) exercise all the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

In addition, the Trustee may, or at the direction of the Holder of the Outstanding Bonds shall, without any further demand or notice, and subject to the terms of the Base Lease, including without limitation, the provisions in Section 4.1 of the Base Lease which provide that the Corporation Facilities shall always be operated for a civic or public purpose to the extent such requirement continues to be applicable under State law, take one or both of the following additional remedial steps:

(i) The Trustee may liquidate its interest in this Purchase and Use Agreement or sell or assign its interest in the Base Lease; or

(ii) The Trustee may relet or assign its rights to the Corporation Facilities under such terms and conditions as it deems appropriate for the benefit of the Holders of the Bonds.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, (1) in the event of termination of the County's interest in any portion of the 2019 Facilities and subsequent thereto the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including fees and expenses of the Trustee, and the payment in full of amounts owed to the

Trustee, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Default or Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Trustee, its assigns or its lessee and (2) the Trustee shall not be permitted to sell, lease or otherwise dispose of any interest in the Corporation Facilities following an Event of Nonappropriation until the Waiver Period has expired, unless such action is expressly subject to the rights of the Corporation, Trustee or the County, as the case may be, to waive such Event of Nonappropriation.

**SECTION 8.3 Limitations on Remedies.** A judgment requiring a payment of money may be entered against the County by reason of an Event of Default or Event of Nonappropriation only as to the County's liabilities described in Section 10.1 of this Purchase and Use Agreement.

**SECTION 8.4 Cumulative Rights.** No remedy conferred upon or reserved to the Corporation or the Trustee by this Purchase and Use Agreement 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 Purchase and Use Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Corporation or the Trustee of any breach by the County of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or failure by the Corporation or the Trustee to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised by the Corporation or the Trustee from time to time and as often as may be deemed expedient.

**SECTION 8.5 Discontinuance of Proceedings.** In case the Corporation or the Trustee shall have proceeded to enforce any right under this Purchase and Use Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Corporation or the Trustee, then and in every such case the County, the Corporation and the Trustee shall be restored respectively to their several positions and rights hereunder and all rights, remedies and powers of the County, the Corporation and the Trustee shall continue as though no such proceeding had been taken.

## ARTICLE IX CONVEYANCE OF THE 2019 FACILITIES

### **SECTION 9.1 Optional Purchase of the 2019 Facilities.**

(a) Purchase in Full. The County is hereby granted the option to terminate this Purchase and Use Agreement and to purchase the Corporation's interest in the 2019 Facilities not theretofore acquired by the County at any time upon payment by the County of the then applicable Purchase Option Price; provided, however, that no such termination shall relieve the County from its obligation to pay Administrative Expenses as provided in Section 4.4 hereof until the Bonds have been fully discharged and the Trust Agreement terminated. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such purchase or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such purchase, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee. Upon the payment of the Purchase Option Price, the Corporation shall transfer and convey all of its remaining interest in the 2019 Facilities to the County in the manner provided in Section 9.2 hereof.

(b) Prepayment of Base Payments and Purchase. On or after [ ], the County is also granted the option to prepay Base Payments at any time for the purpose of having such prepayments credited towards the

purchase price of the 2019 Facilities. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such prepayment or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such prepayment, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee.

## **SECTION 9.2 Manner of Conveyance.**

(a) Complete Conveyance. At the closing of any purchase or other conveyance of all of the 2019 Facilities pursuant to Section 9.1 (a) of this Purchase and Use Agreement, or at the conclusion of the term hereof by the payment of all amounts due hereunder, the Corporation and the Trustee shall execute and deliver to the County all necessary documents assigning, transferring and conveying all interest to the 2019 Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the County.

(b) Partial Conveyance Resulting from Partition. Upon any conveyance under Section 2.4 hereof, the Corporation and the Trustee shall execute and deliver to the County all necessary documents assigning, transferring and conveying all interest in the County Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement with respect to the County Facilities and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the County.

(c) Partial Conveyance Resulting from Prepayment. Any conveyance resulting from a partial prepayment under Section 9.1(b) hereof shall be made in the manner as all other conveyances with respect to payments on each Bond Payment Date.

Neither the Trustee nor the Corporation shall be responsible for the recordation of any deed or other instrument for such purposes.

**ARTICLE X  
MISCELLANEOUS**

**SECTION 10.1 Limitation of Liability of the Corporation and the County.** Notwithstanding any other provision of this Purchase and Use Agreement, in the event of any default by either the Corporation or the County hereunder or under the Trust Agreement, any liability of the Corporation or the County shall be enforceable only out of its interest in the Base Lease and under this Purchase and Use Agreement and the moneys to be paid by the County through the later of the end of the Fiscal Year as to which Base Payments have been appropriated for or the conclusion of any holdover term as provided in Section 2.3 hereof, and there shall be no recourse for any claim based on this Purchase and Use Agreement, the Trust Agreement or the Bonds, against any other property of the Corporation or the County or against any officer or employee, past, present or future, of the Corporation or the County or any successor body as such, either directly or through the Corporation or the County or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Corporation and the County shall be limited to its interests in the Base Lease and interests under this Purchase and Use Agreement and the moneys to be paid by the County hereunder through the later of the end of the Fiscal Year as to which Base Payments have been appropriated therefor or the conclusion of any holdover term as provided in Section 2.3 hereof, and the lien of any judgment shall be restricted thereto, and there shall be no other recourse by the County against the Corporation or the Corporation against the County or any of the property now or hereafter owned by it or either of them.

**SECTION 10.2 Surrender of Possession Upon Termination.** Upon termination hereof or upon termination of all rights of the County hereunder, either by reason of an Event of Default or an Event of Nonappropriation, the County covenants that it will deliver up or cause to be delivered up peaceable possession of such of the 2019 Facilities as are determined under Section 2.4 hereof to be Corporation Facilities together with the related portion of the 2019 Real Property without delay, upon demand made by the Corporation or the Trustee, in good repair and operating condition, excepting reasonable wear and tear and damage, injury or destruction by fire or other casualty which, under the terms hereof, shall not have been repaired, reconstructed or replaced.

**SECTION 10.3 Notices.** Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties as follows:

If to the County:  
Richland County, South Carolina  
ATTN: County Administrator  
2020 Hampton Street  
Columbia, SC 29204

If to the Corporation:  
Richland Facilities Corporation  
Attention: President  
[ ]

(with copy to the County as described above, which does not constitute notice)

(and with a copy to, which does not constitute notice)

Emily S. Luther  
Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100  
Columbia, South Carolina 29201

If to the Trustee:  
[U.S. Bank National Association]

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, or the County to one or more of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

The Trustee is entitled to written notice of an Event of Default, no more than five Business Days after either the County or the Corporation has actual knowledge of the Event of Default.

**SECTION 10.4 Assignments.** Except as expressly provided in the Trust Agreement, this Purchase and Use Agreement may not be assigned by either of the parties without the written consent of the other party and the written consent of the Trustee. Except as provided in Section 8.2 hereof and the provisions of Articles VI and VII of the Trust Agreement, the Trustee shall not be permitted to further assign its interest in this Purchase and Use Agreement. Any assignment in contravention hereof shall be void.

**SECTION 10.5 Severability.** In case any provision of this Purchase and Use Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court or administrative body of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this Purchase and Use Agreement shall be construed as if such provision had never been contained herein.

**SECTION 10.6 Amendments.** The County and the Corporation may, with the prior consent of the Trustee, but without the consent of the Holder of any Bond, enter into any amendments at any time for any of the following purposes:

- (a) To cure any ambiguity, defect or omission herein or in any amendment; or
- (b) To grant to or confer upon the Corporation any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon it; or
- (c) To add to the covenants and agreements of the County herein contained, or to surrender any right or power herein reserved to or conferred upon the County; or
- (d) To increase the Base Payments hereunder to enable the County to proceed to acquire and install additional assets in addition to the 2019 Facilities or modify the Base Payments hereunder in connection with the issuance of Additional Bonds under the Trust Agreement or the redemption, refunding or defeasance of a series of Bonds; or
- (e) To reflect a change in applicable law; or
- (f) To make any amendments required by Moody's or S&P as a condition to rating the Bonds.



The County and the Corporation may, with notice to but without the prior consent of the Trustee, and without notice to or the consent of the Holder of any Bond, enter into any amendments at any time and from time to time (i) amend the 2019 Projects in Exhibit A, (ii) to add Additional Real Property to the description in Exhibit B, consistent with amendments made pursuant to Section 3.1 of the Base Lease, (iii) under the conditions specified in Section 5.1(c) hereof, to delete 2019 Real Property in connection with a substitution of other 2019 Real Property, (iv) to release property from the description of the 2019 Real Property described in Exhibit B, consistent with a termination of the Base Lease pursuant to Section 3.6 of the Base Lease, or (v) to revise the description of Permitted Encumbrances specified in Exhibit C in connection with the foregoing amendments.

All other amendments must be approved by the Trustee and, if and to the extent required by the Trust Agreement, the consent of the Holders of the Bonds.

The Trustee shall receive prior written notice of all such amendments.

**SECTION 10.7 Successors and Assigns.** All covenants, promises and agreements contained in this Purchase and Use Agreement by or on behalf of or for the benefit of the County or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not. To the extent that this Purchase and Use Agreement confers upon, gives or grants to the Trustee any right, remedy or claim under or by reason of this Purchase and Use Agreement, the Trustee is explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**SECTION 10.8 Applicable Law.** This Purchase and Use Agreement shall be governed by, and interpreted under, the laws of the State of South Carolina.

**SECTION 10.9 Recordation.** At the option of the Corporation this Purchase and Use Agreement or a short form and summary hereof may be recorded in appropriate official records.

**SECTION 10.10 Execution in Counterparts.** This Purchase and Use Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

[ONE SIGNATURE PAGE FOLLOWS]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]

WITNESS the due execution of this Purchase and Use Agreement, effective, as of the day and the year first mentioned above.

(SEAL)

RICHLAND COUNTY, SOUTH CAROLINA

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
County Council Chair  
Richland County, South Carolina

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk to County Council  
Richland County, South Carolina

(SEAL)

RICHLAND FACILITIES CORPORATION

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF RICHLAND        )

ACKNOWLEDGMENT

I \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that Paul Livingston, Chair of the County Council of Richland County, South Carolina, and Kimberly Williams-Roberts, Clerk of Council to Richland County, South Carolina, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_ day of [], 2019.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF RICHLAND         )         ACKNOWLEDGMENT

I \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that [ ], President of the Richland Facilities Corporation and [ ], Secretary of the Richland Facilities Corporation, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_ day of [], 2019.

\_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**2019 PROJECTS**

2019 Projects

Acquiring, improving and equipping certain real property on which the County will develop a commercial and industrial park to further the economic development of the County.

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE 2019 REAL PROPERTY AND ANY ADDITIONAL REAL PROPERTY  
(AS MAY BE AMENDED ACCORDING TO SECTION 10.6 OF THIS PURCHASE AND USE AGREEMENT)**

TMS No. R11406-04-01  
2020 Hampton Street (County Administration Building)

[Legal Description to Come]

TMS No. R11614-07-06  
3220 Two Notch Rd. (Richland County Department of Social Services Building)

[Legal Description to Come]

**EXHIBIT B-1**  
**2019 FACILITIES**

All existing improvements located on the 2019 Real Property and any Additional Real Property.

**EXHIBIT C**  
**PERMITTED ENCUMBRANCES**

Any mortgages, liens, financing statements, security interests, easements, leases, restrictive covenants, agreements, options, claims, clouds, encroachments, rights, taxes, assessments, mechanic's or materialmen's liens (inchoate or perfected), and other encumbrances of any nature whatsoever, of record.



**EXHIBIT D**  
**BASE PAYMENTS SCHEDULE**

[INSERT]

**EXHIBIT E**  
**VALUATION OF 2019 FACILITIES\***

[INSERT]

\*AFTER THE COMPLETION DATE AND THE FILING OF THE ACCEPTANCE CERTIFICATE IN ACCORDANCE WITH SECTION 3.04 HEREOF, THE ASSIGNED VALUES OF THE 2019 FACILITIES AND THE PERCENTAGES THEREOF BEING PURCHASED SHALL BE RECALCULATED BASED UPON FINAL CONSTRUCTION COSTS OF THE 2019 FACILITIES. NUMBERS MAY NOT ADD DUE TO ROUNDING.

**EXHIBIT C**  
**2019 FACILITIES**

TMS No. R11406-04-01  
2020 Hampton Street (County Administration Building)

TMS No. R11614-07-06  
3220 Two Notch Rd. (Richland County Department of Social Services Building)

## Richland County Council Request for Action

**Subject:**

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Mars Petcare US, Inc., to provide for payment of a fee-in-lieu of taxes; and other related matters

**Notes:**

First Reading: April 2, 2019

Second Reading: April 16, 2019

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND MARS PETCARE US, INC., TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County, South Carolina more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, Mars Petcare US, Inc. (“Sponsor”) desires to expand its manufacturing operations in the County (“Project”) consisting of taxable investment in real and personal property approximately Three Million Dollars (\$3,000,000.00); and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes Agreement with the Sponsor, as sponsor, the substantially final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (1) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; and (2) locating the Project in the Park.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1. Statutory Findings.** Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.*** The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

**Section 3. *Inclusion within the Park.*** The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

**Section 4. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 7. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: April 2, 2019  
Second Reading: April 16, 2019  
Public Hearing: September 10, 2019  
Third Reading: September 10, 2019

**EXHIBIT A**  
**FORM OF FEE AGREEMENT**  
[ATTACHED]



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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT**

**BETWEEN**

**MARS PETCARE US, INC.**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF SEPTEMBER 10, 2019**

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**SUMMARY OF CONTENTS OF  
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

<b>PROVISION</b>	<b>BRIEF DESCRIPTION</b>	<b>SECTION REFERENCE</b>
<b>Sponsor Name</b>	<b>Mars Petcare US, Inc.</b>	"Sponsor"
<b>Project Location</b>	<b>1720 Pineview Drive</b>	Exhibit A
<b>Tax Map No.</b>	<b>R16200-06-01</b>	Exhibit A
<b>FILOT</b>		
• Phase Exemption Period	Thirty (30) years	
• Contract Minimum Investment Requirement	\$3,000,000.00	
• Investment Period	Five (5) years	
• Assessment Ratio	6%	
• Millage Rate	482.5	
• Fixed or Five-Year Adjustable Millage	Fixed	
<b>Multicounty Park</b>	<b>I-77 Corridor Regional Industrial Park</b>	
<b>Other Information</b>		

## FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of September 10, 2019, between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County, and Mars Petcare US, Inc., a corporation organized and existing under the laws of the State of Delaware (“*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to expand a manufacturing facility (“*Facility*”) in the County, consisting of taxable investment in real and personal property of Three Million Dollars (\$3,000,000.00); and

(d) By an ordinance enacted on September 10, 2019, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to expand its Facility in the County.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.1. Terms.** The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses do not include any costs or expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“*Code*” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2019.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of Three Million Dollars (\$3,000,000.00).

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement effective, as of September 10, 2019.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1.

“**Final Phase**” means the Economic Development Property placed in service during the last year of the Investment Period.

“**Final Termination Date**” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2049, the Final Termination Date is expected to be on or around January 15, 2051, which is the due date of the last FILOT Payment with respect to the Final Phase.

**“Improvements”** means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

**“Infrastructure”** means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

**“Infrastructure Credit”** means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act or Section 4-1-175 of the MCIP Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

**“Investment Period”** means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five (5) years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2024.

**“MCIP Act”** means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

**“Multicounty Park”** means the multicounty industrial or business park governed by Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of September 1, 2018, between the County and Fairfield County, South Carolina.

**“Net FILOT Payment”** means the FILOT Payment net of the Infrastructure Credit.

**“Phase”** means the Economic Development Property placed in service during a particular year of the Investment Period.

**“Phase Exemption Period”** means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

**“Phase Termination Date”** means, with respect to each Phase, the last day of the property tax year which is the twenty-ninth (29<sup>th</sup>) year following the first property tax year in which the Phase is placed in service.

**“Project”** means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

**“Real Property”** means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

**“Removed Components”** means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means Mars Petcare US, Inc., a Delaware corporation, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“**Sponsor Affiliate**” means an entity that participates in the investment at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“**State**” means the State of South Carolina.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the County.** The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County’s general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a “project” on April 2, 2019 by adopting an Inducement Resolution, as defined in the Act.



(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

**Section 2.2. Representations and Warranties of the Sponsor.** The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a manufacturing facility and/or for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement by the end of the Investment Period.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

### **ARTICLE III THE PROJECT**

**Section 3.1. The Project.** The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2019. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

**Section 3.2 Leased Property.** To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

**Section 3.3. Filings and Reports.**

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing in January 31, 2020, the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) Within thirty (30) days of the effective date of this Fee Agreement, the Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV  
FILOT PAYMENTS**

**Section 4.1. FILOT Payments.**

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 482.5, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2018.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7.

**Section 4.2. *FILOT Payments on Replacement Property.*** If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

**Section 4.3. *Removal of Components of the Project.*** Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* taxes.

**Section 4.4. *Damage or Destruction of Economic Development Property.***

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

**Section 4.5. *Condemnation.***

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

**Section 4.6. *Calculating FILOT Payments on Diminution in Value.*** If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

**Section 4.7. *Payment of Ad Valorem Taxes.*** If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

**Section 4.8. *Place of FILOT Payments.*** All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V  
[RESERVED]**

**ARTICLE VI  
[RESERVED]**

**ARTICLE VII  
DEFAULT**

**Section 7.1. *Events of Default.*** The following are “Events of Default” under this Fee Agreement:

(a) Failure to make FILOT Payments or any amount due under this Fee Agreement, which failure has not been cured within thirty (30) days following receipt of written notice from the County specifying the delinquency in payments and requesting that it be remedied;

(b) A Cessation of Operations. For purposes of this Fee Agreement, a “*Cessation of Operations*” means a publicly announced permanent closure of the Facility;

(c) A representation or warranty made by the Sponsor which is deemed materially incorrect when deemed made;

(d) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within thirty (30) days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the thirty (30) day period and is diligently pursuing corrective action until the default is corrected, in which case the thirty (30) day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

(f) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within thirty (30) days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the thirty (30) day period and is diligently pursuing corrective action until the default is corrected, in which case the thirty (30) day period is extended to include the period during which the County is diligently pursuing corrective action.

(h) Notwithstanding anything herein to the contrary, failure to meet any investment requirements, thresholds, or levels set forth in this Fee Agreement shall not be deemed to be an Event of Default under this Agreement.

**Section 7.2. *Remedies on Default.***

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

**Section 7.3. *Reimbursement of Legal Fees and Other Expenses.*** On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 7.4. *Remedies Not Exclusive.*** No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

## ARTICLE VIII PARTICULAR RIGHTS AND COVENANTS

**Section 8.1. *Right to Inspect.*** The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

**Section 8.2. *Confidentiality.*** The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“***Confidential Information***”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “***Confidential Information.***” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement, including reasonable cooperation with the Sponsor to redact any proposed disclosures that may be exempt under the Freedom of Information Act.

### **Section 8.3. *Indemnification Covenants.***

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “***Indemnified Party***”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within thirty (30) days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor's expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**Section 8.4. *No Liability of County Personnel.*** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.5. *Limitation of Liability.*** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. *Assignment.*** The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. Notwithstanding anything herein to the contrary, the County hereby preapproves and consents to any assignment of this Fee Agreement to any transferee in connection with any of the transfers set forth in 12-44-120(B) of the Act or any other financing-related transfer. The Sponsor agrees to notify the County and the Department of the identity of any such transferee within sixty (60) days following the transfer. In case

of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.7. No Double Payment; Future Changes in Legislation.** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.8. Administration Expenses.** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of Five Thousand Dollars (\$5,000.00). The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than sixty (60) days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

## ARTICLE IX SPONSOR AFFILIATES

**Section 9.1. Sponsor Affiliates.** The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

**Section 9.2. Primary Responsibility.** Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

## ARTICLE X MISCELLANEOUS

**Section 10.1. Notices.** Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in



writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE SPONSOR:**

Mars Petcare US, Inc.  
Attn: Steve Cavezza  
315 Cool Springs Boulevard  
Franklin, TN 37067

**WITH A COPY TO (does not constitute notice):**

Womble Bond Dickinson (US) LLP  
Attn: Stephanie L. Yarbrough  
5 Exchange Street  
Charleston, South Carolina 29401

**IF TO THE COUNTY:**

Richland County, South Carolina  
Attn: Richland County Economic Development Director  
2020 Hampton Street  
Columbia, South Carolina 29204

**WITH A COPY TO (does not constitute notice):**

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

**Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor.** Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

**Section 10.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 10.4. Governing Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

**Section 10.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

**Section 10.6. Amendments.** This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

**Section 10.7. Agreement to Sign Other Documents.** From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and

reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

**Section 10.8. Interpretation; Invalidity; Change in Laws.**

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

**Section 10.9. Force Majeure.** The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with thirty (30) days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. Entire Agreement.** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. *Waiver.*** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. *Business Day.*** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. *Agreement's Construction.*** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
County Council Chair  
Richland County, South Carolina

**ATTEST:**

By: \_\_\_\_\_  
Clerk to County Council  
Richland County, South Carolina

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**MARS PETCARE US, INC.**

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

1720 Pineview Drive  
Columbia, South Carolina 29209

TMS No. R16200-06-01

**EXHIBIT B (see Section 9.1)**  
**FORM OF JOINDER AGREEMENT**

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective September 10, 2019 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Mars Petcare US, Inc. (“Sponsor”).

**1. Joinder to Fee Agreement.**

[\_\_\_\_\_], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: \_\_\_\_\_]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following \_\_\_\_\_]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

**2. Capitalized Terms.**

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

**3. Representations of the Sponsor Affiliate.**

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

**4. Governing Law.**

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

**5. Notice.**

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[\_\_\_\_\_]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Entity  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

**RICHLAND COUNTY, SOUTH CAROLINA**

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



**EXHIBIT C (see Section 3.3)**  
**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING**  
**ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,  
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY  
PRACTICES CONCERNING ECONOMIC DEVELOPMENT  
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

**Section 1.** The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

**Section 2.** The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

**Section 3.** A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office  
Attention: Kim Mann  
1201 Main Street, Suite 910  
Columbia, SC 29201

**Section 4.** This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

**Section 5.** The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


**Section 6.** In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA

  
Chair, Richland County Council

(SEAL)  
ATTEST:

  
Clerk to County Council

## Richland County Council Request for Action

**Subject:**

An Ordinance consenting to the conversion of an existing lease purchase agreement between Richland County (The "County") and Mars Petcare US, Inc., f/k/a Kal Kan Foods, Inc. (The "Company") to a fee in lieu of tax agreement pursuant to Title 12, Chapter 44, South Carolina Code, 1976, as amended; authorizing the execution and delivery of a fee in lieu of tax (Conversion) agreement by and between the County and the Company; authorizing the reconveyance by the County to the Company of the property subject to such lease purchase agreement; and other related matters

**Notes:**

First Reading: April 2, 2019

Second Reading: April 16, 2019

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONSENTING TO THE CONVERSION OF AN EXISTING LEASE PURCHASE AGREEMENT BETWEEN RICHLAND COUNTY (THE “COUNTY”) AND MARS PETCARE US, INC., F/K/A KAL KAN FOODS, INC. (THE “COMPANY”) TO A FEE IN LIEU OF TAX AGREEMENT PURSUANT TO TITLE 12, CHAPTER 44, SOUTH CAROLINA CODE, 1976, AS AMENDED; AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX (CONVERSION) AGREEMENT BY AND BETWEEN THE COUNTY AND THE COMPANY; AUTHORIZING THE RECONVEYANCE BY THE COUNTY TO THE COMPANY OF THE PROPERTY SUBJECT TO SUCH LEASE PURCHASE AGREEMENT; AND OTHER RELATED MATTERS**

WHEREAS, pursuant to Title 4, Chapter 12 of the Code, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”), previously entered into a Lease Purchase Agreement dated as of October 7, 1998, with Kal Kan Foods, Inc., a Delaware corporation (“Kal Kan”), as amended by that certain First Amendment to the Lease Purchase Agreement, dated as of December 4, 2018 (as further amended, modified and supplemented from time to time, the “Lease Agreement”) for the purpose of inducing investment in the County through the provision of certain fee in lieu of tax benefits hereunder; and

WHEREAS, Mars Petcare US, Inc., a Delaware corporation (the “Company”), is the successor in interest to Kal Kan under the Lease Agreement; and

WHEREAS, Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), allows the Company, with the consent of the County, to convert the Lease Agreement to a simplified fee in lieu of tax arrangement under the FILOT Act and, in so converting, to cause any property subject to the Lease Agreement (collectively, the “Project”) to be automatically considered economic development property, as defined in Section 12-44-30(7) of the FILOT Act; and

WHEREAS, pursuant to the authority of Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended and Article VIII, Section 13 of the South Carolina Constitution, the County has previously located the Project in the multicounty park jointly developed with Fairfield County, South Carolina (“Park”); and

WHEREAS, the Company has requested the County enter into a Fee in Lieu of Tax (Conversion) Agreement (the “Conversion Agreement”), the form of which is attached as Exhibit A, with respect to the Project the terms of which include: (i) the conversion of the Lease Agreement into a fee in lieu of tax agreement under the FILOT Act; (ii) the continuation, under the Conversion Agreement, of the same fee payments required of the Company under the Lease Agreement for the same time required under the Lease Agreement; (iii) the minimum investment requirements of the Lease Agreement; (iv) appropriate agreements and amendments to continue the provisions and limitations of the Lease Agreement; and (v) the reconveyance to the Company of the property constituting the Project currently subject to the Lease Agreement, to be treated as economic development property (as defined by the FILOT Act) under the Conversion Agreement.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1. *Statutory Findings.*** The Company has provided notice of its election to transfer the Project from the arrangement provided by Lease Agreement to the fee arrangement provided under the Conversion Agreement. The County consents to such transfer pursuant to Section 12-44-170 of the FILOT Act.

**Section 2. *Authorization to Execute and Deliver Conversion Agreement.*** The form, terms and provisions of the Conversion Agreement that is before this meeting are approved, and all of the Conversion Agreement's terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council ("Chair") is authorized and directed to execute the Conversion Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Conversion Agreement and to deliver the Conversion Agreement to the Company.

**Section 3. *MCIP Ratification and Expansion.*** The County acknowledges and ratifies the inclusion of the Project in the Park, and to the extent any portion of the Project is not included in the Park, the County authorizes and approves the expansion of the Park boundaries to include the Project. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park ("Park Agreement"), any necessary expansion of the Park's boundaries or amendment to the Park Agreement to include the Project in the Park is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

**Section 4. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Conversion Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 7. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston  
Chair, Richland County Council

(SEAL)

ATTEST:

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Kimberly Williams-Roberts  
Clerk of Council, Richland County Council

First Reading: April 2, 2019  
Second Reading: April 16, 2019  
Public Hearing: September 10, 2019  
Third Reading: September 10, 2019

**EXHIBIT A**

**FORM OF CONVERSION AGREEMENT**

[ATTACHED]



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**FEE IN LIEU OF TAX (CONVERSION) AGREEMENT**

by and between

**MARS PETCARE US, INC.**  
a Delaware corporation

and

**RICHLAND COUNTY, SOUTH CAROLINA**

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Dated as of \_\_\_\_\_, 2019  
(as a conversion under Title 12, Chapter 44, Code of  
Laws of South Carolina 1976, as amended, of a Lease  
Purchase Agreement dated as of October 7, 1998, by  
and between Richland County, South Carolina and  
Kal Kan Foods, Inc., the predecessor in interest to  
Mars Petcare US, Inc.)

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**FEE IN LIEU OF TAX (CONVERSION) AGREEMENT**

THIS FEE IN LIEU OF TAX (CONVERSION) AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2019, by and between MARS PETCARE US, INC., a Delaware corporation (the “Company”), and RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”). This Agreement is entered into by the parties pursuant to Section 12-44-170 of the Code of Laws of South Carolina 1976, as amended, as a conversion of that certain Lease Purchase Agreement dated as of October 7, 1998, by and between the County and Kal Kan Foods, Inc., the Company’s predecessor in interest.

**WITNESSETH:**

**WHEREAS**, pursuant to the provisions of Section 4-12-30 of the Code, the County previously entered into that certain Lease Purchase Agreement dated as of October 7, 1998, by and between the County and Kal Kan Foods, Inc. (the Company’s predecessor in interest), as amended by that certain First Amendment to Lease Purchase Agreement, dated as of December 4, 2018, by and among the County and the Company (as further amended, modified and supplemented from time to time, the “Lease Agreement”), for purposes of providing a fee in lieu of tax incentive to the Company with respect to investment by the Company in pet food manufacturing machinery, apparatus, equipment and improvements deemed by the Company to be necessary, suitable or useful for the Company’s operations in the County (collectively, the “Project”), which investment was completed during the “Project Period” set forth in the Lease Agreement; and

**WHEREAS**, pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, the Company made the legally required minimum investment in the Project during the Project Period to qualify for negotiated fee in lieu of tax treatment under Section 4-12-30(B)(3) of the Code and under Title 12, Chapter 44 of the Code (the “Act”); and

**WHEREAS**, the Company has notified the County of its election to convert the Lease Agreement to a simplified fee in lieu of tax agreement to be governed by the provisions of the Act, containing the same material provisions as the Lease Agreement in respect of fee in lieu of tax payments, term of the arrangement and other payment or investment obligations of the Company; and

**WHEREAS**, the County, pursuant to ordinance of Richland County Council enacted \_\_\_\_\_, 2019 (the “Ordinance”), has consented, among other things, to the conversion of the Lease Agreement to a simplified fee in lieu of tax agreement pursuant to the Act; and

**WHEREAS**, the parties desire to: (i) enter into this Agreement to provide for the conversion of the Lease Agreement to a simplified fee in lieu of tax arrangement under the Act; and (ii) have this Agreement fully replace all provisions of the Lease Agreement and take effect upon the conveyance by the County to the Company of all portions of the Project currently titled in the name of the County under the Lease Agreement, upon payment by the Company of the purchase price therefor as prescribed in the Lease Agreement and the satisfaction of certain other conditions set forth herein; and

**WHEREAS**, upon the consummation of the conveyance referred to in the preceding paragraph, this Agreement shall supersede the provisions of the Lease Agreement and, at such time, the Lease Agreement shall be deemed terminated (except for those provisions thereof expressly stated to survive termination); and

**WHEREAS**, in connection with the above, the County and the Company agree that the requirements of Section 12-44-55(A) of the Act are hereby waived to the extent that, and so long as, the

Company provides the County with copies of all filings and reports required to be made by the Company under the Act;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF** the respective representations and agreements hereinafter contained and other value given and delivered, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### Section 1.01    Definitions.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“**Act**” shall mean Chapter 44 of Title 12 of the Code, and all future acts amendatory thereof.

“**Additional Payments**” shall have the meaning provided in **Section 4.02** hereof.

“**Administration Expenses**” shall mean the reasonable and necessary expenses incurred by the County with respect to the negotiation and approval of this Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred; and provided, further, that the Company’s obligation to reimburse the County for Administrative Expenses shall be subject to the limitations set forth in **Section 4.02** hereof.

“**Agreement**” shall mean this agreement as originally executed and from time to time supplemented or amended as permitted herein.

“**Code**” shall mean the Code of Laws of South Carolina 1976, as amended.

“**Company**” shall have the meaning set forth in the introductory paragraph hereto, and shall include any surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted hereunder; or any other Person which may succeed to the rights and duties of the Company hereunder in accordance with all applicable provisions hereof. References to “Company” shall be deemed to include the Company’s predecessors in interest, including Kal Kan Foods, Inc.

“**County**” shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“**County Administrator**” shall mean the Richland County Administrator or acting interim, or the holder of any successor position.

“**County Assessor**” shall mean the Richland County Assessor, or the holder of any successor position.

“**County Auditor**” shall mean the Richland County Auditor, or the holder of any successor position.

“**County Council**” shall mean the governing body of the County and its constituent members and their respective successors, or any successor body.

“**County Treasurer**” shall mean the Richland County Treasurer, or holder of any successor position.

“**Default**” shall mean an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default as defined in **Section 9.01** hereof.

“**Department**” shall mean the South Carolina Department of Revenue, or any successor agency.

“**Documents**” shall mean, collectively, this Agreement, the Ordinance and any other documentation executed in connection therewith, including, but not limited to, any bills of sale conveying any portion of the Project to the Company.

“**Equipment**” shall mean the machinery, apparatus, and equipment acquired, constructed and installed in the Company’s facilities pursuant to the Lease Agreement during the Project Period.

“**FILOT Payments**” shall mean the payments in lieu of taxes which the Company is obligated to pay to the County pursuant to **Section 5.02** hereof.

“**Improvements**” shall mean those buildings, structures and fixtures on the Land as are constructed or acquired by the Company or an affiliate and intended and qualified to be included as a part of the Project.

“**Lease Agreement**” shall have the meaning set forth in the recitals hereto.

“**Ordinance**” shall have the meaning set forth in the recitals hereto.

“**Person**” shall mean and include any individual, association, limited liability company or partnership, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

“**Project**” shall mean: (i) the Equipment; (ii) the Replacement Property; and (iii) to the extent not covered by the foregoing, anything qualifying as a Project under Section 12-44-30(16) of the Act.

“**Project Increment Payment**” shall be the payment described in **Section 5.02(b)** hereof.

“**Project Increments**” shall mean those increments of the Project which are completed and fit for their intended use as prescribed by Section 12-37-670 of the Code.

“**Project Millage Rate**” shall mean, for purposes of **Section 5.02(b)** hereof, a rate of 262.6 mills.

“**Project Period**” shall mean the period during which the Company could make investments for the construction and acquisition of the Project that would be eligible for the fee in lieu of tax incentives provided pursuant to the Lease Agreement and this Agreement.

“**Replacement Property**” shall mean all property installed on the land owned by the Company in the County or in the buildings, improvements and personal property theretofore constituting part of the Project to the extent that Section 12-44-60 of the Act permits such property to be included in the Project as replacement property.

“**Sponsor Affiliate**” shall mean an entity whose investment with respect to the Project will qualify for FILOT payments pursuant to **Section 8.02** hereof and Section 12-44-130 of the Act.

“**State**” shall mean the State of South Carolina.

“**Term**” shall mean the duration of this Agreement as set forth in **Section 4.01** hereof.

“**Transfer Provisions**” shall mean the provisions of Section 12-44-120 of the Act, as amended or supplemented from time to time, and any successor provisions under the laws of the State.

Section 1.02    References to Agreement.

The words “hereof,” “herein,” “hereunder” and other words of similar import refer to this Agreement as a whole.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.01    Representations and Covenants of the County.

The County Council makes the following representations and covenants, on behalf of itself and on behalf of the County, as the basis for the undertakings of the County herein contained:

(a)     The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by the Documents and to carry out its obligations thereunder. The County has been duly authorized to execute and deliver the Documents, all for the purpose of promoting economic development and developing the trade, and utilizing and employing the workforce, agricultural products and natural resources of the State.

(b)     The County is not in default under any of the provisions of the laws of the State whereby any such default would adversely affect the execution and delivery of the Documents or adversely affect their validity or enforceability; to the best of its knowledge, the authorization, execution and delivery of the Documents, and the performance by the County of its obligations thereunder, will not conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound.

(c)     No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, wherein an unfavorable decision, ruling or finding may or would adversely affect the County or the consummation of the transactions described in the Documents.

(d)     All consents, authorizations and approvals required on the part of the County in connection with the execution, delivery and performance by the County of the transactions described in the Documents have been obtained and remain in full force and effect as of the date hereof.

(e)     The County has caused the Project to be located and identified in a joint county industrial and business park, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-

170 of the Code. The County shall use its best efforts to cause the Project to remain located in such park or any other joint county industrial and business park established pursuant to such provisions of the South Carolina Constitution and the Code, or any successor provisions, for the term of this Agreement.

Section 2.02 Representations and Covenants by Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation, validly existing and in good standing, under the laws of the State of Delaware and is duly authorized to conduct its business in the State of South Carolina. The Company has power to enter into this Agreement, and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The Company's current tax year for federal income tax purposes ends December 28, 2019.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions of this Agreement will result in a material breach of any of the terms, conditions or provisions of any agreement or instrument to which the Company is party or by which it is bound, or will constitute a default in any material respect under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company which material restricts the Company's ability to make any payments hereunder, other than as may be created or permitted by this Agreement.

(d) The Company is operating and intends to continue to operate the Project for purposes permitted under the Act as it may deem appropriate.

(e) No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting it in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by the Documents or which would materially adversely affect the validity or enforceability of the Documents and which is used or contemplated for use in the consummation of the transactions contemplated thereby.

### ARTICLE III

#### ACQUISITION OF PROJECT

Section 3.01 Acquisition of Project.

(a) The Company and/or its affiliate(s) acquired the Project during the Project Period.

(b) Each year during the term of the Agreement, the Company shall deliver to the County Auditor, the County Treasurer, and the County Assessor a copy of its most recent annual filings made with the Department with respect to the Project, not later than thirty (30) days following delivery thereof to the Department. The Company shall further deliver to the Economic Development Director of the County with respect to the Company, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit A, as may be amended by subsequent resolution.



(c) The Company shall cause a copy of this Agreement to be filed with the County Auditor, the County Assessor, the County Treasurer, and the Department within thirty (30) days after the date of execution and delivery hereof.

(d) The Company shall comply with the provisions of Section 12-44-90 of the Act, including any successor provision, with respect to the filing of returns, contracts and other information.

Section 3.02 Records and Reports, Non-Disclosure.

The Company agrees to maintain complete plans and specifications and books and records accounting for the acquisition and operation of the Project. Such books and records shall:

- (i) permit ready identification of the various Project Increments and components thereof;
- (ii) confirm the dates on which each Project Increment was placed in service; and
- (iii) include copies of all filings made by the Company with the County Auditor or the Department with respect to property placed in service as part of the Project.

Notwithstanding any other provision of this Agreement, the Company may designate with respect to any filings or reports delivered to the County pursuant to the provisions of this Agreement, or segments thereof, that the Company believes contain proprietary, confidential or trade secret matters. Except as required by the South Carolina Freedom of Information Act, the County Council, the County, its officers (including members of County Council) and employees shall not knowingly and intentionally disclose any such confidential information regarding the Project, the Company, the Company's operations and any other competitively sensitive information which is not generally and independently known by the public, in each case without the prior written authorization of the Company. The County shall notify the Company in the event of the County's receipt of any Freedom of Information Act request concerning the aforesaid confidential information and will use its bests efforts to cooperate with the Company in its action, if any, taken, to prevent or limit any disclosure of such information under the South Carolina Freedom of Information Act. Notwithstanding the foregoing provisions, nothing in the paragraph shall limit the County's ability to provide a timely and complete response to a request made to the County under the Freedom of Information Act.

## **ARTICLE IV**

### **AGREEMENT TERM AND PAYMENT PROVISIONS**

Section 4.01 Term.

(a) This Agreement shall take effect upon the delivery by the County to the Company of: (i) the written consents of any mortgagees or secured parties, if any, with respect to any portion of the Project, (ii) a bill or bills of sale with respect to portions of the Project previously conveyed by the Company to the County under the Lease Agreement, and (iii) payment by the Company to the County of the purchase price therefor as prescribed by the Lease Agreement. At such time, this Agreement shall take effect and the Lease Agreement shall be deemed terminated and shall be cancelled of record. Notwithstanding that it is intended by the parties that the Lease Agreement will be deemed terminated as of such effective date of this Agreement, nothing herein shall be construed to deny the Company the benefits of the Lease Agreement as were intended therein from its effective date to the date of delivery of such bill(s) of sale, nor the benefits of

the Lease Agreement which were declared therein to survive termination of the Lease Agreement, including, without limitation, all confidentiality provisions of the Lease Agreement.

(b) Subject to the terms and provisions herein contained, with respect to each annual Project Increment, this Agreement shall be and remain in full force and effect for twenty nine (29) years following the December 31 of the year in which such Project Increment was placed in service during the Project Period, unless sooner terminated as herein permitted; provided that, if at the expiration of the Term payments of all FILOT Payments under **Section 5.02** hereof relating to the operation of the Project during the Term have not been made, the Term shall expire on such later date as such payments shall have been made in full or so provided for.

#### Section 4.02 Additional Payments.

(a) In addition to the Company's obligations under **Section 5.02** hereof to make payment to the County of FILOT Payments and related amounts, the Company shall pay on demand to the County, following receipt of such supporting documentation as may be necessary to evidence the County's right to receive payment, all other amounts, liabilities and obligations which the Company assumes or agrees to pay under this Agreement, including without limitation those obligations referred to in paragraph (b) below (all such other amounts, liabilities and obligations hereinafter collectively called "Additional Payments"). In the event of any failure on the part of the Company to pay any Additional Payments, the County shall have all rights, powers and remedies provided for herein or by law or equity or otherwise.

(b) The Company agrees to pay Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County's right to receive such payment, specifying the nature of such expense and requesting payment of same. Notwithstanding anything herein to the contrary, the Company shall reimburse the County for its Administration Expenses in the amount of Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00).

#### Section 4.03 FILOT Payments Secured by Tax Lien.

The County's right to receive FILOT Payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53 and 54 of Title 12 of the Code.

#### Section 4.04 Defaulted Payments.

In the event the Company should fail to make any of the payments required in this **Article IV** or in **Article V** hereof (following the expiration of any applicable cure periods), the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT payments hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, in addition to all other enforcement provisions for non-payment of taxes provided by the Code.

The foregoing and any other provision hereof to the contrary notwithstanding, to the extent, and only to the extent, the same may be permitted by law with respect to the payment of *ad valorem* taxes for similar investments, if the Company shall first notify the County of its intention to do so, the Company may, at its own expense, and in good faith, contest FILOT Payments and any other related fees, taxes, assessments, and other charges and, in the event of any such contest, may permit the FILOT Payments and

such taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Company's failure to make any such payments as allowed by the foregoing shall not constitute a default on the part of the Company nor give rise to an Event of Default, the foregoing and any other provision hereof to the contrary notwithstanding.

## ARTICLE V

### MODIFICATION OF PROJECT; PAYMENTS IN LIEU OF TAXES; TAXES, UTILITIES AND OTHER CHARGES; INSURANCE

#### Section 5.01    Modification of Project.

The Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may renovate the Project and, in connection therewith, to the extent permitted by the Act, install Replacement Property in the Project. Notwithstanding anything in this Agreement to the contrary, the Company shall be entitled in its discretion from time to time to delete or remove any portions of the Project, or to add any (non-Project) property to the Company's facilities as may be used in conjunction with the Project or otherwise.

(ii) In any instance where the Company in its discretion determines that any portions of the Project have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for operations at the Project, the Company may remove such portions of the Project and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without the consent of the County.

Notwithstanding anything herein to the contrary, and subject in all events to the terms and provisions of **Section 5.02** hereof, the FILOT Payments required under **Section 5.02** hereof shall, to the extent permitted by law, be reduced at such time to the extent that such payments are attributable to any portion of the Project which is removed as part of the Project, and the Company shall not be required to repay any portion of the tax benefit received prior to such event.

#### Section 5.02    Payments in Lieu of Taxes.

(a) In accordance with the provisions of Section 12-44-50 of the Act, during the Term of this Agreement, the Company shall make, with respect to the Project, annual FILOT Payments in the amounts set forth in this Section at the times and places, and in the same manner and subject to the same penalty assessments as prescribed by the County or the Department for *ad valorem* taxes. Such annual payments shall be made on or before each January 15 of each year during the term of this Agreement (or such other date as may be reflected in annual bills provided to the Company by the County). Subject to the provisions of the Act, each annual payment in lieu of taxes shall be equal to the Project Increment Payment with respect to each Project Increment, including, subject to the provisions of the Act, Replacement Property for the Project originally included in such Project Increment, calculated as set forth in **Section 5.02(b)** hereof, for each of thirty (30) consecutive years (except to the extent that any portion of such Project Increment ceases to qualify for a negotiated fee in lieu of taxes under the Act), commencing with the year following the year in which the respective Project Increments were placed in service.

(b) Each Project Increment Payment shall be in an amount, subject to the provisions of Section 12-44-110 of the Act, using the following formula: each such Project Increment Payment shall be in an

amount equal to the product which would result from multiplying the Project Millage Rate by six percent (6%) of the fair market value of the portion of the Project included within such Project Increment. Such fair market value shall be that determined by the Department on the basis provided in Section 12-44-50(A) of the Act, and shall, subject to the provisions of the Act, include all Replacement Property and deductions for depreciation or diminution in value allowed by the Act or by the tax laws generally, and shall be subject to any reductions provided herein under **Sections 5.01** and **6.01** hereof, and includes all applicable *ad valorem* tax exemptions except: (i) the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina; and (ii) the exemptions allowed pursuant to Section 12-37-220(B)(32) and (34) of the Code.

(c) In the event that the Act and/or the above-described payments in lieu of taxes or any portion thereof, are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit then permitted by law. In such event, the Company shall be entitled, to the extent permitted by law: (i) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; and (ii) to enjoy all allowable depreciation.

## ARTICLE VI

### CASUALTY; CONDEMNATION

#### Section 6.01 FILOT Payments in the Event of Damage and Destruction or Condemnation.

In the event that the Project is damaged or destroyed or the subject of condemnation proceedings, which damage, destruction and/or condemnation would substantially impair the operating ability of the Project, the parties hereto agree that the payments in lieu of taxes required pursuant to **Section 5.02** hereof shall be abated in the same manner and in the same proportion as with *ad valorem* taxes..

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

#### Section 7.01 Rights to Inspect.

The County acknowledges and understands that the Company utilizes trade secrets in the conduct of its business and that any disclosure of such information, including financial, sales and manufacturing information, would result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company and the County. Therefore, the County agrees that, without prior express written permission of the Company, it will not (i) request or be entitled to receive any such confidential and proprietary information; (ii) request or be entitled to inspect the Project or any property associated therewith; or (iii) disclose or otherwise divulge any such confidential and proprietary information to any other person, firm, governmental body or agency, or other entity, except as required by law and in compliance with **Section 3.02** hereof.

#### Section 7.02 Limitation of County's Liability; Indemnification.

(a) Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability

or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

(b)(i) Except as provided in subparagraph (iv) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “*Indemnified Party*”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(ii) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in subparagraph (i), above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within thirty (30) days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(iii) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company’s expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(iv) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(v) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

#### Section 7.03 Certain Transfer Restrictions.

The Company acknowledges that any mergers, reorganizations or consolidations of the Company may cause the Project to become ineligible for negotiated fees in lieu of taxes under the Act absent compliance by the Company with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the Act or any successor provisions, any financing arrangement entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Agreement to the contrary, it is not intended in this Agreement that the County shall impose transfer restrictions with respect to the Company or the Project as are any more restrictive than the Transfer Provisions.

Section 7.04    No Liability of County’s Personnel.

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servants or employee of the County and no recourse shall be had against any member of the County Council or any officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 7.05    Other Tax Matters.

The Company shall be entitled to all state and federal investment tax credits, allowances for depreciation and other similar tax provisions allowable by applicable federal or State law with respect to the Project.

**ARTICLE VIII**

**ASSIGNMENT OR LEASE; TRANSFER; SPONSOR AFFILIATES**

Section 8.01    Assignment or Lease.

The Company may assign or otherwise transfer any of its rights and interest hereunder to a lessee or assignee, as the case may be, in compliance with the Transfer Provisions, including the requirement that any such lease or assignment shall be subject to the written consent of the County (when expressly required by the Transfer Provisions). The County agrees that any such consent shall not be unreasonably withheld, conditioned or delayed. Further, the County agrees that, to the extent permitted by Section 12-44-120(B) of the Act, or any successor provision, any financing arrangements entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of requiring consent to the same on the part of the County. To the extent that any prior consent or subsequent ratification of the County is required pursuant to the Transfer Provisions, the County agrees that such consent or ratification shall not be unreasonably withheld, conditioned or delayed and may be provided by a resolution of County Council.

Section 8.02    Sponsor Affiliates.

Pursuant to Section 12-44-130 of the Act and subject to the requirements of that Section, the Company and the County agree that investments by Sponsor Affiliates within the investment period shall qualify for FILOT Payments hereunder to the maximum extent permitted by law. If the Company desires that an entity become a Sponsor Affiliate, it shall request such in writing to the County. If the County agrees in writing and the entity agrees to be bound by the fee agreements to the extent required by said Section 12-44-130, such entity shall become a Sponsor Affiliate entitled to the maximum benefits afforded thereto under the Act.

**ARTICLE IX**

## EVENTS OF DEFAULT AND REMEDIES

### Section 9.01    Events of Default.

Any one or more of the following events (herein called an “Event of Default” or collectively, “Events of Default”) shall constitute an Event of Default:

(a) if default shall be made in the due and punctual payment of any FILOT Payments or related payments under **Section 5.02** hereof, or any Additional Payments, which default shall not have been cured within thirty (30) days following receipt of written notice thereof to the Company from the County; or

(b) if default shall be made by the Company in the due performance of or compliance with any of the material terms hereof, including payment, other than those referred to in the foregoing subdivision (a), and such default shall: (i) continue for thirty (30) days after the County shall have given the Company written notice of such default; or (ii) in the case of any such default which can be cured but which cannot with due diligence be cured within such 30-day period, if the Company shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with the default not susceptible of being cured with due diligence within thirty (30) days that the time of the Company within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence.

Notwithstanding anything herein to the contrary, no failure of the Company to achieve any level of investment in the Project during the Term shall constitute an Event of Default.

### Section 9.02    Remedies on Event of Default.

Upon the occurrence and during the continuance of any Event of Default, the County may: (i) terminate this Agreement by provision of thirty (30) days’ notice in writing specifying the termination date; (ii) upon providing, at the Company’s request, but subject in all events to the necessary exercise by the County of its sovereign duties and powers, a signed nondisclosure statement in form and substance reasonably satisfactory to the Company, have access to and inspect, examine and make copies of, the books, records and accounts of the Company pertaining to the Project; or (iii) take whatever action at law or in equity as may appear necessary or desirable to collect any FILOT Payments and Additional Payments then due or to enforce observance or performance of any covenant condition or agreement of the Company under this Agreement, including without limitation enforcement of a statutory lien on the Project for any non-payment of FILOT Payments hereunder, in addition to exercise of all statutory collection and enforcement provisions applicable to collection of *ad valorem* taxes.

### Section 9.03    Collection of FILOT Payments.

In addition to all other remedies herein provided, the nonpayment of FILOT Payments shall constitute a lien for tax purposes as provided in Section 12-44-90 of the Act. In this regard, and notwithstanding anything in this Agreement to the contrary, the County may exercise the remedies provided by general law (including Title 12, Chapter 49, of the Code) relating to the enforced collection of *ad valorem* taxes to collect any FILOT Payments due hereunder.

## ARTICLE X

### MISCELLANEOUS

Section 10.01 Termination.

Before the stated expiration of the Term of this Agreement, the Company may, at any time by written notice to the County, provide for termination of this Agreement, effective immediately upon giving such notice; provided that any such termination shall not affect any liabilities of the Company as may have accrued as of the date of termination under this Agreement or under law. Upon any such termination, and subject to any provisions herein which shall by their express terms be deemed to survive any termination of this Agreement, the sole consequence to the Company shall be that it shall no longer be entitled to the benefit of the fee in lieu of payments provided herein and the property constituting the Project shall thereafter be subject to the *ad valorem* tax treatment required by law and in no event shall the Company be required to repay to the County the amount of any tax benefit previously received hereunder.

Section 10.02 Rights and Remedies Cumulative.

Each right, power and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise by the County or by the Company of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers or remedies.

Section 10.03 Successors and Assigns.

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 10.04 Notices; Demands; Requests.

All notices, demands and requests to be given or made hereunder to or by the County or the Company, shall be in writing, and shall be deemed to be properly given or made if sent by overnight carrier or United States first class mail, postage prepaid addressed as follows or at such other places as may be designated in writing by such party.

- (a) As to the County:

Richland County  
2020 Hampton Street  
Columbia, SC 29204  
Attention: Attn: Richland County Economic Development Director

with a copy to (which shall not constitute notice to the County):

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509



(b) As to the Company:

Mars Petcare US, Inc.  
315 Cool Springs Boulevard  
Franklin, TN 37067  
Attention: Steve Cavezza

with a copy to (which shall not constitute notice to the Company):

Womble Bond Dickinson (US) LLP  
5 Exchange Street  
Charleston, SC 29401  
Attention: Stephanie Yarbrough

Section 10.05 Applicable Law; Entire Understanding.

This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 10.06 Severability.

In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 10.07 Headings and Table of Contents; References.

The headings of this Agreement and the Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular Articles or Sections or subdivisions of this Agreement are references to the designated Articles or Sections or subdivision of this Agreement.

Section 10.08 Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 10.09 Amendments.

This Agreement may be amended only by a writing signed by all of the parties. The County agrees that, to the extent approval of County Council is required for any amendment, such approval shall not be unreasonably withheld, conditioned or delayed and may be provided by a resolution of County Council.

Section 10.10 Waiver.

Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 10.11    Business Day.

In the event that any action, payment or notice is, by the terms of this Agreement, required to be taken, made or given on any day which is a Saturday, Sunday or a legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment or notice may be taken, made or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[Remainder of the page left blank]

**IN WITNESS WHEREOF**, Richland County, South Carolina, has executed this Agreement by causing its name to be hereunto subscribed by the Chair of its County Council and to be attested to by the Clerk of its County Council, and Mars Petcare US, Inc. has executed this Agreement by its authorized officer, all being done as of the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

---

Paul Livingston  
Chair, Richland County Council

(SEAL)

ATTEST:

---

Kimberly Williams-Roberts  
Clerk of Council, Richland County Council

[Company signature to follow on next page]

MARS PETCARE US, INC., a Delaware corporation

(SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A (see Section 3.01)**  
**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING**  
**ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,  
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY  
PRACTICES CONCERNING ECONOMIC DEVELOPMENT  
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

**Section 1.** The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

**Section 2.** The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

**Section 3.** A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office  
Attention: Kim Mann  
1201 Main Street, Suite 910  
Columbia, SC 29201

**Section 4.** This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

**Section 5.** The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


**Section 6.** In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA

  
\_\_\_\_\_  
Chair, Richland County Council

(SEAL)  
ATTEST:

  
\_\_\_\_\_  
Clerk to County Council

## Richland County Council Request for Action

**Subject:**

An Ordinance Amending the Richland County Code of Ordinances, Chapter 1, General Provisions; so add Section 1-18 related to payment of fees and service charges by tax exempt entities

**Notes:**

July 23, 2019- The committee recommended Council approve the ordinance provided by Legal, but to exempt churches and houses of worship from the ordinance.

First Reading: August 1, 2019

Second Reading:

Third Reading:

Public Hearing:



STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-19HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 1, GENERAL PROVISIONS; SO ADD SECTION 1-18 RELATED TO PAYMENT OF FEES AND SERVICE CHARGES BY TAX EXEMPT ENTITIES.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. The Richland County Code of Ordinances, Chapter 1, General Provisions; is hereby amended by the addition of Sec 1-18, which shall read as follows:

**Sec. 1-18. Payment of fees and service charges by tax exempt entities.**

Unless otherwise provided by state law, all tax-exempt entities shall pay all fees and service charges enacted by council, regardless of such tax-exempt status; provided, however that for services other than water, sewer, and trash collection, this section shall not apply to tax-exempt houses of worship.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2019.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kimberly Williams-Roberts  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

First Reading:  
Second Reading:  
Third Reading:  
Public Hearing:

## Richland County Council Request for Action

**Subject:**

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of an infrastructure credit agreement to provide for infrastructure credits to REI Automation, Inc. and REI Automation Land Company, LLC; and other related matters

**Notes:**

First Reading: August 1, 2019

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR INFRASTRUCTURE CREDITS TO REI AUTOMATION AND REI AUTOMATION LAND COMPANY, LLC; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County, and (ii) improved and unimproved real estate and personal property used in the operation of a manufacturing facility or commercial enterprise (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, REI Automation, Inc. in conjunction with one or more affiliates, including specifically REI Automation Land Company, LLC (collectively, “Company”) desires to expand its business of designing and building custom industrial equipment, including assembly lines, robotic cells, and special purposes machines for manufacturers in South Carolina and across the world, within the County (“Project”), consisting of taxable investments in real and personal property of not less than Three Million (\$3,000,000) Dollars, along with the creation of 35 new full-time jobs;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and amend the Park Agreement to include the real and personal property relating to the Project (“Property”) in the Park; and

WHEREAS, the County further desires to enter into an Infrastructure Credit Agreement between the County and the Company, the final form of which is attached as Exhibit A (“Agreement”), to provide Infrastructure Credits against certain of the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Infrastructure.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1. *Statutory Findings.*** Based on representations made by the Company to the County, the County finds that the Project and the Infrastructure will enhance the economic development of the County.

**Section 2. *Expansion of the Park Boundaries, Inclusion of Property.*** The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is authorized. The Chair of County Council (“Chair”), is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries to include the Property is complete on the adoption of this Ordinance by County Council and a companion approving ordinance by the Fairfield County Council.

**Section 3. *Approval of Infrastructure Credit; Authorization to Execute and Deliver Agreement.*** The Infrastructure Credits, as more particularly set forth in the Agreement, against the Company’s Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement’s terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

**Section 4. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 7. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: August 1, 2019  
Second Reading: September 10, 2019  
Public Hearing:   
Third Reading:

**EXHIBIT A**  
**FORM OF AGREEMENT**

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**INFRASTRUCTURE CREDIT AGREEMENT**

**by and among**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**REI AUTOMATION, INC.**

**and**

**REI AUTOMATION LAND COMPANY, LLC**

**Effective as of: []**

## INFRASTRUCTURE CREDIT AGREEMENT

This INFRASTRUCTURE CREDIT AGREEMENT, effective as of \_\_\_\_\_, 2019 (“Agreement”), is by and among RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and REI Automation, Inc. and REI Automation Land Company, LLC, a South Carolina corporation and an affiliated Limited Liability Company (“Company” together with the County, “Parties,” each, a “Party”).

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, the Company has committed to expand its business of designing and building custom industrial equipment, including assembly lines, robotic cells, and special purposes machines for manufacturers in South Carolina and across the world in the County (“Project”) on property more particularly identified by Exhibit A (“Land”), consisting of taxable investment in real and personal property of not less than Three Million (\$3,000,000) Dollars and the creation of 35 new, full-time jobs;

WHEREAS, by an ordinance enacted on \_\_\_\_\_, 2019 (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property relating to the Project (“Property”) in the Park; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Infrastructure, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:



## ARTICLE I REPRESENTATIONS

**Section 1.1. *Representations by the County.*** The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Infrastructure will enhance the economic development of the County. Therefore, the County is entering into this Agreement for the purpose of promoting the economic development of the County.

**Section 1.2. *Representations by the Company.*** The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of the State of South Carolina, has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment and Jobs Commitment, each as defined below, at the Project; and
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound.

## ARTICLE II INFRASTRUCTURE CREDITS

**Section 2.1. *Investment Commitment.*** The Company shall invest not less than Three Million (\$3,000,000) Dollars in taxable property at the Project ("Investment Commitment") by the Certification Date, as defined below. The Company shall certify to the County achievement of the Investment Commitment by no later than January 31, 2021 ("Certification Date"), by providing documentation to the County sufficient to reflect achievement of the Investment Commitment. If the Company fails to achieve and certify the Investment Commitment by the Certification Date, the County may terminate this Agreement and, on termination, the Company is no longer entitled to any further benefits under this Agreement.

**Section 2.2. *Jobs Commitment.*** The Company shall create 35 new, full-time jobs in the County ("Jobs Commitment") by the Certification Date. The Company shall certify to the County achievement of

the Jobs Commitment by providing documentation to the County sufficient to reflect achievement of the Jobs Commitment on or before the Certification Date. If the Company fails to achieve and certify the Jobs Commitment by the Certification Date, the County may terminate this Agreement and, on termination, the Company is no longer entitled to any further benefits under this Agreement.

**Section 2.3. Infrastructure Credits.**

(a) To assist in paying for costs of Infrastructure, the County shall provide an Infrastructure Credit against certain of the Company's Fee Payments due with respect to the Project. The term, amount and calculation of the Infrastructure Credit is described in Exhibit B.

(b) For each property tax year in which the Company is entitled to an Infrastructure Credit ("Credit Term"), the County shall prepare and issue the Company's annual bill with respect to the Project net of the Infrastructure Credit set forth in Section 2.3(a) ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND THE PARK AGREEMENT. THE INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE INFRASTRUCTURE CREDITS.

**Section 2.4. Clawback.** If the Company fails to meet the Investment Commitment or Jobs Commitment by the Certification Date, then [the Infrastructure Credit will immediately terminate]/[the Infrastructure Credit shall be immediately reduced prospectively by the Clawback Percentage (as calculated below) for the remainder of the Credit Term] and the Company shall repay a portion of the Infrastructure Credits received.

The portion of the Infrastructure Credit to be repaid ("Repayment Amount") is based on the amount by which the Company failed to achieve the Investment Commitment or Jobs Commitment and is calculated as follows:

$$\text{Repayment Amount} = \text{Total Received} \times \text{Clawback Percentage}$$

$$\text{Clawback Percentage} = 100\% - \text{Overall Achievement Percentage}$$

$$\text{Overall Achievement Percentage} = (\text{Investment Achievement Percentage} + \text{Jobs Achievement Percentage}) / 2$$

$$\text{Investment Achievement Percentage} = \text{Actual Investment Achieved} / \text{Investment Commitment}$$

$$\text{Jobs Achievement Percentage} = \text{Actual New, Full-Time Jobs Created} / \text{Jobs Commitment}$$

In calculating each achievement percentage, only the investment made or new jobs achieved up to the Investment Commitment and the Jobs Commitment will be counted.

*For example, and by way of example only, if the Company had received \$[I] in Infrastructure Credits, and had invested \$[D] and created [A] jobs by the Certification Date, the Repayment Amount would be calculated as follows:*

$$\text{Jobs Achievement Percentage} = [A]/[B] = [C]\%$$

$$\text{Investment Achievement Percentage} = \$[D]/\$[E] = [F]\%$$

$$\text{Overall Achievement Percentage} = ([C]\% + [F]\%)/2 = [G]\%$$

$$\text{Clawback Percentage} = 100\% - G\% = H\%$$

$$\text{Repayment Amount} = \$[I] \times [H]\% = \$[J]$$

The Company shall pay the portion of the Infrastructure Credit to be repaid pursuant to this Section 2.4 within 30 days of receipt of a written statement setting forth the Repayment Amount. If not timely paid, the Repayment Amount is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section survives termination of the Agreement.

**Section 2.5. Filings.** To assist the County in administering the Infrastructure Credits, the Company shall, for the Credit Term, prepare and file a separate schedule to the SCDOR PT-100, PT-300 with respect to the Property. Additionally, the Company shall, on or before January 31 of each year during the Credit Term, commencing in January 31, 2020, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution, with respect to the Company.

**Section 2.6 Cumulative Infrastructure Credit.** The cumulative dollar amount expended by the Company on Infrastructure shall equal or exceed the cumulative dollar amount of all the Infrastructure Credits received by the Company.

### ARTICLE III DEFAULTS AND REMEDIES

**Section 3.1. Events of Default.** The following are "Events of Default" under this Fee Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) A Cessation of Operations. For purposes of this Agreement, a "Cessation of Operations" means closure of the Project or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months;

(c) A representation or warranty made by the Company which is deemed materially incorrect when deemed made;

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in Sections 2.1 and 2.2 and under (a) above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

(e) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

### **Section 3.2. Remedies on Default.**

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate the Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate the Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

**Section 3.3. Reimbursement of Legal Fees and Other Expenses.** On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 3.4. Remedies Not Exclusive.** No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

**Section 3.5. Nonwaiver.** A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

**ARTICLE IV  
MISCELLANEOUS**

**Section 4.1. Examination of Records; Confidentiality.**

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment or Jobs Commitment; and (iii) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant to this Agreement as "Confidential Information." Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

**Section 4.2. Assignment.** The Company may assign or otherwise transfer any of its rights and interest in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably withheld.

**Section 4.3. Provisions of Agreement for Sole Benefit of County and Company.** Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

**Section 4.4. Severability.** If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

**Section 4.5. Limitation of Liability.**

(a) The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and

agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 4.6. Indemnification Covenant.**

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company’s expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**Section 4.7. Notices.** All notices, certificates, requests, or other communications under this Agreement are sufficiently given and are deemed given, unless otherwise required by this Agreement, when (i) delivered and confirmed by United States first-class, registered mail, postage prepaid or (ii) sent by facsimile, and addressed as follows:

if to the County:	Richland County, South Carolina Attn: Director of Economic Development 2020 Hampton Street Columbia, South Carolina 29204 Phone: 803.576.2043 Fax: 803.576.2137
-------------------	--

with a copy to  
(does not constitute notice):

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202  
Phone: 803.255.8000  
Fax: 803.255.8017

if to the Company:

REI Automation, Inc.  
1250 Veterans Road  
Columbia, SC 29209  
ATTN: Grant Phillips

with a copy to

Clinch H. Belser, Jr.  
Belser, & Belser, P.A.  
1325 Park Street, Ste. 300  
Columbia, SC 29201

The County and the Company may, by notice given under this Section, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 4.8. *Administrative Fees.*** The Company will reimburse, or cause reimbursement to, the County for the Administration Expenses in the amount of \$[TBD]. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expenses as set forth in the written request no later than 60 days following receipt of the written request from the County. For purposes of this Section, "Administration Expenses" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys' fees. Administration Expenses do not include any costs, expenses, including attorneys' fees, incurred by the County (i) in defending challenges to the Fee Payments or Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

**Section 4.9. *Entire Agreement.*** This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

**Section 4.10 *Agreement to Sign Other Documents.*** From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

**Section 4.11. *Agreement's Construction.*** Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

**Section 4.12. *Applicable Law.*** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

**Section 4.13. *Counterparts.*** This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 4.14. *Amendments.*** This Agreement may be amended only by written agreement of the Parties.

**Section 4.15. *Waiver.*** Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

**Section 4.16. *Termination.*** Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the Project pursuant to the terms of this Agreement.

**Section 4.17. *Business Day.*** If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

*[TWO SIGNATURE PAGES FOLLOW]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]*



IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

---

Chair, Richland County Council

*(SEAL)*  
ATTEST:

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Clerk to Council, Richland County Council

*[SIGNATURE PAGE 1 TO INFRASTRUCTURE CREDIT AGREEMENT]*

IN WITNESS WHEREOF, [PROJECT NAME], has caused this Agreement to be executed by its authorized officer(s), effective the day and year first above written.

**REI AUTOMATION, INC. AND  
REI AUTOMATION LAND COMPANY, LLC**

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

Name: Grant R. Phillips

Its: President and Managing Member

*[SIGNATURE PAGE 2 TO INFRASTRUCTURE CREDIT AGREEMENT]*

## EXHIBIT A

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 5.45 acres, more or less, as shown on a plat prepared for Columbia Systems Technologies, LLC, prepared by Baxter Land Surveying Company, Inc., Rosser W. Baxter, Jr., dated July 20, 2001 and recorded October 4, 2001 in Book 574 at Page 273 in the Office of the Register of Deeds for Richland County. Reference being made to said plat for a more complete and accurate description, be all measurements a little more or less.

Derivation: This being the identical property heretofore conveyed unto Cook Properties, LLC by Deed of Jaquelyn B. Busbee, dated and recorded November 2, 2010 in the Office of Register of Deeds for Richland County in Book 1643 at Page 1299, and thereafter conveyed to REI Automation Land Company, LLC by deed recorded in Book 1844 at page 2328.

AND

All that certain piece, parcel or tract of land containing 2.22 acres of land, situate, lying and being on the northern side of Interstate Route 1-77, in the City of Columbia, in Richland County, State of South Carolina and being shown on the South Carolina Department of Transportation Plans for Interstate Route 1-77, File 40.277A, Sheets 26 and 38, Tract 7B. This being the same property shown as "Vacant Lot" on a boundary survey for Columbia Fluid Systems Technologies, LLC by Baxter Land Surveying Co., Inc., dated February 9, 2005. Said property being more particularly described as follows:

Beginning at a point on the southwestern most corner of the subject parcel on the new 150-foot right of way line and control of access line of Interstate Route 1-77 and on the present 25-foot right of way line of Road S-1534 (Veterans Road) at approximate survey station 10+42 of Road S-1534; thence N 40-40-17 W, 156.07 feet along the present 25-foot right of way line of Road S-1534 to a point on the present 25-foot right of way line of Road S-1534; thence continuing N 39-12-32 W, 65.05 feet along the present 25-foot right of way line of Road S-1534 to a point on the present 25-foot right of way line of Road S-1534 and on the Northern property line of the subject parcel; thence N 78-38-00 E, 334.80 feet along the northern property line of the subject parcel to a point on the northern property line of the subject parcel; thence continuing N 75-45-49 E, 200.32 feet along the northern property line of the subject parcel to a point on the Northern property line of the subject parcel; thence continuing N 78-36-37 E, 140.57 feet along the northern property line of the subject parcel to a point on the Northern property line of the subject parcel; thence continuing N 76-13-34 E, 195.17 feet along the Northern property line of the subject parcel to a point on the eastern property line of the subject parcel and new transitional right of way line of Interstate Route 1-77; thence S 24-27-42 E, 35.71 feet along the eastern property line of the subject parcel and new transitional right of way line of Interstate Route 1-77 to a point on the new 150 foot right of way line and control of access line of Interstate Route 1-77; thence S 65-42-30 W, 791.82 feet along the new 150-foot right of way line a control of access line of Interstate Route 1-77 to the point of beginning. Being bounded on the North by lands of Columbia Fluid Systems Technologies, LLC; on the West by Road S-1534 (Veterans Road); and on all other sides by the right of way line of Interstate Route 1-77.

This being the same property conveyed to REI Automation Land Company, LLC by Deed of Cook Properties, LLC recorded 05/19/06 in the Office of the Register of Deeds for Richland County, South Carolina in Deed Book 1185, at Page 695.

**EXHIBIT B (See Section 2.3)**

**DESCRIPTION OF INFRASTRUCTURE CREDIT**

**THE INFRASTRUCTURE CREDIT SHALL BE IN THE AMOUNT OF 15% EACH YEAR FOR A PERIOD OF 10 YEARS, BEGINNING WITH THE FEE-IN-LIEU OF PROPERTY TAX PAYMENT DUE AND PAYABLE ON JANUARY 15, 2020 AND RUNNING CONSECUTIVELY.**

**EXHIBIT C (See Section 2.5)**

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING  
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,  
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY  
PRACTICES CONCERNING ECONOMIC DEVELOPMENT  
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

**Section 1.** The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

**Section 2.** The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

**Section 3.** A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office  
Attention: Kim Mann  
1201 Main Street, Suite 910  
Columbia, SC 29201

**Section 4.** This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

**Section 5.** The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


**Section 6.** In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA

  
Chair, Richland County Council

(SEAL)  
ATTEST:

  
Clerk to County Council

## Richland County Council Request for Action

**Subject:**

Town of Eastover Inspections IGA

**Notes:**

July 23, 2019 – The committee recommended Council approve an IGA between the Town of Eastover and Richland County to provide building code inspections and plan reviews for all residential and commercial buildings for the purpose of renovations, repairs, additions, and new construction within the Town of Eastover’s jurisdictional limits through the Building Inspections Division of the Community Planning and Development Department. The following additional language is to be added to the IGA: “or any future changes that come about in the fee schedule” and “that any legal matters arising out of Richland County’s assistance will be covered by the Town of Eastover.”



**RICHLAND COUNTY  
ADMINISTRATION**

2020 Hampton Street, Suite 4069  
Columbia, SC 29204  
803-576-2050



Agenda Briefing

**To:** Committee Chair Joyce Dickerson and Members of the Committee  
**Prepared by:** Clayton Voignier, Director  
**Department:** Community Planning and Development  
**Updated:** August 12, 2019      **Meeting Date:** September 10, 2019

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	September 05, 2019
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	August 26, 2019
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	August 26, 2019

<b>Approved for Council consideration:</b>	Assistant County Administrator	Ashley Powell, Assoc. AIA, AICP
<b>Committee</b>	Administration and Finance	
<b>Subject:</b>	Town of Eastover and Richland County IGA for Building Inspections	

**Recommended Action:**

Staff recommends approval of an Intergovernmental Agreement (IGA) between the Town of Eastover and Richland County for providing building code inspections and plan reviews of all residential and commercial buildings for the purpose of renovations, repairs, additions, and new construction within the Town of Eastover’s jurisdictional limits through the Building Inspections Division of the Community Planning and Development Department.

**Motion Requested:**

I move to approve an Intergovernmental Agreement (IGA) between the Town of Eastover and Richland County for providing building code inspections and plan reviews of all residential and commercial buildings for the purpose of renovations, repairs, additions, and new construction within the Town of Eastover’s jurisdictional limits through the Building Inspections Division of the Community Planning and Development Department.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

Exhibit A of the IGA provides the fee schedule for all inspections and re-inspections of newly permitted projects as adopted by County Council.

**Motion of Origin:**

This request did not originate from a Council motion.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	

### Discussion:

The Town of Eastover has requested Richland County to provide assistance with residential and commercial building code inspections and plan reviews. The Town of Eastover no longer has a Building Official with the requisite skills to perform these duties. In 2015, County Council approved a similar agreement in the past that expired with the Town of Eastover's hiring of a Building Official.

Under the proposed IGA, the Building Inspections Division of Richland County's Community Planning and Development Department will provide all plan reviews, permitting, and inspections for residential and commercial projects only. The Town of Eastover will issue the zoning permit and all approvals needed for a residential or commercial project to move forward for plan review. Upon receiving all approvals, a contractor approved by the South Carolina Department of Labor, Licensing, and Regulation (LLR) will submit plans for review and apply for a permit to be issued by the Building Inspections Division and pay fees as established in Exhibit A of the IGA by County Council.

The services for building code inspections and plan reviews will be handled by licensed County inspectors and plans examiners as required by the South Carolina LLR. The Building Official of Richland County shall interpret provisions of the applicable Building Code(s).

### Attachments:

1. Proposed IGA between the Town of Eastover and Richland County
2. Revised proposed IGA between the Town of Eastover and Richland County

STATE OF SOUTH CAROLINA ) INTERGOVERNMENTAL AGREEMENT  
 ) BETWEEN THE TOWN OF EASTOVER,  
 ) SOUTH CAROLINA; AND RICHLAND  
COUNTY OF RICHLAND ) COUNTY, SOUTH CAROLINA

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into, in duplicate, this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Town of Eastover and the County of Richland, South Carolina.

WHEREAS, it is the desire of the Town of Eastover to partner with Richland County in the provision of required building code permitting, inspection and plan review of residential and commercial buildings within the Town of Eastover for the purpose of providing code compliance for construction; and

WHEREAS, the Town of Eastover and Richland County Councils recognize the positive influence this project will have on the quality of life for residents of the Town of Eastover, and desire to provide essential services through inspections and plan review; and

WHEREAS, the Town of Eastover agrees that Richland County shall recoup costs for permitting, inspections and plan review as indicated below;

NOW, THEREFORE, in consideration of the services and agreement described herein, the parties hereto agree as follows:

1. Richland County agrees to provide building services, including permitting, plan review and inspections, within the Town limits of Eastover. The Town of Eastover agrees that in order to recoup the costs associated with the services provided under this Agreement, Richland County shall collect fees for such services as set out on the Richland County Fee Schedule, which is attached as Exhibit A. Richland County agrees that such fees shall be the same as those required for all similar building services within the unincorporated areas of Richland County.
2. The parties hereto agree that all permitting and communication with contractors and builders shall go through the Richland County Building and Inspections Division.
3. The Town of Eastover and Richland County agree that services for inspections and plan review will be handled by state licensed inspectors and plans examiners, as required by South Carolina Department of Labor, Licensing and Regulation (LLR).
4. The Town of Eastover agrees that Richland County shall enforce within the Town limits of Eastover, the current edition of the Building Codes as adopted by the County and all other building codes adopted in Chapter 6 of the Richland County Code of Ordinances. All building code interpretations shall be made by the County Building Official. Building code interpretations of the Building Official of Richland County may be appealed to the Richland County Building Code Board of Appeals. In the event that an appeal is taken to circuit court based on the Board's decision, the Town of

Eastover agrees to pay the costs and expenses of legal counsel for the Board's defense and for the time any employee is required to testify during the appeal.

5. The County services provided pursuant to this Agreement shall be limited to building permitting, plan review and inspection services only. This agreement does not contemplate zoning services, and such agreement for zoning services, if any, shall be negotiated and entered into separately.
6. This Agreement shall have a term of twelve (12) months from the date of execution or until sooner terminated by either party upon such party giving ninety (90) days written notice to the other party of its intent to terminate this agreement or upon the Town of Eastover's employment of a Certified Building Official. This Agreement may be amended, modified or changed only upon the written agreement between the County Council for Richland County and the Town Council for Eastover.

IN WITNESS WHEREOF WE THE UNDERSIGNED have this \_\_\_\_\_ day of \_\_\_\_\_, 2019, set our hand and seal hereon.

TOWN OF EASTOVER:

\_\_\_\_\_  
Mayor

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

RICHLAND COUNTY:

\_\_\_\_\_  
Chair of County Council

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

**RICHLAND COUNTY FEE SCHEDULE**

Permit fees for each category of work will be calculated on a per-building basis and shall be based on the total contract price or total value of work to be done or the per square foot values, for construction, as reported in the international codes council building safety journal for building valuation data, with one and two family dwellings calculates as follows: Average \$57.92 (less than 2,500 square feet of heated area); Best \$73.72 (2,500 square feet or more of heated area). The following dollar value and schedule will be used in calculating permit fees for each category of work to be performed.

- (1) Commercial construction and renovation:** Building, plumbing, gas, mechanical, roofing, sign, pool, barrier, storage, decks, building and fire protection, hood and/or fire suppression, electrical, communications, Security, sound and telephone systems:

TOTAL VALUE	FEE
Up to - \$5000.00	\$52.66
\$5000.01 - \$100,000	\$52.66 for the first \$5000.00 plus \$9.48 per \$1000.00 or fraction thereof
\$100,000.01 - \$1,000,000	\$953.26 for the first \$100,000 plus \$4.21 for each additional \$1000.00 or fraction thereof
\$1,000,000.01 - \$5,000,000	\$4,742.26 for the first \$1,000,000 plus \$3.16 for each additional \$1000.00 or fraction thereof
Over \$5,000,000	\$17,382.26 for the first \$5,000,000 plus \$2.10 for each additional \$1000.00 or fraction thereof

- (2) One and two-family dwelling construction and renovation and townhouses:** Building, plumbing, gas, mechanical, electrical, roofing, pool, barrier, deck, storage. Townhomes include fire protection communications, security, sound and telephone systems due to firewalls:

TOTAL VALUE	FEE
Up to - \$5000.00	\$21.07
Over \$5000	\$21.07 for the first \$5,000 & \$4.21 for each additional \$1000.00 or fraction thereof

- (3) Construction Trailer permits:** \$52.66

- (4) Demolition permits:**

A) Residential Storage or garage  
\$26.33

detached

B) One story residence \$52.66  
C) Two story residence \$78.99

D) Commercial Building	\$157.97
E) Three-story or more	\$210.62 plus \$26.33 per story (Basement counts as a story)

(5) **Land development/Zoning Permits:** (one and two family only)

Detached garage and/or storage building:	\$5.27
Single Family dwelling under \$10,000	\$5.27
Single family dwelling \$10,000 or more	\$10.53
Two Family dwellings	\$15.80

(6) **Moving Permit:** (SEE NOTE:) \$52.66

**NOTE:** All structures, modular units and mobile homes moved within or into Richland County require zoning, building, and may require plan approvals prior to moving and relocation. All permits shall be obtained and fees paid prior to any move. All structures and modular units are classified as new construction for code compliance and are permitted as new construction. Permit shall be good for a maximum of 120 days from date of issuance and structure or modular unit completed and final inspections made with certificate of occupancy issued.

(7) **Miscellaneous/additional fees:**

(A) **Re-Inspection:** The fee for re-inspections resulting from work not being ready for inspection or being disapproved after the first re-inspection, shall be \$31.59 and \$52.66 for each additional re-inspection.

(B) **Commencing work without a permit:**  
Where work requiring a permit is started prior to obtaining the permit, the applicable fee shall be double the amount of the usual permit fee.

(C) **Inspections:** Where no fee is indicated, or the inspection is not required: Residential \$26.33; Commercial \$52.66

(D) **Plan review fee:** (Plan review fees shall be paid in advance for commercial projects, to include townhouses.)

Residential: One and Two Family construction	\$10.53
Commercial Construction & Townhouses:	19 % of permit fee.
<b>Note:</b> Percent (%) of permit fee is based on total construction cost.	

(E) **Structures located within the floodplain:** Elevation certificates and inspections checklist fee of \$52.66 shall be required for new construction, additions, renovations, fences, pools, storage buildings and similar structures.

(F) **Electrical, Plumbing, Gas and HVAC Subcontractors:** Permits are not required for new construction, additions and remodeling work for residential property permitted by a licensed builder provided that the subcontractors are licensed with South Carolina division of LLR, have business license with Richland County, and are listed on the building permit application. Any subcontractor changes shall be reported before new subcontractor's work commences.

(G) Permit Transfer fee:	\$5.27
(H) Permit Refund fee: (less inspections made.	\$10.53
(I) Appeal of Building Official's decision:	\$26.33
(J) Manufactured home set up or de-title fee:	\$142.18
(k) Residential Metal buildings or contract price	\$15.26 sq. ft.
(L) Open decks or open porches or contract price	\$15.26 sq. ft.
(M) Pole buildings based on contract price	\$7.90 sq. ft.
(N) Garages attached/detached no room over, storage building, and screen porches:	\$28.96 sq. ft.
(O) Residential Boarded Structure fee:	\$26.33
(P) Mix Use and Commercial Boarded fee:	\$52.66

**Section 6-51. Elimination of a permit fee for sub-contractor provided a South Carolina licensed general or residential contractor has already secured a single family residential permit and paid the fee.**

**(a)Notwithstanding any other provision of this chapter, when a licensed contractor secures a building permit for the construction of a building or structure, and appropriate permit fee prescribed by the building permit fee schedule will be paid by the contractor. Subcontractor(s) performing work for a licensed contractor will obtain permit(s) for their respective appurtenances, and pay a fee, except for a single family residence. Trade application will display the contractor's name and building permit number so that all permits relating to the same construction can be assimilated. Under extenuating circumstances, the Building Official shall have the authority to adjust the building permit fee.**

STATE OF SOUTH CAROLINA ) INTERGOVERNMENTAL AGREEMENT  
 ) BETWEEN THE TOWN OF EASTOVER,  
 ) SOUTH CAROLINA; AND RICHLAND  
COUNTY OF RICHLAND ) COUNTY, SOUTH CAROLINA

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WHEREAS, the Town of Eastover and Richland County Councils recognize the positive influence this project will have on the quality of life for residents of the Town of Eastover, and desire to provide essential services through inspections and plan review; and

WHEREAS, the Town of Eastover agrees that Richland County shall recoup costs for permitting, inspections and plan review as indicated below;

NOW, THEREFORE, in consideration of the services and agreement described herein, the parties hereto agree as follows:

1. Richland County agrees to provide building services, including permitting, plan review and inspections, within the Town limits of Eastover. The Town of Eastover agrees that in order to recoup the costs associated with the services provided under this Agreement, Richland County shall collect fees for such services as set out on the most current Richland County Building and Zoning Permit Fee Schedule, which is attached as Exhibit A and subject to change pursuant to approval and adoption by the County. Richland County agrees that such fees shall be the same as those required for all similar building services within the unincorporated areas of Richland County.
2. The parties hereto agree that all permitting and communication with contractors and builders shall go through the Richland County Building and Inspections Division.
3. The Town of Eastover and Richland County agree that services for inspections and plan review will be handled by state licensed inspectors and plans examiners, as required by South Carolina Department of Labor, Licensing and Regulation (LLR).
4. The Town of Eastover agrees that Richland County shall enforce within the Town limits of Eastover, the current edition of the Building Codes as adopted by the County and all other building codes adopted in Chapter 6 of the Richland County Code of Ordinances. All building code interpretations shall be made by the County Building Official. Building code interpretations of the Building Official of Richland County may be appealed to the Richland County Building Code Board of Appeals. In the event



that an appeal is taken to circuit court based on the Board's decision, the Town of Eastover agrees to pay the costs and expenses of legal counsel for the Board's defense and for the time any employee is required to testify during the appeal.

5. The County services provided pursuant to this Agreement shall be limited to building permitting, plan review and inspection services only. This agreement does not contemplate zoning services, and such agreement for zoning services, if any, shall be negotiated and entered into separately.
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7. To the fullest extent permitted by law, Town of Eastover shall indemnify, defend, and hold harmless the County and each of the County's officers, officials, employees, agents, and independent contractors, excluding Town of Eastover from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges, settlement amounts, or other liabilities paid or incurred by such Indemnitees as a result of any claims, demands, lawsuits, actions, or proceedings either: (i) alleging violation, misappropriation, or infringement of any copyright, trademark, patent, trade secret, or other proprietary right with respect to the Town of Eastover's work or any other products or deliverables under this Agreement ("infringement claims"); (ii) seeking payment for labor or materials purchased or supplied by Town of Eastover or its subcontractors in connection with this Agreement; (iii) arising from Town of Eastover's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by Town of Eastover or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; (iv) arising from a violation of any federal, state or local law, regulation or ordinance by Town of Eastover or any of its subcontractors, including without limitation E-Verify or other immigration laws; or (v) arising from any claim that Town of Eastover or an employee or subcontractor of Town of Eastover is an employee of, including but not limited to claims relating to workers' compensation, failure to withhold taxes and the like.

IN WITNESS WHEREOF WE THE UNDERSIGNED have this \_\_\_\_\_ day of \_\_\_\_\_, 2019, set our hand and seal hereon.

TOWN OF EASTOVER:

WITNESSES:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
\_\_\_\_\_

RICHLAND COUNTY:

WITNESSES:

\_\_\_\_\_  
Chair of County Council

\_\_\_\_\_  
\_\_\_\_\_

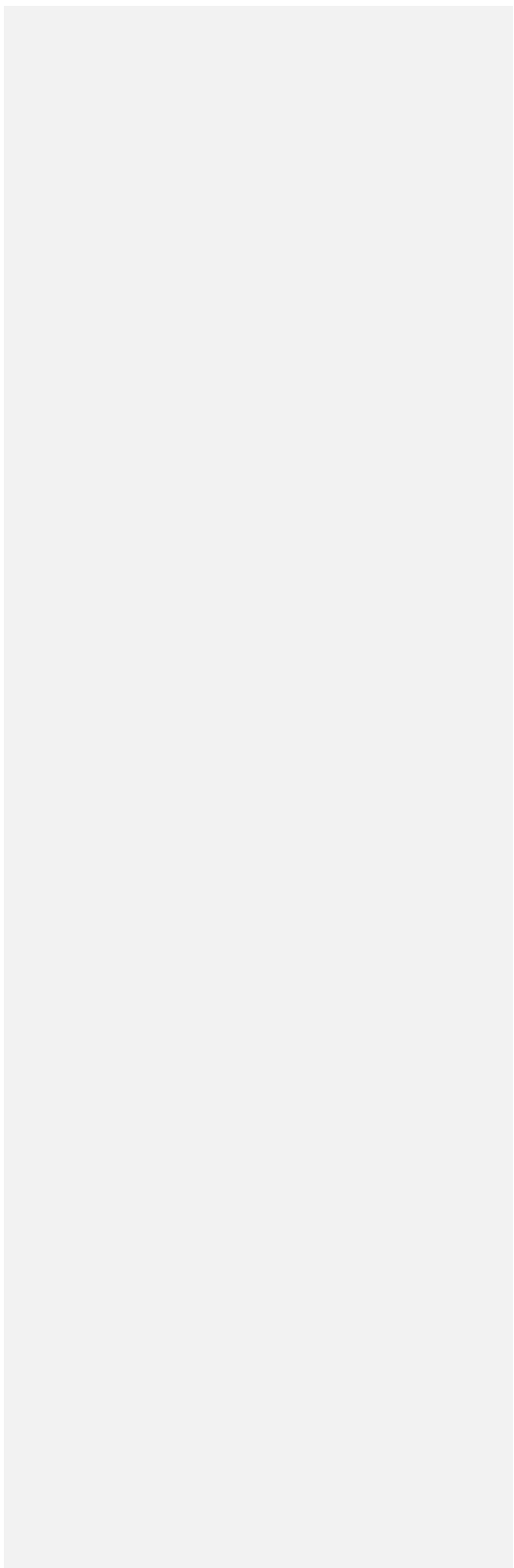


EXHIBIT A

**RICHLAND COUNTY BUILDING AND ZONING PERMIT FEE SCHEDULE**

Permit fees for each category of work will be calculated on a per-building basis and shall be based on the total contract price or total value of work to be done or the per square foot values, for construction, as reported in the international codes council building safety journal for building valuation data, with one and two family dwellings calculates as follows: Average \$57.92 (less than 2,500 square feet of heated area); Best \$73.72 (2,500 square feet or more of heated area). The following dollar value and schedule will be used in calculating permit fees for each category of work to be performed.

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\$1,000,000.01 - \$5,000,000	\$4,742.26 for the first \$1,000,000 plus \$3.16 for each additional \$1000.00 or fraction thereof
Over \$5,000,000	\$17,382.26 for the first \$5,000,000 plus \$2.10 for each additional \$1000.00 or fraction thereof

- (2) **One and two-family dwelling construction and renovation and townhouses:** Building, plumbing, gas, mechanical, electrical, roofing, pool, barrier, deck, storage. Townhomes include fire protection communications, security, sound and telephone systems due to firewalls:

TOTAL VALUE	FEE
Up to - \$5000.00	\$21.07
Over \$5000	\$21.07 for the first \$5,000 & \$4.21 for each additional \$1000.00 or fraction thereof

- (3) **Construction Trailer permits:** \$52.66

- (4) **Demolition permits:**

- A) Residential Storage or garage detached \$26.33
- B) One story residence \$52.66
- C) Two story residence \$78.99
- D) Commercial Building \$157.97
- E) Three-story or more \$210.62 plus \$26.33 per story  
(Basement counts as a story)

(5) **Land development/Zoning Permits:** (one and two family only)

Detached garage and/or storage building:	\$5.27
Single Family dwelling under \$10,000	\$5.27
Single family dwelling \$10,000 or more	\$10.53
Two Family dwellings	\$15.80

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(6) **Moving Permit:** (SEE NOTE:) \$52.66

**NOTE:** All structures, modular units and mobile homes moved within or into Richland County require zoning, building, and may require plan approvals prior to moving and relocation. All permits shall be obtained and fees paid prior to any move. All structures and modular units are classified as new construction for code compliance and are permitted as new construction. Permit shall be good for a maximum of 120 days from date of issuance and structure or modular unit completed and final inspections made with certificate of occupancy issued.

(7) **Miscellaneous/additional fees:**

(A) **Re-Inspection:** The fee for re-inspections resulting from work not being ready for inspection or being disapproved after the first re-inspection, shall be \$31.59 and \$52.66 for each additional re-inspection.

(B) **Commencing work without a permit:**  
Where work requiring a permit is started prior to obtaining the permit, the applicable fee shall be double the amount of the usual permit fee.

(C) **Inspections:** Where no fee is indicated, or the inspection is not required: Residential \$26.33; Commercial \$52.66

(D) **Plan review fee:** (Plan review fees shall be paid in advance for commercial projects, to include townhouses.)

Residential: One and Two Family construction	\$10.53
Commercial Construction & Townhouses:	19 % of permit fee.

**Note:** Percent (%) of permit fee is based on total construction cost.

(E) **Structures located within the floodplain:** Elevation certificates and inspections checklist fee of \$52.66 shall be required for new construction, additions, renovations, fences, pools, storage buildings and similar structures.

(F) **Electrical, Plumbing, Gas and HVAC Subcontractors:** Permits are not required for new construction, additions and remodeling work for residential property permitted by a licensed builder provided that the subcontractors are licensed with South Carolina division of LLR, have business license with Richland County, and are listed on the building permit application. Any subcontractor changes shall be reported before new subcontractor's work commences.

(G) Permit Transfer fee:	\$5.27
(H) Permit Refund fee: (less inspections made.	\$10.53
(I) Appeal of Building Official's decision:	\$26.33

(J)	Manufactured home set up or de-title fee:	\$142.18
(k)	Residential Metal buildings or contract price	\$15.26 sq. ft.
(L)	Open decks or open porches or contract price	\$15.26 sq. ft.
(M)	Pole buildings based on contract price	\$7.90 sq. ft.
(N)	Garages attached/detached no room over, storage building, and screen porches:	\$28.96 sq. ft.
(O)	Residential Boarded Structure fee:	\$26.33
(P)	Mix Use and Commercial Boarded fee:	\$52.66

**Section 6-51. Elimination of a permit fee for sub-contractor provided a South Carolina licensed general or residential contractor has already secured a single family residential permit and paid the fee.**

**(a)Notwithstanding any other provision of this chapter, when a licensed contractor secures a building permit for the construction of a building or structure, and appropriate permit fee prescribed by the building permit fee schedule will be paid by the contractor. Subcontractor(s) performing work for a licensed contractor will obtain permit(s) for their respective appurtenances, and pay a fee, except for a single family residence. Trade application will display the contractor's name and building permit number so that all permits relating to the same construction can be assimilated. Under extenuating circumstances, the Building Official shall have the authority to adjust the building permit fee.**

## Richland County Council Request for Action

**Subject:**

Columbia Housing Authority Vehicle Donation

**Notes:**

July 23, 2019 – The committee recommended Council approve the donation of four retired Richland County Sheriff's Department vehicles to the Columbia Housing Authority for use by their police personnel.

**RICHLAND COUNTY  
ADMINISTRATION**

2020 Hampton Street, Suite 4069  
Columbia, SC 29204  
803-576-2050



Agenda Briefing

**To:** Chair Joyce Dickerson and Members of the Committee  
**Prepared by:** Bill Peters, Manager, Fleet  
**Department:** Risk Management  
**Date Prepared:** June 07, 2019 **Meeting Date:** June 25, 2019

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	June 18, 2019
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	June 12, 2019
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	June 11, 2019
<b>Other Review:</b>	Jennifer Wladischkin via email	<b>Date:</b>	June 18, 2019
<b>Approved for Council consideration:</b>		Acting County Administrator	John M. Thompson, Ph.D., MBA, CPM
<b>Committee</b>	Administration & Finance		
<b>Subject:</b>	Vehicle Donation to the Columbia Housing Authority		

**Recommended Action:**

Council is requested to approve the donation of four retired RCSD vehicles to the Columbia Housing Authority.

**Motion Requested:**

I move to approve the donation of four retired Richland County Sheriff’s Department vehicles to the Columbia Housing Authority for use by their police personnel.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

These units have been replaced and would normally be sold at auction. The fiscal impact would be the loss of auction revenue for their sale. Although the return varies depending on the particular unit sold, the average return to the County would be around \$1,500 - \$2,000 per unit.

**Motion of Origin:**

This is a staff initiated request, at the request of the Columbia Housing Authority.

Council Member	
Meeting	
Date	

**Discussion:**

The Columbia Housing Authority (CHA), in need of four units for their police department, has requested the County to donate retired Richland County Sheriff's Department vehicles. The attached letter detailing the request from the CHA Executive Director, Mr. Gilbert Walker, was delivered to the County Fleet Manager. County Fleet will identify four units that may be acceptable for reissue to the CHA for their use should County Council authorize the donation.

**Attachments:**

1. April 05, 2019 Correspondence from the Columbia Housing Authority
2. July 24, 2019 Correspondence from the Columbia Housing Authority





## THE HOUSING AUTHORITY

of the City of Columbia, South Carolina  
1917 HARDEN STREET • COLUMBIA, S.C. 29204-1015  
TELEPHONE (803) 254-3886  
TDD (803) 256-7762

Attachment 1

April 5, 2019

Office of Risk Management  
400 Powell Road  
Columbia, SC 29203

Re: Donated Vehicles

Dear Sir:

This is a formal request letter to the Richland County Council requesting four vehicles to be donated to the Columbia Housing Authority from Richland County.

According to Mr. Bill Peters, two Ford 2014 Taurus vehicles have already been identified and are waiting to be brought into the maintenance shop to be looked over. Also, we are requesting possibly two Chevrolet Tahoe sport utility vehicles.

Again, thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "G Walker".

Gilbert Walker  
Executive Director

aml



**THE HOUSING AUTHORITY**

of the City of Columbia, South Carolina  
1917 HARDEN STREET • COLUMBIA, S.C. 29204-1015  
TELEPHONE (803) 254-3886  
TDD (803) 256-7762

July 24, 2019

Office of Risk Management  
400 Powell Road  
Columbia, SC 29203

Re: Donated Vehicles

Dear Sir:

This is a formal letter to the Richland County Council requesting four Law Enforcement vehicles to be donated to the Columbia Housing Authority from Richland County.

According to Mr. Bill Peters, two 2014 Ford Taurus vehicles have already been identified and are waiting to be brought into the maintenance shop to be looked over. Also, we are requesting possibly two Chevrolet Tahoe sport utility vehicles.

Again, thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ivory Matthews".

Ivory Matthews  
Executive Director

aml

## Richland County Council Request for Action

**Subject:**

Richland County Recreation Commission – Reprogramming of funds for Allen-Benedict Court Residents

**Notes:**

July 23, 2019 – The committee recommended Council deny RCRC's request.



Agenda Briefing

**To:** Committee Chair Joyce Dickerson and Members of the Committee  
**Prepared by:** James E.S. Hayes, Director  
**Department:** Office of Budget and Grants Management  
**Date Prepared:** July 08, 2019 **Meeting Date:** July 23, 2019

<b>Legal Review</b>	Larry Smith via email	<b>Date:</b>	July 15, 2019
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 08, 2019
<b>Approved for Council consideration:</b>	Assistant County Administrator	Sandra E. Yúdice, Ph.D.	
<b>Committee</b>	Administration and Finance		
<b>Subject:</b>	Richland County Recreation Commission - Redirection of Allen Benedict Funds		

**Recommended Action:**

Staff recommends allowing the Richland County Recreation Commission (RCRC) to be reimbursed for the Day of Giving program held on May 21, 2019. Though it is a program revision of funds approved for the Allen Benedict Court Residents, the residents were directly impacted, and the overall purpose and usage of the funds remained consistent with Council’s intent.

**Motion Requested:**

Move to approve a revision of the Recreation Commission’s usage of the funding approved by the County Council to assist residents of the Allen Benedict Court Community and to be reimbursed for those expenditures incurred during the Day of Giving.

**Request for Council Reconsideration:** Yes

**Fiscal Impact:**

There is no fiscal impact as the funding has already been approved by Council.

**Motion of Origin:**

There is no associated motion.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	

**Discussion:**

At its March 05, 2019 regular session council meeting, Richland County Council approved funding for the Richland County Recreation Commission, among other groups, to assist the displaced residents of the Allen-Benedict Court Community.

County Council originally approved funding for the RCRC to provide after-school activities at six locations. The Commission is requesting to revise their original proposal to be reimbursed for expenses incurred during its Day of Giving event held on May 21, 2019 at St. Andrews Park.

**Attachments:**

1. Richland County Recreation Commission Request



## Contact Information

**Contact:** Lakita Watson  
Executive Director  
Richland County Recreation Commission

**Address:** 7473 Parklane Road  
Columbia, South Carolina 29223

**Email:** [lakita@rcrc.state.sc.us](mailto:lakita@rcrc.state.sc.us)

## Organization Information

**Legal Name:** Richland County Recreation Commission

**Address:** 7473 Parklane Road

**City:** Columbia

**State:** South Carolina

**Zip:** 29223

**Telephone:** 803.547-7272

**E-Mail Address:** [lakita@rcrc.state.sc.us](mailto:lakita@rcrc.state.sc.us)

**Website Address:** [www.richlandcountyrecreation.com](http://www.richlandcountyrecreation.com)

### Mission

Dedicated to enriching lives and connecting communities through diverse recreational opportunities.

### Vision

To be recognized as a leader in park management and the delivery of quality recreation programs in order to better promote health and improve the quality of life in Richland County.

## Request Information

**Project Title:** Resource Fair

**Meeting Community Need:** According to various news outlets, between 300 – 400 individuals have been evacuated from Allen-Benedict Court housing neighborhood due to unsafe living

conditions. Many of these evacuees have been relocated to local hotels until permanent housing can be found. The Richland County Recreation Commission (RCRC) has afterschool programs and summer camps located throughout the county.

**Proposal Detail Revision:** Due to a scheduling conflict with a preplanned special event RCRC was unable to attend the Resource Fair sponsored by Prizma Health, Columbia Housing Authority and Richland County Library held on April 27<sup>th</sup>. However, we had participated with the numerous conference calls and meetings used to set up the event. Also, there were two previous dates set, but other vendors decided to wait for the date and location that Prizma set in order to capitalize on the ability to provide medical information along with the other service vendors. The attendance at this fair was approximately 400 people, which included the general public as well as the Allen Benedict Court residents.

In order to ensure that we provide the greatest benefit to the most Allen-Benedict Court residents within our reach, RCRC will host a Day of Giving that will provide the displaced residents with basic everyday essentials including laundry care and personal hygiene products. In addition to the everyday essentials RCRC will provide twenty-five \$200 grocery gift cards and fifty \$150 vouchers to be used toward programing. The remanding funds will be used to purchase books, games, and activities for school aged youth in an effort to provide educational and enrichment activities to these youth during the summer months. The Day of Giving event will be open to Allen Benedict Court residents and their children. RCRC will provide refreshments and entertainment to ABC residents in attendance and will use funds from our current operating budget to cover the cost. We have contacted social workers employed with the Richland County Library to assist us with advertising the event to ABC residents who seek assistance from the Library.

**Project Timeline Revision:** The Day of Giving will be held at St. Andrews Park located at 920 Beatty Road on May 21<sup>st</sup> from 4-8 pm.

**Total Funding Request: \$15,000**



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Applicant MUST reside in Richland County.

Name: LaTonya Derrick

Home Address: 105 Hyer Court Columbia, SC 29223

Telephone: (home) 803. 714.0123 (work) 803.361.6364

Office Address: 1022 State Street Cayce, SC 29033

Email Address: LaTonyaDerrick@gmail.com

Educational Background: Columbia College (SC); Georgia Southern Univ.; Walden Univ.

Professional Background: SCDHEC: 15+ yrs, Environmental/Transportation Consulting: 4+ yrs

Male [ ] Female [X] Age: 18-25 [ ] 26-50 [X] Over 50 [ ]

Name of Committee in which interested: Board of Zoning Appeals

Reason for interest: Continued service for a second term to ensure consistency in decision making as appeal reviews become more challenging and the Board's membership continues to rotate.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

Currently serving as Vice Chair of BoZA: Knowledge of and experience applying the Richland County Land Development Code.

Presently serve on any County Committee, Board or Commission? Board of Zoning Appeals

Any other information you wish to give?

Recommended by Council Member(s):

Hours willing to commit each month: <10 hrs/month

CONFLICT OF INTEREST POLICY

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.



Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No **XXX** \_\_\_\_\_

#### STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No **XXX** \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LaTonya Herrick  
Applicant's Signature

April 9, 2019  
Date

**Return to:**  
**Clerk of Council, Post Office Box 192, Columbia, SC 29202.**  
**For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>4-10-19</u>	Received by: <u>[Signature]</u>
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	



**APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION**

**Applicant MUST reside in Richland County.**

Name: Marsha Carnegie

Home Address: 840 Sparkleberry Ln Apt 1604 Columbia, SC 29229

Telephone: (home) 571-330-3656 (work) \_\_\_\_\_

Office Address: 1030 Wildwood Centre Dr., Columbia, SC 29229

Email Address: marsha\_carnegie@yahoo.com

Educational Background: Bachelor of Business Administration

Professional Background: Retired Military, Real Estate Agent

Male  Female  Age: 18-25  26-50  Over 50

Name of Committee in which interested: Zoning

Reason for interest: To learn and be abreast of the county's regulations and guidelines pertaining to zoning and to assist others in the community in finding the answers to questions they may have and guide them in the right direction, keeping them within the guidelines set forth by the proper authorities.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

Bachelors of Business Administration and 22 years of military service which prepared me for management and leadership, decision making, analysis, oral and written communication; specialized experience in training development and executive and administrative management.

Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? \_\_\_\_\_

Recommended by Council Member(s): Geonard Price

Hours willing to commit each month: As much as needed

**CONFLICT OF INTEREST POLICY**

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

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All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No X \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No X \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

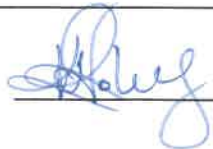
Maisha Carnegie  
Applicant's Signature

4/24/19  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

<b>Staff Use Only</b>		
Date Received: <u>4-24-19</u>	Received by: <u></u>	
Date Sent to Council: _____		
Status of Application:	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied <input type="checkbox"/> On file



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**APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION**

**Applicant MUST reside in Richland County.**

Name: Lonnie D. Daniels

Home Address: 2283 Wilkinson Drive Cola SC 29229

Telephone: (home) 803 917 3410 (work) 803 917 3410

Office Address: 1509 Lady Street Columbia SC 29201

Email Address: Homesandmore@msn.com

Educational Background: MBA Public Relations

Professional Background: Real Estate Military Education

Male  Female  Age: 18-25  26-50  Over 50

Name of Committee in which interested: Board of Zoning Appeals

Reason for interest: I am interested in adding value to the Board of Zoning Appeals

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

Real Estate Broker In Charge in SC/GA/NC RE License Law Instructor

Real Estate Land Institute SC Army National Guard United States Army

Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? No

Recommended by Council Member(s): No

Hours willing to commit each month: 40-60

**CONFLICT OF INTEREST POLICY**

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No X \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No X \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


  
\_\_\_\_\_  
Applicant's Signature

4-25-19  
\_\_\_\_\_  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>4-25-19</u>	Received by: 
Date Sent to Council: _____	
Status of Application:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file



**APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION**

**Applicant MUST reside in Richland County.**

Name: Jason McLeas  
Home Address: 81 Sand Oak Court  
Telephone: (home) (803) 586-6776 (work) \_\_\_\_\_  
Office Address: \_\_\_\_\_  
Email Address: jcmleas@aol.com  
Educational Background: MS in Project Management  
Professional Background: Business Management / IT Professional Analyst  
Male  Female  Age: 18-25  26-50  Over 50   
Name of Committee in which interested: BOZA  
Reason for interest: Re-applying for second term

Your characteristics/qualifications, which would be an asset to Committee, Board or  
Commission:

I am believe my education, character and passion for Richland County are  
all good qualities I will bring to the board.

Presently serve on any County Committee, Board or Commission? Yes, BOZA

Any other information you wish to give? \_\_\_\_\_

Recommended by Council Member(s): \_\_\_\_\_

Hours willing to commit each month: Hours necessary to ensure the board can  
operate.

**CONFLICT OF INTEREST POLICY**

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

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All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No X \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No X \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Jason C Meyer*  
Applicant's Signature

01MAY19  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>5-3-19</u>	Received by: <u><i>[Signature]</i></u>
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	

2



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**A RESOLUTION OF THE  
RICHLAND COUNTY COUNCIL**

**A RESOLUTION TO APPOINT AND COMMISSION BRODERICK JEROME FLEMING, RALPH WILLIAM GUYTON, DAVID EUGENE BAGWELL, JR., AND TINA MILLS ROBINETTE AS CODE ENFORCEMENT OFFICERS FOR THE PROPER SECURITY, GENERAL WELFARE, AND CONVENIENCE OF RICHLAND COUNTY.**

**WHEREAS**, the Richland County Council, in the exercise of its general police power, is empowered to protect the health and safety of the residents of Richland County; and

**WHEREAS**, the Richland County Council is further authorized by Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended, to appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the County;

**NOW, THEREFORE, BE IT RESOLVED THAT** Broderick Jerome Fleming, Ralph William Guyton, David Eugene Bagwell, Jr., and Tina Mills Robinette are hereby appointed and commissioned Code Enforcement Officers of Richland County for the purpose of providing for the proper security, general welfare, and convenience of the County, replete with all the powers and duties conferred by law upon constables, in addition to such duties as may be imposed upon them by the governing body of this County, including the enforcement of the County's hazardous materials and fire prevention regulations and the use of an ordinance summons, and with all the powers and duties conferred pursuant to the provisions of Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended. Provided, however, none of the above-referenced appointees shall perform any custodial arrests in the exercise of their duties as code enforcement officers. Each of these appointments shall remain in effect only until such time as the individual so appointed is no longer employed by Richland County as a code enforcement officer.

**ADOPTED THIS THE \_\_\_\_\_.**

\_\_\_\_\_  
Paul Livingston, Chair  
Richland County Council

Attest: \_\_\_\_\_  
Michelle Onley  
Deputy Clerk of Council



## REQUEST OF ACTION

**Subject:** FY20 - District 5 Hospitality Tax Allocations

### A. Purpose

County Council is being requested to approve a total reallocation of **\$79,000** for District 5.

### B. Background / Discussion

For the 2019 - 2020 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$164,850.00 for each district Council member. The details of these motions are listed below:

**Motion List (3<sup>rd</sup> reading) for FY17:** Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

**Motion List (3<sup>rd</sup> reading) for FY20, Special Called Meeting – June 10, 2019:** Establish Hospitality Tax discretionary accounts for each district in FY20. Move that all unspent H-Tax funding for FY18-19 be carried over and added to any additional funding for FY19-20.

Pursuant to Budget Memorandum 2017-1 each district Council member was approved \$164,850.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 8 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding		\$164,850
FY2020 Allocations		\$ 0
FY2019 Remaining		\$ 0
	Greater Rosewood Merchant Association	\$ 10,000
	Shandon and Hollywood-Rose Hill Home Tour	\$ 3,000
	Historic Columbia	\$ 25,000
	Jam Room Foundation	\$ 7,500
	Animal Mission of the Midlands (Peanut Boil)	\$ 5,000
	Columbia Music Festival	\$ 15,000
	SC Philharmonic	\$ 10,000
	Edgewood Foundation	\$ 1,000
	Latino Communications	\$ 2,500
<b>Total</b>		<b>\$ 79,000</b>
<b>Remaining Balance</b>		<b>\$ 85,850</b>

**C. Legislative / Chronological History**

- 3<sup>rd</sup> Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3<sup>rd</sup> Reading of Budget FY19 June 21 ,2018
- 3<sup>rd</sup> Reading of the Budget FY20 June 10, 2019

**D. Alternatives**

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

**E. Final Recommendation**

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.



## REQUEST OF ACTION

**Subject:** FY20 - District 2 Hospitality Tax Allocations

### A. Purpose

County Council is being requested to approve a total reallocation of **\$60,500** for District 2.

### B. Background / Discussion

For the 2019 - 2020 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$164,850.00 for each district Council member. The details of these motions are listed below:

**Motion List (3<sup>rd</sup> reading) for FY17:** Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

**Motion List (3<sup>rd</sup> reading) for FY20, Special Called Meeting – June 10, 2019:** Establish Hospitality Tax discretionary accounts for each district in FY20. Move that all unspent H-Tax funding for FY18-19 be carried over and added to any additional funding for FY19-20.

Pursuant to Budget Memorandum 2017-1 each district Council member was approved \$164,850.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 8 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$164,850
FY2020 Allocations	\$ 65,500
FY2019 Remaining	\$ 33,700
3 Rivers Music Festival – Richland Music Festival	\$ 26,500
River Community Foundation- Blues, Berries, & BBQ	\$ 34,000
<b>Total</b>	<b>\$ 60,500</b>
<b>Remaining Balance</b>	<b>\$ 72,550</b>

**C. Legislative / Chronological History**

- 3<sup>rd</sup> Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3<sup>rd</sup> Reading of Budget FY19 June 21 ,2018
- 3<sup>rd</sup> Reading of the Budget FY20 June 10, 2019

**D. Alternatives**

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

**E. Final Recommendation**

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.