

# **RICHLAND COUNTY**

## **SPECIAL CALLED MEETING AGENDA**



**Monday, AUGUST 31, 2020**

**6:00 PM**

**ZOOM MEETING**



# RICHLAND COUNTY COUNCIL 2020



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

August 31, 2020 - 6:00 PM  
Zoom Meeting  
2020 Hampton Street, Columbia, SC 29201

**1. CALL TO ORDER**

a. Roll Call

**2. INVOCATION**

The Honorable Allison Terracio

**3. PLEDGE OF ALLEGIANCE**

The Honorable Allison Terracio

**4. APPROVAL OF MINUTES**

- a. Regular Session: July 21, 2020 [PAGES 9-26]
- b. Zoning Public Hearing: July 28, 2020 [PAGES 27-30]
- c. Special Called Meeting: July 28, 2020 [PAGES 31-34]

**5. ADOPTION OF AGENDA**

The Honorable Paul Livingston

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

Larry Smith,  
County Attorney

**7. CITIZEN'S INPUT**

The Honorable Paul Livingston

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

**8. CITIZEN'S 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

- a. Coronavirus Update

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

Michelle Onley,  
Interim Clerk to Council

**11. REPORT OF THE CHAIR**

The Honorable Paul Livingston

**12. OPEN / CLOSE PUBLIC HEARINGS**

The Honorable Paul Livingston

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina and Project Quattro; to provide for payments of fees-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

**13. APPROVAL OF CONSENT ITEMS**

The Honorable Paul Livingston

- a. 20-006MA  
Paul Pettinelli  
HI to GC (.9 Acres)  
1314 Rosewood Drive  
TMS # R11208-02-10 [SECOND READING] [PAGES 35-36]
- b. 20-008MA  
Michael Winkler  
RU to NC (1.25 Acres)  
11045 Two Notch Road  
TMS # R29100-05-04 [SECOND READING] [PAGES 37-38]
- c. 20-015MA  
Brenda Miller  
RU to RS-MD  
8104 Brookmount Lane  
TMS # R14414-02-04 [SECOND READING] [PAGES 39-40]
- d. 20-018MA  
Ryan Horton  
RM-HD to GC (2.62 Acres)  
616 Percival Road  
TMS # R16716-01-01 [SECOND READING] [PAGES 41-42]
- e. Approval of the Award Sum from SC State Resolving Fund (SRF) towards the South East Sewer and Water Expansion Project [PAGES 43-68]

- f. County Attorney's Office – Request to Close a County Road – Murray Tract [PAGES 69-92]

**14. THIRD READING ITEMS**

The Honorable Paul Livingston

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina and Project Quattro; to provide for payments of fees-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [PAGES 93-162]
- b. Approving the transfer of certain property located in the Blythewood Business Park to Fairfield Electric Cooperative; and other related matters [PAGES 163-178]

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

The Honorable Joyce Dickerson

- a. Little Jackson Creek Up-Ditch Work Authorization Award [PAGES 179-187]
- b. Home Detention/Electronic Monitoring Services [PAGES 188-192]

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

- a. Authorizing the extension of the term of the fee in lieu of tax agreement dated as of September 1, 1999, by and between Richland County, South Carolina, and Carolina Ceramics, LLC [PAGES 193-230]
- b. Consenting to and ratifying the partial assignment and assumption of a fee in lieu of tax and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters [PAGES 231-277]
- c. Authorizing, approving, ratifying and consenting to the partial assignment and assumption of an infrastructure credit and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters [PAGES 278-318]

**17. OTHER ITEMS**

The Honorable Paul Livingston

- a. Face Mask Ordinance Extension [PAGES 319-323]
- b. Memorandum of Understanding - COMET - Mapping Services [PAGES 324-333]

**18. EXECUTIVE SESSION**

Larry Smith,  
County Attorney

**19. MOTION PERIOD**

- a. Once Council approves an action no Council member is to individually go to a staff member in an effort to accomplish/change something that was not in the approved information/action by Council

The Honorable Bill Malinowski

**20. 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

REGULAR SESSION  
July 21, 2020 – 6:00 PM  
Via Zoom Meeting

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

**OTHERS PRESENT:** Michelle Onley, Ashiya Myers, Ashley Powell, Angela Weathersby, Leonardo Brown, John Thompson, Dale Welch, Kyle Holsclaw, Clayton Voignier, Jeff Ruble, Mike King, Jennifer Wladischkin, Dwight Hanna Brian Crooks, Michael Mahoney, Tyler Kirk, Tammy Addy, Stacey Hamm, Judy Carter, Brittney Hoyle-Terry, Tommy DeLage, Tariq Hussain, Synithia Williams, Ifeolu Idowu and Brad Farrar

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 Dalhi Myers
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Dalhi Myers
4. **APPROVAL OF THE MINUTES**
  - a. **Special Called: July 14, 2020** – Ms. McBride moved, seconded by Mr. Dickerson, to approve the minutes as distributed.

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

Opposed: Manning

Not Present: Terracio and Walker

The vote was in favor.

5. **ADOPTION OF THE AGENDA** – Mr. Brown requested to remove Item 17(c): “Ole Towne Antique Mall”

Mr. Livingston requested to add the following items to the agenda: Report of the Employee Evaluation Ad Hoc Committee – (1) Temporary Assistance for the Clerk’s Office, (2) County Administrator Evaluation Process, and (3) Clerk to Council Position.

Ms. Dickerson moved, seconded by Ms. McBride, to adopt the agenda as amended.

Mr. Manning inquired if the meeting the items we are being asked to added to agenda had 24-hour notice, and, if so, why an amended agenda was not sent out with those items added, so the public was aware.

Mr. Livingston responded that the committee was not sure which items would be referred from the meeting.

Mr. Malinowski inquired if this motion would require a two-thirds vote.

Mr. Farrar responded in the affirmative.

Ms. Newton moved, seconded by Ms. McBride, to add the Report of the Employee Evaluation Ad Hoc Committee to the agenda.

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

Not Present: Terracio and Walker

The vote in favor was unanimous to add the Report of the Employee Evaluation Ad Hoc Committee to the agenda.

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

Opposed: Manning

Not Present: Terracio and Walker

The vote was in favor.

6. **PRESENTATION OF PROCLAMATION**

- a. Proclamation Honoring the 30<sup>th</sup> Anniversary of the Americans with Disabilities Act [JACKSON] – Ms. Onley read the proclamation into the record. Full Council requested to be added in support of the proclamation.

7. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS** – Mr. Farrar stated the following items are eligible for Executive Session:

- a. Personnel Matter – Grievance Reviews and Recommendations
- b. Temporary Assistance for the Clerk’s Office

8. **CITIZENS’ INPUT**

- a. For Items on the Agenda Not Requiring a Public Hearing – No comments were received for this item.

9. **CITIZENS’ INPUT**

- 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 this time.) – No comments were received for this item.

10. **REPORT OF THE COUNTY ADMINISTRATOR**

- a. Coronavirus Update – Mr. Brown stated there has not been any substantive changes.

Regular Session

July 21, 2020

2

Ms. D. Myers inquired if staff had completed the process of putting together the clarifying information to be provided to businesses and citizens.

Mr. Brown responded they have not completed the process, but the Fire Marshals have been going out to various facilities, which we do have. He stated we need to meet with the ad hoc committee to make sure the clarifying information is consistent with the will of the committee, and Council.

Ms. D. Myers requested that the information be circulated to the Councilmembers.

Ms. Dickerson inquired if we have received the face masks and determined how we are going to distribute them in the various areas.

Mr. Brown responded the masks have not been received. They have received feedback from several Councilmembers on areas they would like to see the masks distributed in their districts. We will coordinate the dates and locations for distribute with each Councilmember.

- b. Personnel Matter – Grievance Reviews and Recommendations – Mr. Malinowski moved, seconded by Ms. Dickerson, to uphold the Administrator’s recommendation in Memorandum 7-2-2020 (Detention Center).

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

The vote in favor was unanimous.

Mr. Malinowski stated he disagrees with the Administrator’s recommendation on the other grievance. In speaking with the Administrator, if we have a rule that says all employees are to receive annual evaluations, and an annual evaluation is not given, to provide a list of potential/alleged infractions, which did not stipulation there was an infraction, does not constitute an evaluation. If the employee were given an evaluation they would have been given the opportunity to address any shortcomings. Therefore, to receive this “Last Chance Agreement” is proper, and should not be placed in the employee’s personnel file. The employee should be given an evaluation and start from there.

Mr. Malinowski moved, seconded by Ms. Dickerson, to not place the “Last Chance Agreement” into the file. Give the employee their evaluation and let them try to resolve any shortcomings.

Ms. D. Myers made a substitute motion, seconded by Ms. Newton, to defer this item until after Executive Session.

In Favor: McBride, Livingston, Manning, Jackson, Myers and Newton

Opposed: Malinowski, Dickerson and Kennedy

Not Present: Terracio and Walker

The vote was in favor of deferral until after Executive Session.

Ms. Dickerson moved, seconded by Mr. Malinowski, to reconsider the motion to uphold the Administrator’s recommendation on Memorandum 7-2-2020.

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

Regular Session

July 21, 2020

3

Not Present: Terracio and Walker

The motion for reconsideration failed.

11. **REPORT OF THE INTERIM CLERK OF COUNCIL** – No report was given.

12. **REPORT OF THE CHAIR** – No report was given.

13. **APPROVAL OF CONSENT ITEMS**

- a. 20-001MA, Robert Giles, RM-HD to NC (2 Acres), Ohio Street & Olympia Avenue, TMS # R11203-01-01, 03, 04 & 05 [THIRD READING]
- b. 20-003MA, Chad Monteith, RU to GC (5 Acres), 6505 N. Main Street, TMS # R11716-01-04 [THIRD READING]
- c. 20-009MA, Bill Dixon, PDD to PDD (13.4 Acres), Greenhill Parish Parkway TMS # R25800-03-44 [THIRD READING]
- d. 20-010MA, Yong M. Han & Kyu H. Han, RU to GC (.071 Acres), 10804 Two Notch Road, TMS # R25915-02-05 [THIRD READING]
- e. 20-014MA, Alex Serkes, GC to HI (6 Acres), 10501 Farrow Road, TMS # R17500-02-07 and 15 [THIRD READING]

Ms. D. Myers moved, seconded by Ms. Kennedy, to approve the consent items.

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

Not Present: Terracio and Walker

The vote in favor was unanimous.

14. **THIRD READING ITEMS**

- a. 20-016MA, John Ecton, RU to RS-LD, 2304, 2312, and 2314 Johnson Marina Road, TMS # R01315-01-17; R01315-01-14; and R01311-02-20 – Mr. Malinowski moved, seconded by Ms. Kennedy, to approve this item.

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

Not Present: Terracio and Walker

The vote in favor was unanimous.

15. **SECOND READING ITEMS**

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina and Project Quattro; to provide for payments of fees-in-

Regular Session

July 21, 2020

4



lieu of taxes; authorizing certain infrastructure credits; and other related matters – Mr. Malinowski moved, seconded by Mr. Jackson, to approve this item.

Ms. D. Myers stated, for the record, as important as getting this done for the potential company, it is equally as important that we work out something that is a benefit to the surrounding community.

Mr. Jackson stated it is his intent to work collaboratively with Ms. D. Myers on this project, as they have done in the past on another project.

Ms. Newton inquired if Third Reading of this item will be coming back at the meeting in August.

Mr. Livingston responded in the affirmative.

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

Opposed: Myers

Not Present: Terracio and Walker

The vote was in favor.

16. **REPORT OF THE BLUE RIBBON AD HOC COMMITTEE**

- a. CDBG-MIT Action Plan Update – Approval of the CDBG-MIT Action Plan – Mr. Voignier stated on August 30, 2019 the US Dept. of Housing and Urban Development allocated \$21,864,000 in Community Development Block Grant-Mitigation (CDBG-MIT) funds to Richland County, as a grantee recovering from a qualifying disaster in 2015. In order to expend these funds HUD requires the development and submission of an action plan, which includes proposed mitigation activities, as well as the mitigation needs assessment that identifies and quantitatively analyzes all significant current and future disasters risks, providing a substantive basis for the proposed mitigation activities. Through the Richland County CDBG-MIT Action Plan, staff is proposing two (2) infrastructure and two (2) housing programs, based on the results of the mitigation needs assessment. These programs are designed to improve resilience to public infrastructure, mitigate future flood damage, reduce impacts of flooding and severe storms on public safety, and property damage, enhance the long-term resilience of community lifelines and address the unmet household mitigation needs among the most socially vulnerable populations. This action plan was published to the County’s mitigation website from March 18 – June 15, 2020 to allow for public input and comment. At its May 28, 2020 meeting, the Blue Ribbon Committee unanimously recommended that Council approve the action plan for submission to HUD by the August 31, 2020 deadline.

Ms. Dickerson inquired if we have expended all of the funds, or are there funds still available.

Mr. Voignier responded the action plan requires us to spend the entire allocation of the \$21.8M. They have not spent the funds yet. This is an action plan to spend the funds over a 12-year grant period.

Mr. Malinowski stated, for record, these particular funds that are being given to Richland County is extremely important to the citizens and he thinks it was somewhat unfair to Councilmembers to be asked to absorb and understand 176 pages of data in a short period of time we have been given. While there are different proposals in the action plan, he noted on p. 249 of the agenda, Ms. D.

Myers asked about there being more public input before this moved forward to Council. He inquired if there was an attempt to obtain any additional public input.

Mr. Voignier stated, in terms of the official public comment period that closed on June 5<sup>th</sup>. However there have been continuing meetings with the Conservation Commission, as well as members of Gills Creek Watershed Association. Although their comments will not be reflected in the action plan, there will be additional opportunities for public input we will take into consideration, and we will continue to meet with those stakeholders throughout the period of the grant.

Mr. Malinowski stated, on p. 192 of the agenda, it shows the budget, which shows a total of \$4.8M for planning and program administration, which is 28% of the total, and seems a bit excessive.

Mr. Voignier responded the Federal Register allows for up to 5% to be allocated to program administrator and 15% to planning. Those funds not only support the administration of the programs, but other planning efforts that will support infrastructure programs, and implementation of all the programs. The budget was put together by staff, who felt that the current amounts for the infrastructure and housing programs were adequate to meet those needs. If there are additional funds available, as we get further into the grant, we will look at reallocating those funds to those projects, if necessary.

Mr. Malinowski noted the design study cost is over 50% of the construction cost. He requested an explanation for this.

Mr. Voignier responded that budget was put together by the Public Works Department, and would be better able to respond to that question.

Ms. Williams responded the estimates that were put in for the infrastructure projects were based off of the current costs we have seen with other infrastructures throughout the department. As Clayton stated earlier, as we get into the program and the funding changes, then we can reallocate those resources to more construction projects or other areas within the program.

Ms. D. Myers noted the stakeholders tend to be the same groups we go to repeatedly for all of our projects. The Conservation Commission, the Gills Creek Watershed, and the Builders Association were identified as stakeholders, which is fine, but they do not take in a large swath of the County that should be considered a stakeholder. She inquired about what meetings were held with other groups, since the time she asked for additional public input.

Mr. Voignier responded they held a public hearing on June 5<sup>th</sup> to receive additional stakeholder input. He has spoken with a regional organization and they will be meeting with them to receive some additional input.

Ms. D. Myers stated, with this being such a large grant, and there being so much post-flood need, she was concerned at the committee meeting, and remain concerned, we are continuously talking in a loop to the same people. We are not getting to different groups of people whose input is important in making sure that we are meeting the need that exist. In the plan document, which are submitted to HUD and become a binding document, we have covered all of those bases. Her initial concern was that we draft a plan that included the whole of Richland County, not just the request from the Conservation Commission and homebuilders. For example, did we talk to the neighborhood association, community groups, etc. She is concerned the Lower Richland, Forest Acres and King's Grant areas have not been specifically heard from, and it is important that they be heard from before we submit this action plan to HUD.

Mr. Voignier stated they have not spoken specifically to those neighborhood associations. They have met with the Forest Acres Town Administrator about a particular project, and will be having further discussions with them. Part of the planning budget is for education outreach for when the actual programs get started.

Ms. D. Myers stated her concern is the programs will be approved by the time you do the education, so if there is something that needs included in the programming, we have not done the outreach to figure that out.

Ms. McBride noted that 50% of the funds must benefit low and moderate income individuals. She inquired how Mr. Voignier is documenting this requirement. In addition, is there a way for Council to see, monthly or quarterly, who is receiving the funds, and what is being done?

Mr. Voignier responded for the housing program there will be applications where we will have to document income eligibility. For the infrastructure projects, those qualify under an area benefit for LMI, so those are documented in that way. Furthermore, we are required by HUD to do a quarterly performance report that will be published on the website. In addition, those reports will be provided to the Blue Ribbon Committee, and can be provided to Council also.

Ms. McBride inquired if they will be contracting out with different vendors.

Mr. Voignier responded in the affirmative.

Ms. McBride stated she would strongly urge us to look at minority vendors to assist with these projects.

Mr. Voignier stated, as we are doing solicitation for these projects, he will work with Procurement to ensure that we are as inclusive as possible.

Ms. McBride stated she would like a way to monitor the vendors and contractors we are using.

Mr. Manning inquired as to when the public hearing was held, and the time the hearing was held.

Mr. Voignier responded there were two public hearings. The one on March 12<sup>th</sup> did not receive any participation, and an additional public hearing was held on June 5<sup>th</sup>. There was fairly good participation at the June 5<sup>th</sup> public hearing. Both public hearings were held at 5:00 PM.

Mr. Manning noted individuals that work 12-hour shifts would have been precluded from participating in the public hearings.

Mr. Voignier responded it would have precluded a live participation; however, they did have an opportunity to submit written comments and read those into the record at the meeting.

**POINT OF ORDER** – Ms. D. Myers noted the meeting was held on Friday afternoon at 5:00 PM.

Ms. Newton stated these have been such extraordinary times over the past few months, which has made it more difficult to get community input, but it makes it even more important. She would ask that in addition to what has been outlined we look for additional opportunities to continue to have conversations with the community.

Mr. Malinowski inquired as to what would happen if this were not to pass. (i.e. additional public hearing and Special Called Meeting prior to August 31<sup>st</sup> deadline.)

Mr. Voignier responded if that is the will of Council that is essentially what would have to occur. If we do not submit the action plan by the deadline the funding would not be available, as we have exhausted all of our extensions. In addition, HUD would not look on the County favorably for not meeting the deadline.

Ms. Dickerson stated she would prefer to pass this item now, so we do not miss out on receiving these funds, and so we do not have to have a Special Called Meeting.

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

Not Present: Terracio and Walker

The vote in favor was unanimous.

Ms. D. Myers requested staff to utilize the tele-town hall format.

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

In Favor: Myers

Opposed: Malinowski, Dickerson, McBride, Livingston, Jackson and Newton

Not Present: Terracio and Walker

The motion for reconsideration failed.

Ms. D. Myers noted that we have a list of what we have defined as stakeholders, which seems to be the same list across all categories. It leaves out broad sections of the County. She would request staff to expand our definition of stakeholders beyond the Conservation Commission, the building industry, etc. and reach into all the communities to get needed input.

Mr. Jackson stated he hope we continue this conversation, and continue it at the highest level possible, recognizing that if we want to engage other stakeholders the responsibility lies with staff to make that happen.

#### 16.5 **REPORT OF THE EMPLOYEE EVALUATION AD HOC COMMITTEE**

- a. Temporary Assistance for the Clerk's Office – This item was taken up in Executive Session.
- b. County Administrator Evaluation Process – Ms. Newton stated Mr. Brown has completed his self-evaluation and Council members have completed their evaluation. The question before Council is how we want to communicate the results of that information to Council and the Administrator. The committee recommended, when we receive the aggregated feedback, it will be shared with Council and the Chair and Vice-Chair would meet with the Administrator to review the feedback. Any Councilmember that wishes to be a part of this meeting is welcome to attend.

Ms. D. Myers stated, for clarification, the recommendation does not include the Chair, or a member, of the Employee Evaluation Ad Hoc Committee participating in the review.

Regular Session

July 21, 2020

8

Ms. Newton responded that it did not.

Ms. McBride stated usually the committee develops the format and the process. Once that is done, they have done their job, and it goes back to the Chair and Vice-Chair to represent Council. However, each Councilmember has the opportunity to speak with the Administrator regarding their evaluation.

Mr. Jackson stated the task the Employee Evaluation Ad Hoc Committee was given was a yeoman's task, given the way it had to build the airplane in flight. He thinks it is important, before the Chair and Vice-Chair meet with the Administrator to go over the results, for Council to be privy to that so there is a collective understanding of what the findings, recommendations and conversations are going to be before they occur with the Administrator, so the Administrator gets a clear message. Also typically tied to that is an extension of a contract, or a merit increase.

Ms. Newton stated the idea is to bring the feedback to Council first. Then the question is how you facilitate the conversation that shares that information with the Administrator.

Ms. McBride stated once Council reviews the aggregated data and gives the Chair permission to share it with the Administrator, if the Administrator has any feedback, it would then be shared with Council.

Mr. Manning stated he is a little concerned that Mr. Jackson is talking about a contract extension and a merit raise, when we have not seen the results of the evaluation. The results of the evaluation may indicate that is not what we want to do.

Mr. Livingston responded the disposition could be those things, or something different.

- c. Clerk to Council Position – Ms. Newton stated the committee recommended that we hire Find Great People to do an Executive Search for the Clerk to Council position.

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

Opposed: Malinowski

Abstain: Manning

Not Present: Terracio and Walker

The vote was in favor.

Ms. Newton moved, seconded by Mr. Manning, to reconsider this item.

In Favor: Malinowski and Jackson

Opposed: McBride, Livingston, Manning, Myers and Newton

Not Present: Terracio and Walker

The motion for reconsideration failed.

17. **OTHER ITEMS**

- a. FY2020-2021 CDGG and HOME Annual Action Plan Budget – Mr. Voignier stated staff is recommending approval of the FY20-21 Annual Action Plan budget, as presented in the agenda briefing document, for CDBG and HOME funds the County is allocated on an annual basis, as an entitlement community. While Council previously approved utilization of the CDBG portion of the allocation to aid in the County’s response to the COVID-19 pandemic, staff has not identified additional CDBG eligible projects or programs beyond those currently in progress to prevent, prepare and respond to COVID-19, which already have identified funding sources. Staff has identified other new, and continuing CDBG eligible program needs, as reflected in the proposed budgets for CDBG and HOME.

Ms. Newton moved, seconded by Ms. Dickerson, to approve this item.

Ms. D. Myers inquired about how much broad-based community input have we sought and received for this plan.

Mr. Voignier responded they have not held the public comment period and a public hearing for this plan. All of these projects have been consistently funded year over year, with the exception of the sewer pipe installation project, which he believes has had some public input. There will be a public hearing and public comment period held on the other projects prior to the plan being submitted to HUD for approval.

Ms. D. Myers inquired if the plan will come back to Council after the comment period, and if Council will be made aware of any changes those comments produce.

Mr. Voignier responded he would be happy to provide that to Council, for information. What will be coming back to Council are particular projects, whenever we identify the entities that will be receiving the funds, in particular the public service projects, as well as, the Community Housing Development organization.

Ms. D. Myers again requested the annual allocation of CDBG funds and the uses we make of them. She stated there are communities across the County that largely left out of these critical conversations. She is asking that we involve more of the County’s stakeholders in these discussions, so they are not left out of these multimillion dollar projects.

Ms. Dickerson stated, for the record, that she supports Ms. D. Myers’ comments.

Mr. Malinowski inquired how the Operation One Touch Minor Home Repair and Public Service Projects (Zoom Grants) programs work, and how it is determined who will qualify and get these funds.

Mr. Voignier responded Operation One Touch is generally for projects under \$15,000 that homeowners apply for. The applications are assessed and evaluated based on their income eligibility, as well as, the type of project. They estimate that 15 – 20 homes would benefit from the program in a fiscal year. They typically set aside 15% of the budget for the Public Service Projects. The application process is currently underway for these projects. Each application is a minimum of \$30,000, and a maximum of \$100,000, for projects we receive from the community. The applications are evaluated by an internal committee, based on the goals of the program, and several other factors (i.e. financial and programmatic). They are partnering with the County’s

Government and Community Services Department to cast a wider net, so we can get additional applications for these projects.

Mr. Malinowski requested clarification on the Program Administration Costs.

Mr. Voignier responded the Program Administration Costs should be less than 20% of the total allocation of \$1.6M.

Ms. McBride inquired if the decisions, on these projects, are made by an in-house review team.

Mr. Voignier responded they make a recommendation, which comes back to Council, on the Public Service Projects. Operation One Touch is a first-come, first-served, application process.

Ms. McBride stated there appears to be a need for more transparency and accountability, as we try to change the way we are doing business. She would like for us to look at the overall process, in terms of the methods we are using to make decisions.

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

Not Present: Terracio and Walker

The vote in favor was unanimous.

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

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

Not Present: Terracio and Walker

The motion for reconsideration failed.

- b. CDBG-DR Rehabilitation Project Change Order – Mr. Voignier stated staff is recommending approval of a 2<sup>nd</sup> Change Order for one of the County's rehabilitation properties in the Housing Disaster Recovery Program. The change order totals \$11,079.86. All change orders greater than 25% of the original contract amount, for CDBG-DR funds, must be approved by Council. The purpose of the change order is to address a structural issue that could not be identified until work began on the 1<sup>st</sup> change order. The structural issue presents a safety concern that must be repaired, based on the County's housing standards to construct safe, sanitary and secure homes, in accordance with our CDBG-DR Action Plan. Failing to complete this work may cause the structure to fail in the future with further damage to the property, and possibly the homeowner.

Ms. Newton moved, seconded by Mr. Livingston, to approve staff's recommendation.

In Favor: McBride, Livingston, Myers and Newton

Opposed: Malinowski, Dickerson and Jackson

Not Present: Terracio and Walker

The vote was in favor.

Ms. Newton moved, seconded by Mr. Livingston, to reconsider this item.

In Favor: Malinowski, Dickerson, McBride, Manning and Myers

Opposed: Livingston and Newton

Not Present: Terracio and Walker

The vote was in favor of reconsideration.

Mr. Manning requested that someone that voted in opposition of the item would explain their reason for opposing the change order.

Mr. Malinowski stated the original contract amount was \$21,500. He realizes things can be found after work has begun, but the first change order was in excess of \$39,000, which was a 183% increase. The second change order is over \$11,000, which is 51% of the original approval. We have an original contract awarded in the amount of \$21,500 with two (2) change orders in excess of \$50,000. The County is being asked to repair items that are a result of the homeowner not conducting routine home maintenance.

Mr. Manning inquired if this item does not pass will there be other options.

Mr. Voignier responded, if this does not pass, the work will not be completed. What will be left is the sagging floor joist underneath the den. There is a potential for future structural failure or the homeowner could be injured, if the floor joist were to fail completely. He does not know the extent of the liability for the County in that situation.

Mr. Manning stated, for clarification, Mr. Voignier is requesting the governing body to allow taxpayer money to be utilized to rectify the situation. He inquired if staff allowed this to happen, or did not see this coming. He requested staff to help him understand that it is the responsibility of Council, as stewards of the taxpayers, to make this government expenditure.

Mr. Voignier responded the responsibility is placed due to the recommendation of the Blue Ribbon Committee, as far as change orders. He noted this is disaster recovery grant funding, and is not County dollars. The purpose of the funds is for this purpose. We indicated in the action plan that we construct homes that are safe, sanitary and secure. It could be viewed as us not fulfilling our obligation under the action plan, if these types of change orders are not approved.

Ms. Newton inquired if the only remedy is utilizing CDBG-DR funds, or is there any responsibility on the part of the vendor we were working with to have discovered this earlier.

Mr. Voignier responded we have not concluded that the contractor should have been able to see this. The purpose of the original change order was to replace the joists that were rotted out in the kitchen, as those repairs were related to flood damage. When they opened up the kitchen, they would not anticipate to see, without beginning the work, the other half of the house because of the way the ventilation system and the crawlspace is configured.

Ms. D. Myers inquired if staff knows the value of the home.

Mr. Voignier responded that he did not have that information in front of him.

Regular Session

July 21, 2020

12



Ms. D. Myers stated, for clarification, the change orders would total approximately \$72,000.

Mr. Voignier responded in the affirmative. The analysis we do is, once it reaches a certain point, our grant size limit for rehabilitation is \$90,000. Therefore, once it exceeds that amount, we would make the decision that we would have had to rebuild the home.

Ms. D. Myers stated, for the repairs to the kitchen floor, we have basically built a house.

Mr. Manning inquired about how long the Blue Ribbon Ad Hoc Committee discussed this item.

Mr. Voignier responded the Blue Ribbon Ad Hoc Committee recommended the establishment of the policy regarding change orders that are greater than 25%. Council approved that policy, so that any change orders that exceed 25% go directly to Council. He stated this is a staff recommendation.

Mr. Malinowski does not understand why we cannot tell the person we will repair what is needed, based on the flooding event, but items that were due to the homeowner's neglect, we are not paying for.

Ms. Dickerson stated she believes this item should have gone through committee.

Mr. Manning moved, seconded by Mr. Malinowski, to send this item to the July D&S Committee meeting.

Mr. Voignier stated this matter is time-sensitive, as the homeowner is currently not in the home and the County is paying their relocation expenses.

Mr. Malinowski inquired as to what happens if Council refuses to move forward with the change order. Will the homeowner go back into the house?

Mr. Voignier responded he would have to confer with the contractor to determine if they are still willing to complete the first change order, and discontinue work on the home. No work is currently being done, pending the approval/disapproval of this item.

Mr. Manning made a substitute motion, seconded by Ms. McBride, to approve the change order.

Mr. Manning stated he does not know what in the world has gone wrong here, and he hates the fact that he is a part of a body that is having this in front of us with this all so messed up. At the same time, we have a citizen that is out of their home, with a contractor ready to go to work. He thinks it is unfair for this citizen, and whatever went wrong that has us, as a governing body, with the staff that we depend on, in a bad situation. But, he is not in a bad situation where he is out of his house, with a government that somehow did not seamlessly get to the point to where this should have been an easy decision. It either should not have been here as a staff recommendation, or if it was we should have been in a position where this was a no-brainer and a rubber stamp. He cannot see us, at this point, having a citizen's life further disrupted because of the situation we find ourselves in tonight.

Ms. McBride stated she agrees with Mr. Manning.

Mr. Jackson stated he is concerned this is not the real issue, and we are resolving one homeowner's problem tonight, because of the negligence of staff and an outside contractor. is afraid we are about to set a bad precedent so contractor can come in the future and do the same thing. He thinks

to have a contractor gouge us like this, and treat us like a money pit, is a bigger issue than it is for homeowners being treated fairly.

Ms. D. Myers stated she is looking at these pictures, and she is troubled because she thinks after this work is done you will have virtually a \$100,000 kitchen in a home that does not even equal that value. She finds it shocking that we would be putting this much money into a kitchen, and that it came to us, at this point.

Ms. McBride stated this is not a precedent. This has been going on for a long time, and we have just been passing it. She thinks it is time to correct it, but she does not think we need to use this person to make that correction. We are not saving resources because we are still paying for the relocation expenses. We need to put policies, mechanisms and tracking systems in place to make sure this does not happen again.

Mr. Manning stated, if this is setting a precedent for staff to continue to let this happen, then he does not think this is a precedent. It seems to him, that is what got us here, and he hopes this whole discussion is being heard clearly by Mr. Brown, particularly in light of the report we had earlier from the Employee Evaluation Ad Hoc Committee. He is making and voting for this substitute motion for the sake of a citizen, but he sure hopes this precedent is not allowed to continue.

Mr. Malinowski stated we do not have any answers as to what happens to the citizen in this matter. It seems like there should be a “playbook” that says, “if this does not pass, this is what happens next.”

Mr. Manning requested to withdraw his substitute motion.

Mr. Livingston ruled that Mr. Manning’s request was not in order.

In Favor: McBride, Livingston, Manning

Opposed: Malinowski, Dickerson, Jackson, Myers and Newton

Not Present: Terracio and Walker

The substitute motion failed.

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

The vote in favor of forwarding this item to the July D&S Committee meeting was unanimous.

- c. Ole Town Antique Mall – Proposed Improvements – This item was removed during the Adoption of the Agenda.
- d. COVID-19 Pandemic Relief Grant Update – Ms. A. Myers stated, beginning on p. 383 of the agenda, is the final pandemic relief grant update, and recommendations. As indicated during the July 14<sup>th</sup> meeting, the grant closed for application at 11:59 PM on June 30<sup>th</sup>. Included in tonight’s agenda, on p. 385, is a report and list of non-profits approved by Council to receive grant funding. Tonight, staff is seeking a motion for approval for the final round of recommended small business recipients.

Mr. Malinowski inquired if has been determined that the individuals we are being asked to approve are only receiving funds from Richland County.

Ms. A. Myers responded, as a part of the submission process, the grantees have to sign and indicate they are only receiving funds from Richland County. If they receive other funding, they have to deny ours.

Ms. McBride inquired if citizens are able to apply for assistance from the organizations now.

Ms. A. Myers responded in the affirmative.

Ms. McBride inquired if we have informed the public that they can apply.

Ms. A. Myers responded she has requested, through the PIO Director, and Mr. Brown, that we post that information on website to let citizens know the funds have been dispersed.

Ms. McBride inquired if there is any other means of informing the citizens, and how they can apply.

Ms. A. Myers responded that she has requested, through the PIO Director, that the public be made aware that these funds are available. She does not know what means Ms. Harris plans to use to do so, but the request has been made to inform the public. She will have Ms. Harris follow-up with Council regarding this matter.

Ms. McBride requested the total applications received in the various areas.

Ms. Dickerson stated she is very disappointed in what she is seeing. She inquired if Mr. Livingston had appointed Councilmembers to the committee.

Mr. Livingston responded he sent out an email to Councilmembers asking if they would like to serve, but there are currently no Councilmembers on the committee.

Ms. Newton moved, seconded by Mr. Livingston, to approve staff's recommendation.

In Favor: McBride, Livingston, Walker, Manning, Jackson, Myers and Newton

Opposed: Malinowski and Dickerson

The vote was in favor.

Ms. D. Myers moved, seconded by Mr. Livingston, to reconsider this item.

In Favor: Malinowski and Dickerson

Opposed: McBride, Livingston, Walker, Manning, Jackson, Myers and Newton

The motion for reconsideration failed.

- e. Richland County's Fiber Broadband Partnership for Southeast Richland County – Ms. Myers moved, seconded by Mr. Manning, to approve this item.

Ms. D. Myers thanked staff for finding this provider to build out broadband in the Southeast at no cost to Richland County. She noted the only thing the provider has requested is a customer facing space in the building being constructed, with deferred rent.

Mr. Malinowski noted in the briefing document that the Budget and Finance Departments are concerned about giving a for profit organization rent free space in a taxpayer-funded facility. He inquired if it legal to put a private company in a government facility, with deferred rent. He also noted the company wants any grants funds the County may receive to defray the costs for constructing the system.

Mr. Brown stated, when this item initially came before the body, there were some different considerations. Specifically, we were talking about doing some joint trenching for the laying of conduit and the water and sewer lines. Those things have changed, so the requests associated with that are different, and not in consideration. The provider, TruVista has not given us any conditions by which the project is contingent upon. They did say, if the County has access to funds that could be used, they would like to have access to the funds, if possible. They also did say, if the County has space, they would like to utilize that space as a payment center.

Mr. Farrar stated, under Home Rule, the governing body has contract authority, as well as, authority to dispose of real and personal property, which includes leasing. Obviously, anybody that is a County facility you want to have a lease, even if the rent is deferred, to spell out the rights of the parties.

Mr. Brown stated originally there was more of a partnership, because we thought the provider would be able to do joint trenching, but we learned that is not feasible due to some of the construction liability. At this point, we have a service provider who is willing to do work in that area, and is not something that Council would be approving. If there was anything Council would be approving, which is not the case today, it would be whether you were providing some space in the facility that is currently not in existence.

Ms. Carla French, TruVista, stated, without the spirit of partnership with the County, it would not be a fruitful business decision for them to move into Lower Richland County to serve these underserved areas. When staff first came to them, they looked at the opportunity. There were some significant savings with the idea of being able to participate in the trench, and the business case looked attractive. Once they found out they were not going to be able to co-locate, they had to revisit the opportunity, add \$2.5M in costs to the project, and determine if it was still viable. When they go into a community, they like the local government leadership to be a fan of the services they will be providing. Tonight, was to make sure Council understood they have looked and are willing to invest in Richland County. Not only for the approximately 3,000 underserved homes, but also for the businesses in that footprint. In the spirit of partnership, the thought was, is there an opportunity to help defray some costs for TruVista, with the deferment of rent for a period of time, and the County's assistance in developing grant applications.

Mr. Malinowski made a substitute motion, seconded by Ms. D. Myers, to accept Ms. French's comments as information, and create a resolution of support for their company conducting business in Richland County.

Mr. Manning inquired if the \$85,000 set aside for the conduit is still in the County's account.

Mr. Brown stated he was not sure how far they gotten with putting down the conduit, but TruVista is still willing to uphold the commitment they originally made, and will reimburse the County if any funds have been expended.

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

The vote in favor was unanimous.

Ms. D. Myers thanked her colleagues and TruVista for their support of this endeavor.

Mr. Jackson stated, as a former educator, the benefit of this goes beyond the residents, and businesses, in Lower Richland.

18. **EXECUTIVE SESSION**

- a. Personnel Matter – Grievance Reviews and Recommendations
- b. Temporary Assistance for the Clerk’s Office
- c. Richland County’s Fiber Broadband Partnership for Southeast Richland County

Mr. Malinowski moved, seconded by Ms. Newton, to go into Executive Session.

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

Opposed: Walker and Manning

The vote was in favor.

***Council went into Executive Session at approximately 8:50 PM and came out at approximately 9:41 PM***

Mr. Manning moved, seconded by Mr. Malinowski, to come out of Executive Session.

In Favor: Malinowski, Dickerson, Livingston, Manning, Jackson, Myers and Newton

Opposed: Walker

The vote was in favor.

Mr. Manning moved, seconded by Ms. Newton, to go into Executive Session on the broadband matter.

In Favor: Walker, Manning, Jackson, Myers and Newton

Opposed: Malinowski, Dickerson and Livingston

The vote was in favor.

***Council went into Executive Session at approximately 9:41 PM and came out at approximately 9:48 PM***

Mr. Manning moved, seconded Mr. Malinowski, to come out of Executive Session.

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

The vote in favor was unanimous.

- a. Personnel Matter – Grievance Reviews and Recommendations – Mr. Malinowski moved, seconded by Mr. Walker, that no disciplinary action should be placed in the personnel file and the employee should be immediately given an appraisal so any shortcomings can be addressed.

Ms. Myers made a substitute motion, seconded by Ms. Newton, to follow the Administrator’s recommendation.

Mr. Walker withdrew his second to the original motion.

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

Opposed: Malinowski

The vote was in favor.

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

In Favor: Malinowski

Opposed: Dickerson, McBride, Livingston, Walker, Jackson, Myers and Newton

The motion for reconsideration failed.

- b. Temporary Assistance for the Clerk’s Office – Ms. Newton moved, seconded by Ms. McBride, to proceed with Candidate #1.

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

Abstain: Manning

The vote in favor was unanimous with Mr. Manning abstaining from the vote.

Ms. Newton moved, seconded by Ms. McBride, to reconsider this item.

Opposed: Malinowski, McBride, Livingston, Walker, Jackson, Myers and Newton

The motion for reconsideration failed.

19. **MOTION PERIOD** – There were no motions submitted.

20. **ADJOURNMENT** – The meeting adjourned at approximately 11:25 PM.



## Richland County Council

ZONING PUBLIC HEARING  
July 28, 2020 – 7:00 PM  
Zoom Meeting

**COUNCIL MEMBERS PRESENT:** Paul Livingston, Chair; Joyce Dickerson, Bill Malinowski, Jim Manning, Allison Terracio, Yvonne McBride, Chakisse Newton, Calvin Jackson, Dalhi Myers and Joe Walker

**OTHERS PRESENT:** Michelle Onley, Geo Price, Tommy DeLage, Clayton Voignier, Leonardo Brown, Angela Weathersby, Ashiya Myers, Ashley Powell, Brian Crooks and Elizabeth McLean

- II. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 7:00 PM.
- III. **ADDITIONS/DELETIONS TO THE AGENDA** – Mr. Price stated the coversheet was amended to make Item #3 (Case 20-008MA) and Item #4 (Case 20-012MA), so they would match the backup documentation in the agenda packet.
- IV. **ADOPTION OF THE AGENDA** – Mr. Walker moved, seconded by Mr. Malinowski, to adopt the agenda as amended.

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

Not Present: McBride

The vote in favor was unanimous.

V. **MAP AMENDMENTS**

1. 19-049MA  
Donald G. Jones  
RU to RC (.764 & 1.236 {2 Acres Total})  
7812 Fairfield Road  
TMS # R12100-02-26 & R12100-02-01 (Portion) [FIRST READING]

Mr. Malinowski moved, seconded by Mr. Walker, to deny the re-zoning request.

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

The vote in favor was unanimous.

VI. **MAP AMENDMENTS (Public Hearing)**

2. 20-006MA  
Paul Pettinelli  
HI to GC (.9 Acres)  
1314 Rosewood Drive Road  
TMS # R11208-02-10 [FIRST READING]

Mr. Livingston opened the floor to the public hearing.

No comments were received.

The floor to the public hearing was closed.

Ms. Myers moved, seconded by Mr. Malinowski, to approve this item.

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

The vote in favor was unanimous.

3. 20-008MA  
Michael Winkler  
RU to NC (1.25 Acres)  
11045 Two Notch Road  
TMS # R29100-05-04 [FIRST READING]

Mr. Livingston opened the floor to the public hearing.

Mr. Michael Winkler and The Honorable Melissa Emmons, Mayor, Town of Elgin submitted comments in favor of this item.

The floor to the public hearing was closed.

Mr. Jackson moved, seconded by Mr. Walker, to approve this item.

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

The vote in favor was unanimous.

4. 20-012MA  
Anna Fonseca  
GC/M-1 to RM-HD (14.31 Acres)  
Fontaine Center Drive  
TMS # R14201-05-02 (portion of), 07 and ) [FIRST READING]

Ms. McBride moved, seconded by Ms. Dickerson, to defer the item and the public hearing until the October Zoning Public Hearing.

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

The vote in favor was unanimous.



5. 20-015MA  
Brenda Miller  
RU to RS-MD  
8104 Brookmount Lane  
TMS # R14414-02-04 [FIRST READING]

Mr. Livingston opened the floor to the public hearing.

Ms. Brenda Miller submitted comments in favor of this item.

The floor to the public hearing was closed.

Mr. Walker moved, seconded by Mr. Malinowski, to approve this item.

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

The vote in favor was unanimous.

6. 20-013MA  
Anna Fonseca  
RU to RS-MD (191.2 Acres)  
1113 Ridge Rd.  
TMS # R24900-07-03 [FIRST READING]

Mr. Livingston opened the floor to the public hearing.

Ms. Anna Fonseca submitted comments in favor of this item.

Staff received a petition with 72 signatures, 66 form letters (Statement of Facts and Concerns), and a letter from McEntire Air National Guard in opposition of the request.

The floor to the public hearing was closed.

Ms. Newton moved, seconded by Mr. Malinowski, to deny the re-zoning request and to place all comments in the record.

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

The vote in favor was unanimous.

7. 20-018MA  
Ryan Horton  
RM-HD to GC (2.62 Acres)  
616 Percival Road  
TMS # R16716-01-01 [FIRST READING]

Mr. Livingston opened the floor to the public hearing.

No comments were received.

The floor to the public hearing was closed.

Mr. Walker moved, seconded by Ms. Newton, to approve this item.

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

The vote in favor was unanimous.

VII. **OTHER BUSINESS** – No other business.

VIII. **ADJOURNMENT** – The meeting adjourned at approximately 7:34 PM.



## Richland County Council

### SPECIAL CALLED MEETING

July 28, 2020

Immediately Following the Zoning Public Hearing  
Zoom Meeting

**COUNCIL MEMBERS PRESENT:** Paul Livingston, Chair; Dalhi Myers, Vice Chair; Joyce Dickerson, Calvin Jackson, Bill Malinowski, Yvonne McBride, Chakisse Newton, Allison Terracio, Jim Manning and Joe Walker

**OTHERS PRESENT:** Michelle Onley, Ashley Powell, Leonardo Brown, Dale Welch, Angela Weathersby, Ashiya Myers, John Thompson, Larry Smith, Tammy Addy, Clayton Voignier, Kyle Holsclaw, Quinton Epps, James Hayes, Allison Steele, Nancy Stone-Collum, and Elizabeth McLean

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 7:38 PM.
2. **ADOPTION OF AGENDA** – Mr. Walker moved, seconded by Ms. Newton, to adopt the agenda as published.

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

Not Present: Kennedy

The vote in favor was unanimous.

3. **REPORT OF THE DEVELOPMENT AND SERVICES COMMITTEE**

- a. **CDBG-DR Rehabilitation Project Change Order** -- Mr. Malinowski moved, seconded by Mr. Manning, to deny this item.

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

Not Present: Kennedy

The vote in favor was unanimous.

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

- a. **Historic Property Designation at 1215 Shop Road** – Mr. Brown stated the committee forwarded this item to Council with a recommendation for approval. It was noted by Ms. Myers that it would have been beneficial if she had been aware of this matter.

Mr. Malinowski noted, at the committee meeting, he requested staff to provide the cost to Richland County in loss taxes, or benefit to the County in additional taxes taken in.

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

Not Present: Kennedy

The vote in favor was unanimous.

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

- a. Clemson Rd. Widening Project – Waterline Deeds – Mr. Jackson stated the committee recommended First Reading approval of this item.

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

Not Present: Kennedy

The vote in favor was unanimous.

6. **REPORT OF THE CORONAVIRUS AD HOC COMMITTEE**

- a. Coronavirus Relief Fund Requirements – Ms. Myers stated Mr. Brown and Tetra Tech made us aware that the funds the County had to receive directly from the Federal government have been given to the State, and were to have been distributed on a proportionate basis. We have now been informed that the Governor has instituted a different program, and we may not get proportionate amounts of the funds, based on population. We will now be competing with every other county for a smaller pot of funds. At the committee meeting, she inquired if the statute allow for that kind of discretion on the part of the Governor, and if we are entitled to the funds as a direct grant, based on what Congress did. She requested the Legal Department to look at that, collaborate with other counties, and check with the Association of Counties and lobbyists to see if the process that has been instituted is correct.

Ms. Newton stated one additional thing that was discussed was what would happen if we signed the agreement that allowed us to access the system to apply for reimbursement.

Mr. Smith stated between the committee meeting and this meeting they had an opportunity to go back and gather information regarding the way the State proposes to distribute the funding to local government, pursuant to a sub-recipient agreement. Based on the information he has, at this point, it appears the legislation from Congress provided that if a local government had a population of 500,000 or less, a benchmark would be used, based on 45% of the local government's per capita share of the Statewide allocation. It appears Richland County has an approximately 420,000 citizens. It his understanding that Greenville County is the only county that got a direct payment because their population was over 500,000. Based on the information they have received, the State wants counties that have less than 500,000 to compete for the rest of those dollars by way of the sub-recipient agreement. They have not been able to find anything in the legislation, which says that is the formula they intended to be followed for those local governments with less than 500,000.

Ms. Myers inquired if we should go back, because there is a formula by which funds should be allocated rather than on a competitive basis, as would be the case with this agreement.

Mr. Smith responded in the affirmative.

- b. Subrecipient Agreement for Coronavirus Relief Funds – This item was taken up with the previous item.
- c. Relief Grant Program – Mr. Brown stated the committee forwarded this to Council with a recommendation to approve the extension to October 31, 2020, with the understanding that we could request additional time, if needed.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

Ms. Myers moved, seconded by Mr. Malinowski, to go into Executive Session.

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

Opposed: Manning

Not Present: Walker and Kennedy

The vote was in favor.

***Council went into Executive Session at approximately 8:03 PM and came out at approximately 8:26 PM***

Mr. Malinowski moved, seconded by Mr. Manning, to come out of Executive Session.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

Ms. Myers moved, seconded by Ms. Newton, to instruct the staff to evaluate the CARES Act, the County's options under the CARES Act, and to recommend actions consistent with the funding formula under the CARES Act.

Mr. Malinowski made a friendly amendment to reach out to other stakeholders and State officials, as needed.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

Mr. Malinowski noted, during the earlier Transportation Ad Hoc Committee meeting, the Administrator commented that he was not going to approve any projects that were over the referendum. However, in a previous Council meeting, staff presented descopes of projects, and all of those projects were included under one item on the agenda. It is his recollection, Council approved staff to move forward with all of the descoping projects. Therefore, staff needs to allow them to

move forward so we do not end up having negative publicity by holding something back that was approved by Council.

Mr. Jackson stated he was glad to hear that what was going to be recommended to Council, in the future, has automatically been approved tonight by everyone saying they honor that. We were going to ensure, in the effort of full transparency, that if there were any items in that approved list that exceeded the referendum, which prior to the list every member of Council voted to not fund, or to allow to move forward, that you understood that and you still wanted that list to go forward. If you are saying you are happy with the decision on May 5<sup>th</sup>, regardless if they are over the referendum, there will be no need to bring those projects back for individual approval.

7. **ADJOURNMENT** – The meeting adjourned at approximately 8:35 PM.

## Richland County Council Request for Action

**Subject:**

20-006MA  
Paul Pettinelli  
HI to GC (.9 Acres)  
1314 Rosewood Drive  
TMS # R11208-02-10

**Notes:**

First Reading: July 28, 2020  
Second Reading: August 31, 2020 {Tentative}  
Third Reading: September 15, 2020 {Tentative}  
Public Hearing: July 28, 2020

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-20HR

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 # R11208-02-10 FROM HEAVY INDUSTRIAL DISTRICT (HI) TO GENERAL COMMERCIAL DISTRICT (GC); 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 # R11208-02-10 from Heavy Industrial District (HI) to General Commercial District (GC).

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 \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: July 28, 2020  
First Reading: July 28, 2020  
Second Reading: August 31, 2020  
Third Reading: September 15, 2020



## Richland County Council Request for Action

**Subject:**

20-008MA  
Michael Winkler  
RU to NC (1.25 Acres)  
11045 Two Notch Road  
TMS # R29100-05-04

**Notes:**

First Reading: July 28, 2020  
Second Reading: August 31, 2020 {Tentative}  
Third Reading: September 15, 2020 {Tentative}  
Public Hearing: July 28, 2020

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-20HR

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 # R29100-05-04 FROM RURAL DISTRICT (RU) TO NEIGHBORHOOD COMMERCIAL DISTRICT (NC); 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 # R29100-05-04 from Rural District (RU) to Neighborhood Commercial District (NC).

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 \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: July 28, 2020  
First Reading: July 28, 2020  
Second Reading: August 31, 2020  
Third Reading: September 15, 2020

## Richland County Council Request for Action

**Subject:**

20-015MA  
Brenda Miller  
RU to RS-MD  
8104 Brookmount Lane  
TMS # R14414-02-04

**Notes:**

First Reading: July 28, 2020  
Second Reading: August 31, 2020 {Tentative}  
Third Reading: September 15, 2020 {Tentative}  
Public Hearing: July 28, 2020

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-20HR

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 # R14414-02-04 FROM RURAL DISTRICT (RU) TO RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY 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 # 14414-02-04 from Rural District (RU) to Residential Single-Family Medium Density 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 \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: July 28, 2020  
First Reading: July 28, 2020  
Second Reading: August 31, 2020  
Third Reading: September 15, 2020

## Richland County Council Request for Action

**Subject:**

20-018MA  
Ryan Horton  
RM-HD to GC (2.62 Acres)  
616 Percival Road  
TMS # R16716-01-01

**Notes:**

First Reading: July 28, 2020  
Second Reading: August 31, 2020 {Tentative}  
Third Reading: September 15, 2020 {Tentative}  
Public Hearing: July 28, 2020

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL OF RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-20HR

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 # R16716-01-01 FROM RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT (RM-HD) TO GENERAL COMMERCIAL DISTRICT (GC); 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 # R16716-01-01 from Residential Multi-Family High Density District (RM-HD) to General Commercial District (GC).

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 \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: July 28, 2020  
First Reading: July 28, 2020  
Second Reading: August 31, 2020  
Third Reading: September 15, 2020

## Richland County Council Request for Action

**Subject:**

Approval of the Award Sum from SC State Revolving Fund (SRF) towards the South East Sewer and Water Expansion Project

**Notes:**

July 28, 2020 – The A&F Committee recommended to accept \$1,000,000 of a South Carolina State Revolving Fund principal forgiveness loan awarded by the South Carolina Department of Health and Environmental Control to Richland County Utilities for the construction of the new pump station at Gadsden Elementary School, Hopkins Elementary School and Hopkins Middle School.



**Agenda Briefing**

**Prepared by:** Jani Hussain, Deputy Director

**Department:** Utilities

**Date Prepared:** May 20, 2020

**Meeting Date:** July 28, 2020

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	July 22, 2020
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	July 10, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 10, 2020
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	
<b>Committee</b>	Administration & Finance		
<b>Subject:</b>	Approval of the Award Sum from SC State Resolving Fund (SRF) towards the South East Sewer and Water Expansion Project.		

**Recommended Action:**

Staff recommends that Richland County Council accepts a sum of \$1,000,000 of a South Carolina State Revolving Fund principal forgiveness loan awarded by the South Carolina Department of Health and Environmental Control (DHEC) to Richland County Utilities for the construction of the new pump stations at Gadsden Elementary School, Hopkins Elementary School and Hopkins Middle School.

**Motion Requested:**

Move to approve staff's recommendations as noted above.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

The fiscal impact to Richland County Utilities (RCU) is a net gain of \$1,000,000, which will be used to offset the costs for constructing the sewer and water infrastructure for Gadsden Elementary School, Hopkins Elementary School, and Hopkins Middle School.

**Motion of Origin:**

There is no associated Council motion of origin.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	



**Discussion:**

One of the major goals of the ongoing Southeast Sewer and Water Expansion Project is to address the multiple compliance failure at the schools, parks and provide the public sewer treatment for McEntire Joint National Guard Base. To support this goal, the SRF proposed to provide funds to support the construction and connection of new pump stations at Gadsden Elementary School, Hopkins Elementary School and Hopkins Middle School. The funding was originally appropriated in FY2012 with the project separated into two phases. Each phase was included in the SRF yearly Intended Use Plan (IUP) for FY 13, FY 15 and FY 17 (see table below).

**Table 1:** Break Down of SRF Estimated Principal Forgiveness Assistance for SE Project

Phase	Station	IUP Fiscal Year	Estimated Principal Forgiveness Assistance
1	Lower Richland County (Hopkins Community, Franklin Park SD, Hopkins Middle School, Hopkins Elementary School, Garners Ferry Road Corridor, Manchester Farms and McEntire Joint National Guard);	FY 13	\$577,000
2	Gadsden Elementary Pump Station and Force Main	FY 15/FY 17	\$423,000
			<b>\$1,000,000</b>

The Loan Assistance Agreement (LAA) for Phase I was signed June 10, 2014 (See Appendix A). Following this agreement, SRF issued several amendments through the years and eventually combined the two phases into one project. On April 1, 2020, an amendment was issued that includes the combined project, scope of work, project budget and the loan assistance awarded (See Appendix B). This amendment, along with the June 10, 2014 LAA, serves as the contract between the South Carolina Water Quality Revolving Fund Authority and Richland County. As presented in the attached documents, the combined project includes the construction of three (3) pump stations to replace the wastewater treatment facilities (WWTF) at Gadsden Elementary School, Hopkins Elementary School and Hopkins Middle School. The total eligible cost for the listed scope of work in the ammendement is \$1, 611,662 . The amendment shows that SRF will be awarding \$1,000,000 as loan assistance fund towards the construction of these pump stations. The outstanding cost of \$611,662 will be funded by the Richland School District One’s \$2 million contribution. Table 2 gives a breakdown of the funding.

**Table 2:** Breakdown of Project Budget for School District

Pump Station	Loan Assistance Fund	Project Sponsor	Total Eligible Cost
Gadsden Elementary	\$577,000	\$274,810	\$851,810
Hopkins Elementary and Middle School	\$423,000	\$336,852	\$759,852
Total	\$1,000,000	\$611,662	\$1,611,662

**Attachments:**

1. Loan Assistance Agreement
2. Loan Assistance Agreement Amendment

**LOAN ASSISTANCE AGREEMENT**

between

**SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY**

and

**RICHLAND COUNTY**

Dated

June 10, 2014

relating to

Lower Richland Sewer System – Phase 1

South Carolina Water Pollution Control Revolving Fund

FY 2012 Federal Capitalization Grant

Loan Assistance Number: F1-12-574-20

No. 1 of Two Executed Original Counterparts

TABLE OF CONTENTS

Page

LOAN ASSISTANCE PROVISIONS

1. Loan Assistance Defined	2
2. Purpose Limited to Project	2
3. Disbursements	2
4. Budget Changes	2
5. Federal and State Requirements	3
6. Procurement Requirements	4
7. Contract Award, Construction Inspection and Completion	4
8. Viability	4
9. Reporting and Information	4
10. Maintenance of Records	4
11. Accounting and Auditing	4
12. Release of Responsibility	5
13. Access and Inspection	5
14. Other Agreements	5
15. Compliance with Governmental Authority	5
16. Review and Inspection of Work	5
17. Sanctions	5
18. Severability	5
19. Complete Agreement	6
20. South Carolina Contract	6
21. Notices	6
22. Counterparts	6
23. Term of Agreement	6
APPENDIX "A" SCOPE OF WORK	A-1
PROJECT BUDGET	A-2
APPENDIX "B" LOAN ASSISTANCE	B-1
APPENDIX "C" PROCUREMENT REQUIREMENTS	C-1
APPENDIX "D" SPECIAL CONDITIONS	D-1

ATTACHMENT #1 Davis-Bacon Wage Rates Required Under Federal Appropriations Act

LOAN ASSISTANCE AGREEMENT

THIS LOAN ASSISTANCE AGREEMENT is entered into as of the 10<sup>th</sup> day of June, 2014, (the "**Effective Date**") between the SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, a public instrumentality of the State of South Carolina (the "**Authority**"), and RICHLAND COUNTY, a political subdivision of the State of South Carolina (the "**Project Sponsor**").

WITNESSETH:

WHEREAS, the Authority is authorized by Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "**Act**") to administer the South Carolina Water Pollution Control Revolving Fund (the "**Fund**") for the purpose of assisting Project Sponsors (as defined in the Act) in the construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as amended; and

WHEREAS, the Department of Health and Environmental Control (the "**Department**") is authorized by the Act to, among other things, develop a priority system and prepare an annual plan to insure compliance with the Federal Water Pollution Control Act; and

WHEREAS, the Fiscal Year 2012 Federal Appropriations Act ("**Public Law 112-74**") requires the Fund, identified therein as the Clean Water State Revolving Fund, to provide additional subsidization for wastewater infrastructure facilities; and

WHEREAS, the Act, as amended May 28, 2010, authorizes the Authority to fully implement all requirements of Public Law 112-74 for the Fund; and

WHEREAS, the Authority is authorized by the Act to enter into agreements with Project Sponsors in order to finance Projects (as defined in the Act) and the Department is authorized to select projects to receive additional subsidization in the form of Loan Assistance, herein defined; and

WHEREAS, the Project Sponsor proposes to acquire and construct the facilities described in Appendix "A" hereto (the "**Project**"), which Project will be part of the Project Sponsor's sewer system (the "**System**"); and

WHEREAS, the Department has selected this Project to receive additional subsidization in the form of Loan Assistance, herein defined;

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

## LOAN ASSISTANCE PROVISIONS

The Authority agrees to provide Loan Assistance, as defined below, to the Project Sponsor solely from Public Law 112-74 appropriations granted to the State of South Carolina (the "*State*") for the Fund subject to the terms and conditions of this Loan Assistance Agreement, applicable laws, regulations and all Federal and State requirements now and hereafter in effect governing the use of this Loan Assistance.

1. Loan Assistance Defined. Subject to the terms and conditions of this Agreement, the Authority agrees to make, and the Project Sponsor agrees to accept, the loan assistance herein provided for (the "*Loan Assistance*"), such term being defined as a loan which will not accrue interest and the principal of which is hereby forgiven in its entirety. The amount of the Loan Assistance is set forth in Appendix "B" hereto.
2. Purpose Limited to Project. The Project Sponsor shall use the Loan Assistance only to pay the actual eligible costs of the Project. The Project scope is described in Appendix "A" and more specifically as approved in the Project files of the Department. The Project Sponsor shall make no modifications to the Project scope without the written consent of the Department, such consent to be made part of this Agreement. Except to the extent otherwise approved in writing by the Department and made part of this Agreement, only the costs shown in the Project budget set forth in Appendix "A" shall be allowed and only in the amounts provided for each category. Loan Assistance may not be used to pay for labor performed by employees of the Project Sponsor.
3. Disbursements.
  - (a) Requests for disbursement shall be made by the Project Sponsor to the Department on forms of the Department, and shall be accompanied by such invoices and other proofs of incurred costs as the Department may reasonably require. The Project Sponsor shall comply with all requirements of the SRF Disbursement Package in submitting draw requests to the Department.
  - (b) The Authority shall make disbursements to the Project Sponsor under this Agreement only after receiving each Department approved draw request. The Authority shall incur no liability to the Project Sponsor in the event that the Department does not approve a draw request submitted by the Project Sponsor.
  - (c) The Authority will exert its best efforts to mail its check within seven (7) days of receiving such approved draw request, but no assurance is given by the Authority that such schedule will be met and the Authority shall incur no liability to the Project Sponsor for a delay.
  - (d) All disbursements shall be provided by the Authority in the form of a check mailed to the Project Sponsor.
  - (e) The Project Sponsor shall receive and promptly disburse the funds to be provided hereunder as trust funds for the purpose of paying the eligible costs of the Project and for no other purpose.
4. Budget Changes. Any change to the budget categories, the amounts therein, or increases/decreases to the total budget for the Project shown in Appendix "A" hereto, or to the Loan Assistance Amount shown in Appendix "B" hereto, shall require written approval by the Department and such approval shall be provided to the Project Sponsor and the Authority and shall be attached hereto and become a part of this Agreement without the requirement of further amendment.

5. Federal and State Requirements. The Project Sponsor hereby agrees to comply with the following requirements.
- (a) Civil Rights and Labor Standards Requirements and use of Disadvantaged Business Enterprise (DBE) firms and Debarment or Suspension Prevention. (Executive Order 12549)
    - (i) Positive efforts shall be made by the Project Sponsor and its consultants to utilize DBE firms as sources of supplies, services and construction. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts and subcontracts to be performed utilizing Loan Assistance funds. Documentation of efforts made to utilize DBE firms shall be maintained by the Project Sponsor and its consulting firms and construction contractors.
    - (ii) The Project Sponsor shall not be debarred for noncompliance with Federal Law and shall not award contracts to any firm that has been debarred for noncompliance with Federal Law where the contract amount equals or exceeds the federal small purchase procurement threshold.
    - (iii) The Project Sponsor shall require all prime construction contractors to certify that subcontracts have not and will not be awarded to any firm that has been debarred for noncompliance with Federal Law, where the subcontract amount is expected to equal or exceed the Federal small purchase procurement threshold.
    - (iv) The Project Sponsor agrees to comply with all the requirements of 41 CFR Part 60-4 which implements Executive Order 11246 as amended (Equal Employment Opportunity).
    - (v) The Project Sponsor agrees to require all construction contractors and their subcontractors to comply with the Affirmative Action, Equal Opportunity Clause, Goals and Timetables, if the amount of the contract or subcontract is in excess of \$10,000.
    - (vi) The Project Sponsor shall require all contractors on the Project to comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-956) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).
  - (b) Davis-Bacon and Related Acts, as required by Public Law 112-74, certifying that all laborers and mechanics employed by prime contractors and subcontractors are paid wages at rates not less than those listed on the prevailing wage rate contained in the Project's contract documents and that all applicable provisions of the Davis-Bacon and Related Acts have been met. The Project Sponsor shall require the prime contractor to comply with the Davis-Bacon and Related Acts. See Attachment #1 herein.
  - (c) All applicable provisions of the Uniform Relocation and Real Property Acquisition Act of 1970 (PL 92-646) in regard to acquisition of real property (including easements) for the Project and any resulting relocation of persons, business and farm operations.
  - (d) Guidance Packages for: (i) Bidding and Award of Construction Contracts; (ii) Federal Requirements for the SRF Program; and (iii) Construction Contracts in the SRF Program.
  - (e) "American Iron and Steel" provisions, as set forth in the 2014 Appropriations Act (PL 113-76, Section 426) and related American Iron and Steel implementation guidance, requiring that all of the iron and steel products used in the Project be produced in the United States unless a waiver is granted by the U.S. Environmental Protection Agency. The Project Sponsor shall require all bidders to comply with the American Iron and Steel provisions.

6. Procurement Requirements. The Project Sponsor shall comply with all procurement requirements of law and, to the extent compliance therewith does not contravene any provision of law applicable to the Project Sponsor, shall comply with the procurement requirements set forth in Appendix "C" hereto.
7. Contract Award, Construction Inspection and Completion.
  - (a) The Project Sponsor shall not execute construction contracts or issue the notice to proceed with respect to the Project prior to receiving written approval from the Department to award construction contracts.
  - (b) The Project Sponsor shall provide and maintain competent and adequate engineering supervision and continuous inspection of the Project to insure that the construction conforms to the plans and specifications approved by the Department. A monthly inspection report shall accompany each disbursement request.
  - (c) The Project Sponsor shall cause the Scope of Work identified in Appendix "A" to be completed and shall require all contractors to satisfactorily complete all work within the time stated in the executed construction contract. Extension of any contract completion date requires the Department's approval. Any costs incurred as a result of a time extension which has not received approval by the Department shall not be eligible for Loan Assistance participation.
  - (d) The Project Sponsor shall pay all costs to complete the Project not covered by the Loan Assistance.
8. Viability. The Project Sponsor shall, to the satisfaction of the Department, have developed and implemented appropriate managerial and financial capacity mechanisms to ensure compliance with state and federal regulatory requirements (e.g., Safe Drinking Water Act, Clean Water Act).
9. Reporting and Information. The Project Sponsor agrees to complete and submit all information and reports, in such form and according to such schedule, as may be required by the Department or the Authority.
10. Maintenance of Records. All pertinent Project records including, but not limited to, financial records, supporting documents, Davis-Bacon certifications and associated support documentation, certified payroll records, procurement records, and technical records for the Project shall be retained for a minimum of three years after the date of the final disbursement under this Agreement. However, if any litigation, claim, or investigative audit is started before the expiration of the three year period, then all such records must be retained for three years after the litigation, claim, or audit is resolved.
11. Accounting and Auditing.
  - (a) The Project Sponsor shall account for the Project according to Generally Accepted Governmental Accounting Principles (GAAP).
  - (b) Within nine (9) months after the end of each fiscal year of the Project Sponsor in which any funds are received under this Agreement, the Project Sponsor shall submit to the Department's Office of Internal Audits at 2600 Bull Street, Columbia, South Carolina, 29201, an annual financial audit prepared by an independent certified public accountant. The conduct of the audit and the audit shall be in accordance with Generally Accepted Auditing Standards as defined in Government Auditing Standards, Comptroller General of the United States, July 27, 2007, and revisions, updates or successors thereto. An audit, as required by OMB Circular No.



A-133, Audits of States, Local Governments, and Non-Profit Organizations, may be necessary for each year program funds are disbursed to the Project Sponsor (CFDA Number 66.458).

12. Release of Responsibility. The Project Sponsor shall undertake the Project on its own responsibility and shall release and hold harmless the Authority, the Department, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project including any matter due solely to the negligence of any of these parties.
13. Access and Inspection. The Project Sponsor shall provide access to the Project work whenever it is in preparation, under construction, or after completion and provide proper facilities for access and inspection. The Project Sponsor shall allow the United States Environmental Protection Agency, the Inspector General of the United States, the Department and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records pertinent to the Project. The Project Sponsor shall cause its engineers, contractors, auditors and employees to cooperate during such inspections and make available all materials relevant to the review, examination or audit of the Project and compliance with this Agreement.
14. Other Agreements. The Project Sponsor shall comply with all terms and conditions of any construction contracts or engineering agreements affecting the Project and its operation.
15. Compliance with Governmental Authority. The Project Sponsor shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project. The Project Sponsor agrees that no date reflected in this Agreement, or in the Project completion schedule, or extension of any such date, shall modify any compliance date established in an NPDES permit. It is the Project Sponsor's obligation to request any required modification of applicable permit terms or other enforceable requirements.
16. Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the convenience of the Department only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Department of responsibility for design or construction.
17. Sanctions. If the Project Sponsor does not comply with the provisions of the Agreement, the Authority, upon receipt of written instructions by the Department, may take any or all of the following actions: (a) require repayment of all or a portion of any Loan Assistance provided; (b) require the Project Sponsor to take corrective actions to comply with this Agreement; (c) cancel, terminate, or suspend, in whole or in part, the Loan Assistance provided through this Agreement; or (d) terminate the entire Agreement.
18. Severability. If any provision of the Agreement is found to be illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired.
19. Complete Agreement. This Agreement contains Appendices "A", "B", "C" and "D", Attachment # 1, and all subsequent written approvals of the Department that alter any information contained in any of the Appendices hereto.
20. South Carolina Contract. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

21. Notices All notices hereunder shall be in writing and shall be addressed as follows:

If to the Project Sponsor:

Richland County  
Utilities Department  
7525 Broad River Road  
Irmo, South Carolina 29063

Attention: Director of Utilities

If to the Authority:

South Carolina Water Quality Revolving Fund  
Authority  
c/o Office of Local Government - SRF  
South Carolina Budget and Control Board  
1200 Senate Street  
453 Wade Hampton Building  
Columbia, South Carolina 29201


Attention: Patricia A. Comp

22. Counterparts. This Agreement is executed in two counterparts, which are separately numbered, but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.
23. Term of Agreement. The Term of this Agreement begins on the Effective Date and will expire upon the satisfaction of the requirements of Paragraph 11 herein.


IN WITNESS WHEREOF, the Project Sponsor and the Authority have caused these presents to be signed, sealed and delivered all as of the date hereof.

RICHLAND COUNTY


(SEAL)

By:   
Name: NORMAN JACKSON  
Title: CHAIR

Attest:

  
Its Deputy Clk. of Council

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By:   
Ashlie Lancaster, Interim Director,  
Office of Local Government,  
South Carolina Budget and Control Board

SCOPE OF WORK

Project Sponsor: Richland County

Project Name: Lower Richland Sewer System – Phase 1

Loan Assistance Number: F1-12-574-20

Project consists of Lower Richland County Sewer System Project – Phase 1. Phase 1 consists of providing sewer service to the Lower Richland County area encompassing the Hopkins Community, Franklin Park Subdivision, Hopkins Middle School, Hopkins Elementary School, Garners Ferry Road Corridor, Manchester Farms, and McEntire Joint National Guard Base. Infrastructure improvements to consist of approximately 23,000 linear feet (LF) of gravity sewer lines, approximately 76 manholes, five (5) new sewer pump stations, one (1) existing sewer pump station upgrade, approximately 95,000 LF of sewer force main, and all necessary appurtenances. The Project will create a new sewer system that collects and conveys wastewater from the Lower Richland County area to the Richland County Wateree River Waste Water Treatment Facility (NPDES # SC0047911).

PROJECT BUDGET

Project Sponsor: Richland County  
 Project Name: Lower Richland Sewer System – Phase 1  
 Loan Assistance Number: F1-12-574-20

<u>ITEM</u>	<u>LOAN ASSISTANCE FUNDS</u>	<u>RD GRANT &amp; LOAN</u>	<u>PROJECT SPONSOR</u>	<u>TOTAL PROJECT COSTS</u>
Legal and Appraisal Fees		\$25,000		\$25,000
Planning and Design Engineering		587,900		587,900
Land & Rights-of-Way		92,000		92,000
Construction	577,000	8,904,700		9,481,700
Construction Contingency		948,200		948,200
Construction Inspection and Engineering		275,000		275,000
City of Columbia Fees		804,000	41,600	845,600
RD Debt Service 24 Months	_____	_____	<u>682,300</u>	<u>682,300</u>
TOTAL	\$577,000	\$11,636,800	\$723,900	\$12,937,700

LOAN ASSISTANCE

Project Sponsor: Richland County  
Project Name: Lower Richland Sewer System – Phase 1  
Loan Assistance Number: F1-12-574-20

Loan Assistance Amount: \$577,000

Loan Amount:	\$577,000
Less Principal Forgiveness:	\$577,000
Net Amount for Repayment:	\$ 0

Project Sponsor: Richland County

Loan Assistance Number: F1-12-574-20

PROCUREMENT REQUIREMENTS

- I. Prior to construction contract award, the Project Sponsor shall:
  - A. Advertise the Project for a minimum of thirty (30) days in advance of bid opening using at least one of the following methods:
    1. Local newspapers of general circulation.
    2. MBE/WBE publications.
    3. Statewide or regional newspapers of general circulation.
    4. The South Carolina Business Opportunities (SCBO).
  - B. Modify bid documents only by written addenda, which require prior Department approval.
  - C. Hold a public bid opening.
  - D. Utilize competitive sealed construction bids.
  - E. Require at least a five percent (5%) bid bond or certified check.
  - F. Require one hundred percent (100%) payment and performance bonds.
  - G. Require the contractor, during construction, to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property.
  - H. Follow, and require the prime contractor to follow, Davis-Bacon and Related Acts provisions.
  - I. Follow, and require the prime contractor to follow, American Iron and Steel Provisions.
  - J. Follow, and require the prime contractor to follow, the "Good Faith Efforts" to aid in meeting Disadvantaged Business Enterprise (DBE) requirements.
  - K. Create and maintain a list of all firms that bid or quote on prime contracts and/or subcontracts (Bidders List) including both disadvantaged business enterprises and non-disadvantaged business enterprises. The Bidders List must be kept until Project completion.
  - L. If other funding sources are included which have stricter bidding requirements or if applicable Federal, State or local laws or ordinances have stricter requirements, these stricter requirements govern.
  - M. After bid opening, provide the Department with the following:
    1. Project Construction Summary Form (DHEC Form #3589).
    2. A certified copy of the advertisement with date(s) of publication.
    3. A copy of the Project Sponsor's Bidders List.
    4. Detailed bid tabulation certified by Project Sponsor's engineer.
    5. Proposal of successful bidder(s).
    6. Bid Bond with associated Power of Attorney.
    7. Engineer's award recommendation of low bidder(s) to Project Sponsor. If the award is recommended to other than the low bidder(s), provide justification for decision.
    8. Certified copy of Project Sponsor's tentative award resolution listing the proposed contractor(s) and contract amount(s).
    9. Davis-Bacon wage rate(s) used in bidding the project.

10. A copy of the proposed prime contractor's Bidders American Iron and Steel Certification (DHEC Form 2556).
  11. Evidence that the low bidder(s) complied with the Disadvantaged Business Enterprise (DBE) requirements listed in the bid documents. DBE approval must precede bid package approval.
  12. A copy of the prime contractor's Bidders List.
  13. Prime Contractor's Subagreement Certification (DHEC Form #3591).
  14. DBE Program Subcontractor Utilization Form (EPA Form 6100-4) from the prime contractor(s).
  15. DBE Subcontractor Performance Form (EPA Form 6100-3) from all DBE firms.
  16. EEO Documentation Form (DHEC Form #2323), with all required attachments, including Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity (DHEC Form #3592) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$10,000.
  17. Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form #3590) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$25,000.
  18. Project Inspection Designation Form (DHEC Form #2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.
- N. Receive Department approval to award the construction contract(s).
- II. Subsequent to construction contract award, the Project Sponsor shall submit the following to the Department as proof of compliance with procurement requirements:
- A. Executed contract documents.
  - B. Notice to Proceed.
  - C. Semi-annual MBE/WBE Utilization Reports (EPA Form 5700-52A).
  - D. Monthly Construction Inspection Reports.
  - E. Davis-Bacon Certification (DHEC Form #2557) with each draw request.
  - F. American Iron and Steel Certification (DHEC Form #0962) with each draw request.
- III. Subsequent to contract award, the Project Sponsor shall submit the following, for Department review and approval, on any proposed change orders:
- A. Need for the change.
  - B. Clear description of the change.
  - C. Cost and pricing data.
  - D. Documentation of negotiation.
  - E. For claims, information showing the claim did not result from the Project Sponsor's or contractor's mismanagement.



SPECIAL CONDITIONS

Project Sponsor: Richland County

Project Name: Lower Richland Sewer System – Phase 1

Loan Assistance Number: F1-12-574-20

The SRF will withhold 5% of the Loan Assistance funds for the final draw request, which cannot be approved until the Department's final Approval to Place Into Operation has been issued by the DHEC Region Engineer.

The Project Sponsor will construct all necessary collection sewer lines, pumping facilities, force main lines and appurtenances to connect the Franklin Park Subdivision to the Richland County Wateree River Wastewater Treatment Facility (NPDES # SC0047911).

**Davis-Bacon Wage Rates Under FY 2012 Federal Appropriations Act  
For Subrecipients (Project Sponsors)**

1. Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements

Under the FY 2012 Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$2,000. Available from the Department.

4. Contract Provisions for Contracts in Excess of \$100,000

Refer to Appendix A: Mandatory Supplemental General Conditions For The South Carolina State Revolving Fund Program that must be included in all bid documents and contracts over \$100,000. Available from the Department.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

Office of Local Government  
State Revolving Funds



Bonnie Ammons  
Executive Director

South Carolina  
Rural Infrastructure Authority

April 1, 2020

Honorable Paul Livingston  
Chairman  
Richland County  
P.O. Box 192  
Columbia, SC 29202

**Subject:** Amendment to Loan Assistance Agreement (LAA) No. F1-14-574-20 (originated as LAA No. F1-12-574-20 dated June 10, 2014 amended on February 2, 2017 and February 1, 2018) Lower Richland Sewer System – Phase 1

Dear Chairman Livingston:

The above-referenced Loan Assistance Agreement (LAA) is being amended to provide additional funding in the amount of \$423,000 to complete improvements to the Lower Richland Sewer System – Phase 1. The LAA agreement will be amended as follows:

- The cover page to the LAA shall read: *FY 2014 and FY 2019 Federal Capitalization Grants*
- Page 1, paragraph 4 of the LAA is deleted and replaced by the following:

***WHEREAS, the Fiscal Year 2014 and the Fiscal Year 2019 Federal Appropriations Acts (the "Federal Appropriations Acts"), under which the project is committed, requires the Fund, identified therein as the Clean Water State Revolving Fund, to provide additional subsidization for wastewater infrastructure facilities; and***

- Page 1, paragraph 5 of the LAA is deleted and replaced by the following:

***WHEREAS, the Act as amended on May 28, 2010, authorizes the Authority to fully implement all requirements of the Federal Appropriations Acts for the Fund; and***

- Page 5, a new paragraph is added at the end of section Federal and State Requirements:
  - (f) Development and implementation of a fiscal sustainability plan ("FSP") for any project involving the repair, replacement or expansion of a publicly owned treatment works pursuant to requirements of the Federal Act. Project Sponsors with an existing and implemented FSP shall certify to that effect before the date of this Agreement. Project Sponsors that need to develop an FSP must submit a certification that an FSP has been developed, and will be implemented, by the date of the final disbursement hereunder.***

Attached are Appendix A and Appendix B, which have also been amended and should be inserted into the County's duplicate original of the LAA.

If you have questions, please contact me at 803-898-9873 or [nhebert@ria.sc.gov](mailto:nhebert@ria.sc.gov).

Sincerely,

A handwritten signature in black ink that reads "Noel Hebert". The signature is written in a cursive style with a long horizontal stroke at the end.

Noel Hebert, CPA  
Senior Financial Analyst

CC: Tariq Hussain, Deputy Director  
Brian Asbill, DHEC

SCOPE OF WORK

Project Sponsor: Richland County

Project Name: Lower Richland Sewer System – Phase 1

Loan Assistance Number: F1-14-574-20

The Clean Water State Revolving Fund (SRF) will participate in only two (2) of the four (4) divisions needed to rehabilitate the Lower Richland Sewer System. SRF participation is as follows:

Division 1: No participation.

Division 2: The project will include the construction of one (1) new pump station to replace the Gadsden Elementary School Wastewater Treatment Plant (WWTP), one (1) stand-by emergency pump, valves, fittings and appurtenances.

Division 3: The project will include the construction of two (2) new pump stations to replace the Hopkins Elementary School WWTP and the Hopkins Middle School WWTP. The project will also include a portable generator.

Division 4: No participation.

**AMENDMENT dated April 1, 2020**

A-1

PROJECT BUDGET

Project Sponsor: Richland County  
 Project Name: Lower Richland Sewer System – Phase 1  
 Loan Assistance Number: F1-14-574-20

<u>ITEM</u>	<u>LOAN ASSISTANCE FUNDS</u>	<u>PROJECT SPONSOR</u>	<u>TOTAL ELIGIBLE COST</u>
Construction			
Division 2 (Gadsden)	\$ 577,000	\$ 274,810	\$ 851,810
Division 3 (Hopkins)	423,000	336,852	759,852
<b>Total</b>	<b>\$ 1,000,000</b>	<b>\$ 611,662</b>	<b>\$ 1,611,662</b>

**AMENDMENT dated April 1, 2020**

B-1

LOAN ASSISTANCE

Project Sponsor: Richland County  
Project Name: Lower Richland Sewer System – Phase 1  
Loan Assistance Number: F1-14-574-20

Loan Assistance Amount: \$ 1,000,000

Loan Amount:	\$ 1,000,000
Less Principal Forgiveness:	\$ <u>1,000,000</u>
Net Amount for Repayment:	\$ 0

**AMENDMENT dated April 1, 2020**

B-1



## Richland County Council Request for Action

**Subject:**

County Attorney's Office – Request to Close a County Road – Murray Tract

**Notes:**

July 28, 2020 – The D&S Committee recommended to approve petitioner's request to close the subject road and direct Legal to answer the lawsuit accordingly.



**Agenda Briefing**

**Prepared by:** Lauren Hogan, Assistant County Attorney

**Department:** County Attorney’s Office

**Date Prepared:** July 15, 2020

**Meeting Date:** July 28, 2020

<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	July 21, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 15, 2020
<b>Approved for Consideration:</b>	County Administrator	Leonardo Brown, MBA, CPM	

**Committee** Development & Services

**Subject:** Request to Close a Richland County Road

**Recommended Action:**

County Council is requested to approve, deny or make a recommendation with respect to a Petition for Road Closing regarding a portion of Screaming Eagle Road Extension in accordance with Richland County Code of Ordinances (Roads, Highways and Bridges) section 21-14. The road is more particularly described in the attached Petition For Abandonment and Closing of Road filed in the case of Murray Tract, LLC v. South Carolina Department of Transportation, County of Richland, Northeast Sanitary Landfill – Republic Services, James Addison, Christopher H. Crimminger and Chandra R. Crimminger, Civil Action No.: 2020-CP-40-2875.

**Motion Requested:**

1. Approve petitioner’s request to close the subject road and direct Legal to answer the lawsuit accordingly.
2. Deny petitioner’s request to close the road, state reasons for such denial, and direct Legal to answer the lawsuit accordingly.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

There is no associated fiscal impact.

**Motion of Origin:**

There is no associated Council motion of origin. The matter is a petition filed with Richland County Clerk of Court.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	

**Discussion:**

County Council is requested to approve, deny or make a recommendation with respect to a Petition for a Road Closing regarding a portion of Screaming Eagle Road Extension in accordance with Richland County Code of Ordinances (Roads, Highways and Bridges) section 21-14. The road is more particularly described in the attached Petition for Abandonment and Closing of Road filed as 2020-CP-40-2875 in Richland County.

Richland County Code of Ordinances (Roads, Highways and Bridges) section 21-14 requires the County Attorney to consult with the County's Planning, Public Works and Emergency Services departments and to forward the request to abandon or close a public road or right-of-way to County Council for disposition. All afore-mentioned departments have been informed of the need for input and none have an objection to the road closure.

According to the Petitioner, this portion of Screaming Eagle Road Extension is prone to washing out and areas along the road way are used for dumping of trash and other debris.

**Attachments:**

1. Petition and Exhibits

John W. Davidson  
Member  
Admitted in SC

June 23, 2020

**BY CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Leonardo Brown  
County Administrator  
County of Richland  
PO Box 192  
Columbia, SC 29204

**Re: Murray Tract, LLC v. South Carolina Department of Transportation, et al**  
**C/A NO: 2020-CP-40-02875**

Dear Mr. Brown,

Enclosed please find a Summons and Petition for Abandonment and Closing of Road relating to the proposed closure of a portion of Screaming Eagle Road Extension. You may recall that we sent you a letter on March 3, 2020 notifying you of the proposed road closure. If you would, please sign the enclosed Acceptance of Service and return it to me for filing. If you would prefer not to sign the Acceptance of Service, we will move forward to serve you by other means.

If you would like to consent to this closure, please sign the enclosed Consent of Respondent and return it to me in the postage prepaid envelope for filing with the court.

If you have any questions or wish to discuss this matter further, please contact me.

Sincerely,

John W. Davidson

JWD/mos  
Enclosures

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

1230 Main Street  
Suite 700 (29201)  
PO BOX 2426  
Columbia, SC 29202  
www.nexsenpruet.com

T 803.540.2023  
F 803.727.1427  
E JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Murray Tract, LLC

Petitioner,

vs.

South Carolina Department of Transportation;  
County of Richland, Northeast Sanitary Landfill  
– Republic Services, James Addison,  
Christopher H. Crimminger and Chandra R.  
Crimminger

Respondents.

IN THE CIRCUIT COURT

Case No. 2020-CP-40-02875

**CONSENT OF RESPONDENT COUNTY OF  
RICHLAND TO PETITION FOR ABANDONMENT  
AND CLOSING OF ROAD**

The undersigned hereby consents to the closure of the road as requested in the Petition for Abandonment and Closing of Roads, and agrees to execute such further documents as may be required to complete the closure.

County of Richland

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

Its: \_\_\_\_\_

\_\_\_\_\_, 2020

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Murray Tract, LLC

Petitioner,

vs.

South Carolina Department of Transportation;  
County of Richland, Northeast Sanitary Landfill  
– Republic Services, James Addison,  
Christopher H. Crimminger and Chandra R.  
Crimminger

Respondents.

IN THE CIRCUIT COURT

Case No. 2020-CP-40-02875

**ACCEPTANCE OF SERVICE BY  
RESPONDENT COUNTY OF RICHLAND**

Due and legal service of the Summons and Petition For Abandonment and Closing of Road is accepted this \_\_\_\_\_ day of June, 2020, by the County of Richland and a copy thereof retained by same.

County of Richland

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

Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE CIRCUIT COURT

Murray Tract, LLC,

Petitioner,

Case No. 2020-CP-40-

vs.

**SUMMONS  
(Non-Jury)**

South Carolina Department of Transportation,  
County of Richland, Northeast Sanitary Landfill  
– Republic Services, James Addison,  
Christopher H. Crimminger and Chandra R.  
Crimminger

Respondents.

**TO THE RESPONDENTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your response to the Petition upon the undersigned at his office located at 1230 Main Street, Suite 700, Post Office Drawer 2426, Columbia, South Carolina 29202, within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Petition within the time aforesaid, the Petitioner will apply to the Court for judgment by default for the relief demanded therein.

S/John W. Davidson

John W. Davidson  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700  
Post Office Drawer 2426  
Columbia, South Carolina 29202  
(803) 771-8900  
[JDavidson@nexsenpruet.com](mailto:JDavidson@nexsenpruet.com)

*Attorney for Petitioner*

June 23, 2020

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Murray Tract, LLC ,

Petitioner,

vs.

South Carolina Department of Transportation,  
County of Richland, Northeast Sanitary Landfill  
– Republic Services, James Addison,  
Christopher H. Crimminger and Chandra R.  
Crimminger,

Respondents.

IN THE CIRCUIT COURT

Case No. 2020-CP-40-

**PETITION FOR ABANDONMENT AND  
CLOSING OF ROAD  
(Non-Jury)**

NOW COMES THE PETITIONER, Murray Tract, LLC (“Murray”), and alleges the following:

1. This is an action brought pursuant to S.C. Code Ann. §§ 57-9-10 *et. seq.*, which seeks to close a portion of Screaming Eagle Road Extension in Richland County.
2. Petitioner Murray is a limited liability company organized and existing under the laws of the State of South Carolina, and owns property which abuts and adjoins both sides of the portion of Screaming Eagle Road Extension which is sought to be closed.
3. Respondent South Carolina Department of Transportation (“SCDOT”) is a governmental entity charged with the oversight of public roads within the State of South Carolina, including Screaming Eagle Road Extension.
4. Respondent County of Richland (“Richland County”) is a governmental entity and/or political subdivision of the State of South Carolina in which the road petitioned to be



closed and abandoned lies and owns land and the right of ways that abut portions of the portion of Screaming Eagle Road Extension which is herein petitioned to be closed.

5. The following Respondents are named by virtue of owning property that abuts the portion of Screaming Eagle Road Extension petitioned to be closed or to the north of the portion of the road sought to be closed:

- (a) James Addison, who currently owns or formerly owned property which abuts Screaming Eagle Road Extension to the north of the portion of the road sought to be closed by this Petition.
- (b) Christopher H. Crimminger, who currently owns or formerly owned property which abuts the Screaming Eagle Road Extension to the north of the portion of the road sought to be closed by this Petition.
- (c) Chandra R. Crimminger, who currently owns or formerly owned property which abuts Screaming Eagle Road Extension to the north of the portion of the road sought to be closed by this Petition.
- (d) Northeast Sanitary Landfill – Republic Services, who currently owns or formerly owned property which abuts the portion Screaming Eagle Road Extension sought to be closed by this Petition.

6. Murray seeks the closure of the portion of Screaming Eagle Road Extension from its intersection with Westvaco Road to a point 6,700 feet to the northeast. Murray owns property abutting the portion of Screaming Eagle Road Extension which is sought to be closed by this Petition. This area is depicted on the maps attached as **Exhibit A** to this Petition.

7. Murray desires that, pursuant to this Petition, the State of South Carolina and Richland County discontinue maintenance of the portion of Screaming Eagle Road Extension sought to be closed and abandoned, to the extent, and in the unlikely event, that such maintenance continues to occur to this date, and relinquish any and all claim they may have to the road and the land under said roadway. Petitioner is informed and believes that the title to

the abandoned portion of this road should become vested in the owner or owners of the property abutting the abandoned portion of this road according to their respective interest.

8. Pursuant to SC Code Ann. §§ 57-9-10 *et. seq.*, Petitioner Murray has advertised its Notice of Intention to File Petition by publishing such notice once a week for three consecutive weeks in The Columbia Star, a newspaper generally circulated and published in Richland County. A copy of the Affidavit of Publication is attached and made a part of this Petition as **Exhibit B**. Petitioner has also delivered notice to the respective abutting property owners and as well as the South Carolina Department of Transportation and Richland County by mailing an individual letter to the last known addresses of the known Respondents by certified mail, return receipt requested (“Notice”). Copies of the Notice letters are attached and made a part of this Petition as **Exhibit C**. Additionally, Petitioner provided notice in the form of posted signs along the portion of Screaming Eagle Road Extension sought to be closed by this Petition in strict or substantial compliance with the regulations of the South Carolina Department of Transportation.

9. Petitioner is further informed and believes that the abandonment of this road is in the public interest and in the best interest of all concerned and is not unduly burdensome to the Respondents and the public at large. The portion to be closed is prone to washing out and is of limited possibility, and is difficult to maintain. Additionally, areas along the road way are used for dumping of trash and other debris.

10. Petitioner is further informed and believes that upon abandonment and closing the portion of the road closed will become or already has become the subject of *ad valorem* taxation and add additional property to the tax rolls and will, at the same time, avoid further

expenditure of public funds for the maintenance of the abandoned portions of this road, thereby providing additional benefits to the State, its political subdivisions, and the public at large.

11. Petitioner is further informed and believes that the best interest of all concerned will be best served by this Court issuing its Order closing the certain portion of the road set forth in this Petition, releasing the State of South Carolina and Richland County from any and all obligations to maintain this roadway, forever barring its public use, and vesting title to the roadway as set forth above in the abutting property owners in accordance with their respective interest.

WHEREFORE, Petitioner prays that this Court inquire into these matters as set forth and alleged in this Petition and issue its ORDER closing the portion of the road at issue, releasing the State of South Carolina and its political subdivisions from any and all obligations to maintain this roadway, forever barring its future public use, investing title to the abandoned roadway and the abutting property owners in accordance with their respective interest, and for such other and further legal and equitable relief as this Court may deem just and proper.

Respectfully submitted,

s/John W. Davidson

---

John W. Davidson  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Post Office Drawer 2426  
Columbia, SC 29202  
JDavidson@nexsenpruet.com  
Telephone: 803.771.8900

*Attorney for Petitioner*

June 23, 2020

ELECTRONICALLY FILED - 2020 Jun 23 2:31 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002875

# EXHIBIT A

(3 Maps)

Richland County, SC, Internet Mapping<sup>0.9</sup>



Pointer: 34.0336702, -80.6281042

Leaflet | Map produced by RC GIS Dept, Roads basemap © Google, Map data © Richland County SC

www.richlandmaps.com/apps/dataviewer/?lat=34.01664&lon=-80.66711&zoom=15&base=roadmap&expanded=53759|52088|18518|38669|39665&layers=33844|24029

# Richland County, SC, Internet Mapping <sup>0.x</sup>



3/19/2020 3:21 PM - RICHLAND - COMMON PLEAS - CASE#R020CP4002875

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## Legend

Pointer: 34.0273039, -80.6400990

Leaflet | Map produced by RC GIS Dept, Roads basemap © Google, Map data © Richland County SC

# Richland County, SC, Internet Mapping



ELECTRONICALLY FILED - 2020 Mar 23 2:01 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002875

## Legend

Pointer: 34.0352706, -80.6389403

Leaflet | Map produced by RC GIS Dept, Roads basemap © Google, Map data © Richland County SC



# EXHIBIT B

(Affidavit of Publication)

**NOTICE OF  
INTENTION TO FILE  
PETITION  
STATE OF  
SOUTH CAROLINA  
COUNTY OF  
RICHLAND  
IN THE COURT OF  
COMMON PLEAS**

Pursuant to S.C. Code  
Ann. §§ 57-9-10 through  
57-9-40, Murray Tract,  
LLC gives this Notice of  
Intention to File a Petition  
in the Circuit Court for  
Richland County, South  
Carolina for the closure of  
a portion of Screaming  
Eagle Road Extension  
from its intersection with  
Westvaco Road to a point  
6,700 feet to the north-  
east. This notice shall be  
published once a week for  
three consecutive weeks.

John W. Davidson  
Nexsen Pruet, LLC  
1230 Main Street, Suite  
700

Post Office Drawer 2426  
Columbia, SC 29202  
JDavidson@nexsenpruet.c  
om

Telephone: 803.771.8900  
Attorney for Petitioner  
March 2, 2020

# THE COLUMBIA STAR

## COLUMBIA, SOUTH CAROLINA

State of South Carolina  
County of Richland

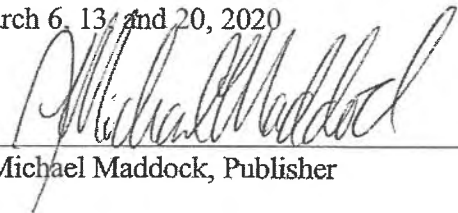
Personally appeared before me,  
**J. MICHAEL MADDOCK,**  
**PUBLISHER OF THE COLUMBIA STAR,**  
who makes oath that the advertisement

### NOTICE OF INTENTION TO FILE PETITION

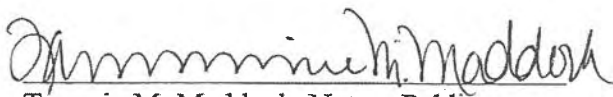
Murray Tract, LLC gives notice of Intention to File Petition for  
closure of portion of Screaming Eagle Rd., et al.

a clipping of which is attached hereto, was printed in  
**THE COLUMBIA STAR**, a weekly newspaper of general circulation  
published in the City of Columbia, State and County aforesaid, in the issues of

March 6, 13, and 20, 2020

  
\_\_\_\_\_  
J. Michael Maddock, Publisher

Sworn to before me on this  
20<sup>th</sup> day of March, 2020

  
\_\_\_\_\_  
Tammie M. Maddock, Notary Public  
My commission expires June 27, 2026

# EXHIBIT C

(Notice Letters)

**John W. Davidson**  
Member  
Admitted in SC

March 3, 2020

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**RESTRICTED DELIVERY**

Christopher H. & Chandra R. Crimminger  
105 Valhalla Dr  
Columbia SC 29229

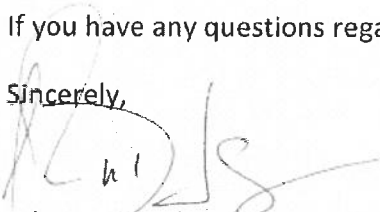
Re: Closing of a Portion of Screaming Eagle Road Extension, Richland County, SC

Dear Christopher H. & Chandra R. Crimminger:

Our firm has been retained by Murray Tract, LLC to petition the Court for the closure of a portion of Screaming Eagle Road Extension. This road closing process is instituted pursuant to the provisions of S.C. Code Ann. §§ 57-9-10 et. seq. As required by statute, we are providing notice of the intent to close this road because you either own property which abuts this portion of Screaming Eagle Road Extension and/or you otherwise may be affected by the closure.

If you have any questions regarding this matter, please contact me.

Sincerely,

  
**John W. Davidson**

JWD/smr

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

1230 Main Street  
Suite 700 (29201)  
PO Drawer 2426  
Columbia, SC 29202  
www.nexsenpruet.com

**T** 803.540.2023  
**F** 803.727.1427  
**E** JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

**John W. Davidson**  
Member  
Admitted in SC

March 3, 2020

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**RESTRICTED DELIVERY**

James Addison  
124 Candlelight Dr  
West Columbia SC 29170

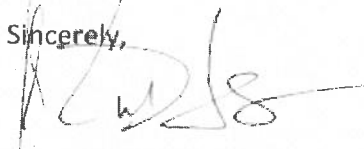
Re: Closing of a Portion of Screaming Eagle Road Extension, Richland County, SC

Dear James Addison:

Our firm has been retained by Murray Tract, LLC to petition the Court for the closure of a portion of Screaming Eagle Road Extension. This road closing process is instituted pursuant to the provisions of S.C. Code Ann. §§ 57-9-10 et. seq. As required by statute, we are providing notice of the intent to close this road because you either own property which abuts this portion of Screaming Eagle Road Extension and/or you otherwise may be affected by the closure.

If you have any questions regarding this matter, please contact me.

Sincerely,



John W. Davidson

JWD/smr

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

1230 Main Street  
Suite 700 (29201)  
PO Drawer 2426  
Columbia, SC 29202  
www.nexsenpruet.com

**T** 803.540.2023  
**F** 803.727.1427  
**E** JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

ELECTRONICALLY FILED - 2020 Jun 23 2:31 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002875

**John W. Davidson**  
Member  
Admitted in SC

March 3, 2020

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**RESTRICTED DELIVERY**

Northeast Sanitary Landfill - Republic Services  
PO Box 29246  
Phoenix AZ 85038

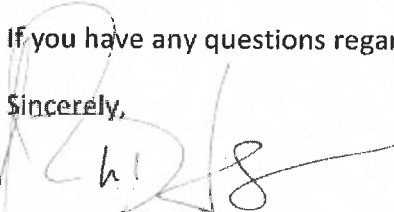
Re: Closing of a Portion of Screaming Eagle Road Extension, Richland County, SC

Dear Northeast Sanitary Landfill - Republic Services:

Our firm has been retained by Murray Tract, LLC to petition the Court for the closure of a portion of Screaming Eagle Road Extension. This road closing process is instituted pursuant to the provisions of S.C. Code Ann. §§ 57-9-10 et. seq. As required by statute, we are providing notice of the intent to close this road because you either own property which abuts this portion of Screaming Eagle Road Extension and/or you otherwise may be affected by the closure.

If you have any questions regarding this matter, please contact me.

Sincerely,

  
John W. Davidson

JWD/smr

- Charleston
- Charlotte
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- Greensboro
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- Raleigh

1230 Main Street  
Suite 700 (29201)  
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Columbia, SC 29202  
www.nexsenpruet.com

T 803.540.2023  
F 803.727.1427  
E JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

**John W. Davidson**  
Member  
Admitted in SC

March 3, 2020

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**RESTRICTED DELIVERY**

Leonardo Brown, County Administrator  
PO Box 192  
Columbia SC 29204

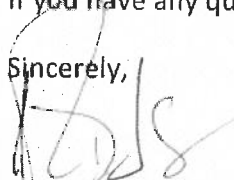
Re: Closing of a Portion of Screaming Eagle Road Extension, Richland County, SC

Dear Leonardo Brown, County Administrator:

Our firm has been retained by Murray Tract, LLC to petition the Court for the closure of a portion of Screaming Eagle Road Extension. This road closing process is instituted pursuant to the provisions of S.C. Code Ann. §§ 57-9-10 et. seq. As required by statute, we are providing notice of the intent to close this road because you either own property which abuts this portion of Screaming Eagle Road Extension and/or you otherwise may be affected by the closure.

If you have any questions regarding this matter, please contact me.

Sincerely,

  
John W. Davidson

JWD/smr

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
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**F** 803.727.1427  
**E** JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

John W. Davidson  
Member  
Admitted in SC

March 3, 2020

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**RESTRICTED DELIVERY**

SC Department of Transportation  
Post Office Box 191  
Columbia SC 29202

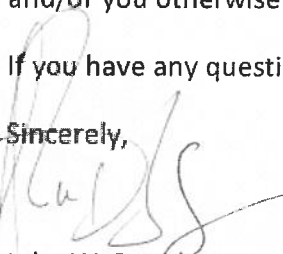
Re: Closing of a Portion of Screaming Eagle Road Extension, Richland County, SC

Dear SC Department of Transportation:

Our firm has been retained by Murray Tract, LLC to petition the Court for the closure of a portion of Screaming Eagle Road Extension. This road closing process is instituted pursuant to the provisions of S.C. Code Ann. §§ 57-9-10 et. seq. As required by statute, we are providing notice of the intent to close this road because you either own property which abuts this portion of Screaming Eagle Road Extension and/or you otherwise may be affected by the closure.

If you have any questions regarding this matter, please contact me.

Sincerely,

  
John W. Davidson

JWD/smr

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T 803.540.2023  
F 803.727.1427  
E JDavidson@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**



## Richland County Council Request for Action

**Subject:**

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina and Project Quattro; to provide for payments of fees-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

**Notes:**

First Reading: July 14, 2020  
Second Reading: July 21, 2020  
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 AND INFRASTRUCTURE CREDIT AGREEMENT, AND AMENDMENTS OF CERTAIN EXISTING FEE-IN-LIEU OF *AD VALOREM* AGREEMENTS, BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT QUATTRO; TO PROVIDE FOR PAYMENTS OF FEES-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; 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 (the “Code”), as amended (the “Simplification Act”), Title 4, Chapter 12 of the Code (the “Chapter 12 Act”) and Title 4, Chapter 29 of the Code (the “Chapter 29 Act”, and together with the Simplification Act and the Chapter 12 Act the “Acts”) 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 Acts, 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 Acts;

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, the County is authorized and empowered under and pursuant to the provisions of the Simplification Act to enter into and amend certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute “projects” as defined in the Simplification Act);

WHEREAS, pursuant to the Acts and MCIP Act, 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, Project Quattro (the “Sponsor”) owns and operates a manufacturing facility (the “Facility”) located in the County;

WHEREAS, the Sponsor desires to expand the Facility consisting of taxable investment in real and personal property of not less than \$175,000,000 (“Project”);

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 and Incentive Agreement with the Sponsor, as sponsor, the substantially final form of which is attached as Exhibit A (“2024 Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i)

providing for FILOT Payments, to be calculated as set forth in the 2024 Fee Agreement, with respect to the portion of the Project which constitutes economic development property; and (ii) providing Infrastructure Credits, as described in the 2024 Fee Agreement, to assist in paying the costs of certain Infrastructure;

WHEREAS, the County and Sponsor are parties to a Lease Purchase Agreement dated as of December 1, 1991, as amended by a First Amendment to Lease Purchase Agreement dated as of May 1, 2010 (the “1991 Lease Agreement”);

WHEREAS, the County and Sponsor desire to amend certain provisions of the 1991 Lease Agreement in order to extend the term thereof (the “1991 Extension”) by entering into the Second Amendment to Lease Purchase Agreement between the County and Sponsor, the substantially final form of which is attached as Exhibit B;

WHEREAS, the County and Sponsor are parties to a Lease and Financing Agreement dated as of November 1, 2004 (the “2004 Lease Agreement”);

WHEREAS, the County and Sponsor desire to amend certain provisions of the 2004 Lease Agreement to extend the term thereof (the “2004 Extension”) by entering into the First Amendment to Lease and Financing Agreement between the County and Sponsor, the substantially final form of which is attached as Exhibit C;

WHEREAS, the County and Sponsor are parties to a Fee Agreement dated as of December 31, 2013 (the “2013 Fee Agreement”, and together with the 1991 Lease Agreement and the 2004 Lease Agreement the “Existing Fee Agreements”);

WHEREAS, the County and Sponsor desire to amend certain provisions of the 2013 Fee Agreement to extend the term thereof (the “2013 Extension”, and together with the 1991 Extension and the 2004 Extension the “Existing Agreement Extensions”) by entering into the First Amendment to Fee Agreement between the County and Sponsor, the substantially final form of which is attached as Exhibit D;

WHEREAS, as an inducement to maintaining the Facility and further investing in the Facility through the Project, through any combination of the following: additions and/or improvements to infrastructure, the construction of one or more new buildings, investment involving one or more existing buildings, and/or the addition of machinery and equipment at the Facility, the Sponsor has requested the County to provide Infrastructure Credits against certain of the FILOT Payments derived from the Existing Fee Agreements and Payments derived from property located in the Park that is not subject to a fee agreement under the Acts; and

WHEREAS, the County desires to enter into an Infrastructure Credit Agreement between the County and Sponsor, the substantially final form of which is attached as Exhibit E (the “Infrastructure Agreement”), to provide Infrastructure Credits against certain of the Sponsor’s FILOT Payments derived from the Existing Fee Agreements and FILOT Payments derived from property located in the Park that is not subject to a fee agreement under the Acts.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

**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;

(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;

(d) The Facility and the Project, including the Existing Agreement Extensions and the 2024 Fee Agreement, and the Infrastructure Credit Agreement will directly and substantially benefit the general public welfare of the County by providing the retention of jobs and employment; the increase of the ad valorem tax base; and other public benefits.

**Section 2. *Approval of Incentives; Authorization to Execute and Deliver 2024 Fee Agreement.*** The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the 2024 Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the 2024 Fee Agreement that is before this meeting are approved and all of the 2024 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 2024 Fee Agreement in the name of and on behalf of the County at such time as is requested by the Sponsor, but no later than December 31, 2024, 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 2024 Fee Agreement to the Sponsor.

**Section 3. *Inclusion within the Park.*** The expansion of the Park boundaries to include the Project, and the Facility to the extent any portion is not already included in the Park, 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”), any necessary 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. *Approval of Existing Agreement Extensions; Authorization to Execute and Deliver Existing Agreement Amendments.*** The incentives as described in this Ordinance, and as more particularly set forth in the Existing Agreement Extensions, with respect to the Facility and/or Project are hereby approved. The form, terms and provisions of the Existing Agreement Extensions that are before this meeting are approved and all of the Existing Agreement Extensions’ terms and conditions are incorporated in this Ordinance by reference. The Chair is authorized and directed to execute the Existing Agreement Extensions 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 Existing Agreement Extensions and to deliver the Existing Agreement Extensions to the Sponsor.

**Section 5. *Approval of Infrastructure Agreement; Authorization to Execute and Deliver Infrastructure Agreement.*** The incentives as described in this Ordinance, and as more particularly set forth in the Infrastructure Agreement, with respect to the Facility and/or Project are hereby approved. The form, terms and provisions of the Infrastructure Agreement that are before this meeting are approved and all of the Infrastructure Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair is authorized and directed to execute the Infrastructure 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 Infrastructure Agreement and to deliver the Infrastructure Agreement to the Sponsor.

**Section 6. *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, the 2024 Fee Agreement, the Existing Agreement Extensions, and the Infrastructure Agreement.

**Section 7. *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 8. *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 9. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

---

Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: July 14, 2020  
Second Reading: July 21, 2020  
Public Hearing: August 31, 2020  
Third Reading: August 31, 2020

**EXHIBIT A**  
**FORM OF 2024 FEE AGREEMENT**

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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT**

**BETWEEN**

**PROJECT QUATTRO**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF JANUARY 1, 2024**



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**TABLE OF CONTENTS**

---

	Page
Recitals.....	[]
 <b>ARTICLE I</b> <b>DEFINITIONS</b>  	
Section 1.1 Terms.....	[]
 <b>ARTICLE II</b> <b>REPRESENTATIONS AND WARRANTIES</b>  	
Section 2.1 Representations, Warranties, and Agreements of the County.....	[]
Section 2.2 Representations, Warranties, and Agreements of the Sponsor.....	[]
 <b>ARTICLE III</b> <b>THE PROJECT</b>  	
Section 3.1 The Project.....	[]
Section 3.2 Leased Property.....	[]
Section 3.3 Filings and Reports.....	[]
 <b>ARTICLE IV</b> <b>FILOT PAYMENTS</b>  	
Section 4.1 FILOT Payments.....	[]
Section 4.2 FILOT Payments on Replacement Property.....	[]
Section 4.3 Removal of Components of the Project.....	[]
Section 4.4 Damage or Destruction of Economic Development Property.....	[]
Section 4.5 Condemnation.....	[]
Section 4.6 Calculating FILOT Payments on Diminution in Value.....	[]
Section 4.7 Payment of <i>Ad Valorem</i> Taxes.....	[]
Section 4.8 Place of FILOT Payments.....	[]
 <b>ARTICLE V</b> <b>ADDITIONAL INCENTIVES</b>  	
Section 5.1 Infrastructure Credits.....	[]
 <b>ARTICLE VI</b> <b>CLAW BACK</b>  	
Section 6.1 Claw Back.....	[]

ARTICLE VII  
DEFAULT

Section 7.1 Events of Default ..... []  
Section 7.2 Remedies on Default ..... []  
Section 7.3 Reimbursement of Legal Fees and Other Expenses ..... []  
Section 7.4 Remedies Not Exclusive ..... []

ARTICLE VIII  
PARTICULAR COVENANTS AND AGREEMENTS

Section 8.1 Right to Inspect ..... []  
Section 8.2 Confidentiality ..... []  
Section 8.3 Indemnification Covenants ..... []  
Section 8.4 No Liability of County’s Personnel ..... []  
Section 8.5 Limitation of Liability ..... []  
Section 8.6 Assignment ..... []  
Section 8.7 No Double Payment; Future Changes in Legislation ..... []  
Section 8.8 Administration Expenses ..... []

ARTICLE IX  
SPONSOR AFFILIATES

Section 9.1 Sponsor Affiliates ..... []  
Section 9.2 Primary Responsibility ..... []

ARTICLE X  
MISCELLANEOUS

Section 10.1 Notices ..... []  
Section 10.2 Provision of Agreement for Sole Benefit of County and Sponsor ..... []  
Section 10.3 Counterparts ..... []  
Section 10.4 Governing Law ..... []  
Section 10.5 Headings ..... []  
Section 10.6 Amendments ..... []  
Section 10.7 Agreement to Sign Other Documents ..... []  
Section 10.8 Interpretation; Invalidity; Change in Laws ..... []  
Section 10.9 Force Majeure ..... []  
Section 10.10 Termination; Termination by Sponsor ..... []  
Section 10.11 Entire Agreement ..... []  
Section 10.12 Waiver ..... []  
Section 10.13 Business Day ..... []  
Section 10.14 Agreement’s Construction ..... []

- Exhibit A – Description of Property
- Exhibit B – Form of Joinder Agreement
- Exhibit C – Accountability Resolution
- Exhibit D – Description of Infrastructure Credit

**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.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
<b>Sponsor Name</b>	Project Quattro	
<b>Project Location</b>	[to be added]	
<b>Tax Map No.</b>	[to be added]	
<b>FILOT</b>		
• Phase Exemption Period	Thirty (30) years	
• Contract Minimum Investment Requirement	\$120,000,000	
• Investment Period	Ten (10) years	
• Assessment Ratio	6%	
• Millage Rate	Lowest of the millage rates in effect on June 30, 2023, or June 30, 2024.	
• Fixed or Five-Year Adjustable Millage	Fixed	
<b>Multicounty Park</b>	I-77 Corridor Regional Industrial Park	
<b>Infrastructure Credit</b>	Yes	
• Brief Description	10%	
• Credit Term	10 years	
• Claw Back Information	Pro-rata repayment required if Contract Minimum Investment Requirement not met by the end of the Investment Period	
<b>Other Information</b>	FILOT Payment calculation to be made using net present value FILOT terms pursuant to Section 12-44-50(A)(2) of the FILOT Act based on net present value calculations	

## 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 January 1, 2024, 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 Project Quattro, a corporation organized and existing under the laws of the State of [\_\_\_\_\_] (“*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 desires to invest in its facility located in the County (“*Facility*”), through any combination of the following: additions and/or improvements to Infrastructure, the construction of one or more new buildings, investment involving one or more existing buildings, and/or the addition of machinery and equipment at the Facility and has requested the County to commit to provide certain incentives to the Sponsor by entering into this Fee Agreement;

(d) By an ordinance enacted on [DATE], 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.

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.

“*Act Minimum Investment Requirement*” means an investment of at least \$2,500,000 in the Project within five years of the Commencement Date.

“*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 does not include any costs,

expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives 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 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,, 2024.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$120,000,000.

“**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.

“**Credit Term**” means the years during the Fee Term in which the Infrastructure Credit is applicable, as described in Exhibit C.

“**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.

“**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, 2034, the Final Termination Date is expected to be January 15, 2065, 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.

“**Investment Period**” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending ten years after the Commencement Date. For purposes of this Fee Agreement, the Investment Period is expected to end on December 31, 2034.

“**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 the 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, as may be amended.

“**Net FILOT Payment**” means the FILOT Payment net of the Infrastructure Credit.

“**NPV FILOT Minimum Investment Requirement**” means an investment of at least \$45,000,000 in the Project within the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as set forth in Section 12-44-50(A)(3).

“**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 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 Project Quattro 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 July 14, 2020 by adopting an Inducement Resolution, as defined in the Act on July 14, 2020.

(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 the Facility in the Multicounty Park and 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 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.

(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, 2024. 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 on January 31, 2025, 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) 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 [ ], 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, 20[ ].

So long as the Sponsor achieves the NPV FILOT Minimum Investment Requirements, as authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the FILOT Act, the County and the Sponsor agree that the FILOT Payments shall be calculated on an alternative payment method yielding (over the Phase Exemption Period for each Phase) a payment stream which has the same net present value as the payment stream which would be generated using the standard FILOT calculation provided under Section 12-44-50(A)(1) of the Act and the factors set forth above in Section 4.1 of this Fee Agreement. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which this Fee Agreement is executed, which the parties believe to be [ ]% (i.e., the discount rate so in effect on [ ]). If no yield is available for the month in which this Fee Agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

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* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes; provided, however, that notwithstanding the foregoing provisions of this Section 4.3, if any part of the Economic Development Property is so removed

and disposed of, then the Sponsor is obligated to pay to the County an amount equal to the difference, if any, between (i) what the Sponsor would have paid to the County with respect to such Economic Development Property using the standard FILOT calculation described in Section 12-44- 50(A)(1) of the FILOT Act and the factors set forth in Section 4.1 of this Fee Agreement and (ii) the amount actually paid by the Sponsor using the alternative payment method FILOT described in Section 12-44-50(A)(3) and the factors set forth in Section 4.1 of this Fee Agreement (a “*Differential Payment*”), after taking into account the Infrastructure Credits that would have applied, or did apply, to each such FILOT Payment, as the case may be. Such Differential Payment will be made and included by the Sponsor with the FILOT Payment due to the County for the tax year corresponding to the property tax year in which such removal and disposal occurs.

#### **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.

**Section 4.9. Failure to Satisfy the NPV FILOT Minimum Investment Requirement.** In the event that the NPV FILOT Minimum Investment Requirement is not satisfied, but the Act Minimum Investment Requirement is nevertheless satisfied, then the FILOT Payments shall revert retroactively and prospectively to the amounts due under Section 12-44- 50(A)(1) of the FILOT Act and the factors set forth in Section 4.1 of this Fee Agreement, and in such event, the Sponsor shall pay to the County a Differential Payment as calculated and at such time as described in Section 4.3 of this Fee Agreement.

## ARTICLE V ADDITIONAL INCENTIVES

**Section 5.1. Infrastructure Credits.** To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim Infrastructure Credits to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Infrastructure Credit is described in Exhibit D. In no event may the Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section 5.1 exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Infrastructure Credit is applicable ("**Credit Term**"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in accordance with Exhibit D. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

## ARTICLE VI CLAW BACK

**Section 6.1. Claw Back.** If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County 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 and Exhibit E survives termination of this Fee Agreement.

## 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, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a “*Cessation of Operations*” means a publicly announced closure of the Facility, a layoff of a substantial majority of the employees working at the Facility, or a substantial cessation of production at the Facility that continues for a period of twelve (12) months;

(d) A representation or warranty made by the Sponsor which is deemed materially incorrect when deemed made;

(e) 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 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 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 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 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 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 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.

### **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 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. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of 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 \$5,500. 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 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:**

Project Quattro  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**WITH A COPY TO (does not constitute notice):**

Burr & Forman LLP  
Attn: Erik Doerring  
1221 Main Street, Suite 1800 (29201)  
Post Office Box 11390  
Columbia, South Carolina 29211

**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: Emily Luther  
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 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]*

**PROJECT QUATTRO**

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

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**[TO BE INSERTED]**

**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 [DATE] (“Fee Agreement”), between Richland County, South Carolina (“County”) and [COMPANY] (“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

**EXHIBIT D (see Section 5.1)**  
**DESCRIPTION OF INFRASTRUCTURE CREDIT**

The Sponsor shall be entitled to receive, and the County shall provide, Infrastructure Credits against each FILOT Payment due from the Sponsor under this Fee Agreement for the first ten (10) years of this Fee Agreement in an amount equal to ten percent (10%) of each such FILOT Payment, commencing with the tax year for which the initial FILOT Payment is due under this Fee Agreement.

THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY UNDER THIS FEE AGREEMENT WITH RESPECT TO THE PROJECT.

**EXHIBIT E (see Section 6.1)**  
**DESCRIPTION OF CLAW BACK**

If the Sponsor fails to meet the Contract Minimum Investment Requirement by the end of the Investment Period the Sponsor shall be required to pay the Repayment Amount.

**Repayment Amount = Total Received x Claw Back Percentage**

**Claw Back Percentage = 100% - Investment Achievement Percentage**

**Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement**

In calculating the investment achievement percentage, only the investment made up to the Contract Minimum Investment Requirement will be counted.

*For example, and by way of example only, if the County granted \$1,000,000 in Infrastructure Credits, and \$96,000,000 had been invested at the Project by the end of the Investment Period, the Repayment Amount would be calculated as follows:*

*Investment Achievement Percentage = \$96,000,000/\$120,000,000 = 80%*

*Claw Back Percentage = 100% - 80% = 20%*

*Repayment Amount = \$1,000,000 x 20% = \$200,000*

The Sponsor shall pay any amounts described in or calculated pursuant to this Exhibit E within 30 days of receipt of a written statement from the County. If not timely paid by the Sponsor, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Exhibit E survives termination of this Fee Agreement.

**EXHIBIT B**

**FORM OF SECOND AMENDMENT TO LEASE PURCHASE AGREEMENT (1991 EXTENSION)**

SECOND AMENDMENT TO LEASE PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE PURCHASE AGREEMENT (this “Amendment”), dated as of \_\_\_\_\_, 2020, is made and entered into by and between RICHLAND COUNTY, SOUTH CAROLINA, a public body corporate and a political subdivision of the State of South Carolina (the “County”), and PROJECT QUATTRO, a [state] corporation (the “Company”). All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in the Lease Agreement (hereinafter defined).

RECITALS

WHEREAS, pursuant to Lease Purchase Agreement dated as of December 1, 1991 (the “Lease Agreement”) between the County and the Company, as successor by merger to [to be inserted prior to third reading], County agreed to lease to the Company and the Company agreed to lease from the County the Building and Equipment;

WHEREAS, the County and the Company entered a First Amendment to Lease Purchase Agreement dated as of May 1, 2010 (the “First Amendment”) in order to extend the term of the Lease Agreement and modify the payment in lieu of ad valorem taxes payable by the Company thereunder during such extended term;

WHEREAS, [insert applicable language for memorandum of lease, any related amendments to the memorandum of lease]; and

WHEREAS, the County and the Company desire to amend certain provisions of the Lease Agreement and Memorandum of lease, as amended, to further extend the term thereof and modify the payment in lieu of ad valorem taxes payable by the Company thereunder during such extended term.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I  
AMENDMENTS

Section 1.1. Section 4.3 of the Lease Agreement is hereby amended and restated as follows:

The County agrees to deliver to the Company sole and exclusive possession of the Building and the Equipment for twenty (20) years from the date of acquisition of title of each asset by the County (the “Original Lease Term”) plus an additional period of twenty (20) years from the expiration of the Original Lease Term, forty (40) years in total (the “Extended Lease Term”), and the Company thereupon and thereafter shall have sole and exclusive possession of each asset during that period. The Original Lease Term and the Extended Lease Term shall be referred to collectively herein as the “Lease Term”.

Section 1.2 Section 4.6 of the Lease Agreement is hereby amended and restated as follows:

Payments-in-Lieu-of-Taxes. The parties acknowledge that under Article I, Section 3 of the South Carolina Constitution, the Project is exempt from ad valorem property taxes. However, the Company shall be required to make payments to the County in lieu of ad valorem property taxes with respect to the Project. In accordance with Section 4-29-67 of the Act, and unless sooner terminated in accordance with Section 11.1 or unless the option to purchase provided for in Section 11.2 is exercised, the Company shall make forty (40) annual Payments-in-Lieu-of-Taxes for the portion of the Project placed in service each year during the Project Period, said payments being due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for ad valorem taxes. Such amounts shall be calculated as follows:

In each year of the Original Lease Term, the Payment-in-Lieu-of-Taxes payable by the Company shall be the amount determined pursuant to the Lease Agreement prior to the effective date of the First Amendment.

Thereafter, in each year of the Extended Lease Term, the Company shall become liable to the County for an amount equal to the sum of (a) the amount that would be due as taxes on the undeveloped property if it were taxable, and (b) the product of multiplying (i) the millage rate in effect for the then current year by (ii) six percent (6%) of the fair market value of each asset included within the Building or Equipment (determined by the South Carolina Department of Revenue as though title to such assets were in the name of the Company and subject to ad valorem taxes) that has been placed into service prior to the year of payment, determined at the time of payment and including all deductions for depreciation or diminution in value allowed by the tax laws and all applicable ad valorem tax exemptions except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State and the exemption allowed pursuant to Section 12-37-220(B)(32) of the Code of Laws of South Carolina, 1976, as amended, and determined without regard to capitalized interest.

## ARTICLE II MISCELLANEOUS

Section 2.1. This Amendment shall be effective from the date first above written.

Section 2.2. Except as specifically amended hereby, the Lease Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment [including amendment to memo] need not be made in the Lease Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Lease Agreement, any reference in any of such items to the Lease Agreement [including memo] being sufficient to refer to the Lease Agreement [and memo] as amended hereby. The County and the Company confirm all their respective



representations and covenants made under the Lease Agreement as if made on the date of this Amendment.

Section 2.3. This Amendment and/or memo may be recorded in the office Richland County Register of Deeds, or in such other office as may be at the time provided by law as the proper place for such recordation.

Section 2.4. This Amendment shall be governed by South Carolina law.

This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the date 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

WITNESSES:

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

[Signature Page of the County]

[Signature Page of the Company Follows]

PROJECT QUATTRO

[SEAL]

ATTEST:

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

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

[Signature Page of the Company]

**EXHIBIT C**

**FORM OF FIRST AMENDMENT TO LEASE AND FINANCING AGREEMENT (2004 EXTENSION)**

## FIRST AMENDMENT TO LEASE AND FINANCING AGREEMENT

THIS FIRST AMENDMENT TO LEASE AND FINANCING AGREEMENT (this “Amendment”), dated as of \_\_\_\_\_, 2020, is made and entered into by and between RICHLAND COUNTY, SOUTH CAROLINA, a public body corporate and a political subdivision of the State of South Carolina (the “County”), and PROJECT QUATTRO, a [state] corporation (the “Company”). All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in the Lease Agreement (hereinafter defined).

### RECITALS

WHEREAS, pursuant to Lease and Financing Agreement dated as of November 1, 2004 (the “Lease Agreement”) between the County and the Company, County agreed to lease to the Company and the Company agreed to lease from the County the Fee Property;

WHEREAS, [memo of lease reference]; and

WHEREAS, the County and the Company desire to amend certain provisions of the Lease Agreement, [and the related memo], to extend the term thereof and modify the payment in lieu of ad valorem taxes payable by the Company thereunder during such extended term.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I AMENDMENTS

Section 1.1. The definition of “Term” in Article I is hereby amended and restated as follows:

“Term” shall mean the term of this Agreement which shall coincide with the maximum term of the fee in lieu of tax payment benefits provided under the Act. The maximum term of the fee in lieu of tax payment benefits provided under the Act is thirty (30) years for each Phase of the Project.

Section 1.2 Section 5.3 of the Lease Agreement is hereby amended and restated as follows:

The Issuer agrees to deliver to the Company sole and exclusive possession of the Project for thirty (30) years from the first day of the Tax Year immediately after the In-Service Date for each Phase of the Project, and the Company thereupon and thereafter shall have sole and exclusive possession of the Project during that period. This Agreement shall terminate upon the earliest to occur of (a) payment of the final installment of Fee Payments pursuant to Section 5.6(b), (b) exercise by the Company of its option to terminate pursuant to Section 11.1 hereof, and (c) exercise by the Company of its option to purchase pursuant to Section 11.5 hereof; but in no event shall the Company be relieved of its obligations under Section 5.4 of this

Agreement prior to the date when all of the Bonds shall have been fully paid and retired.

Section 1.3 The first sentence of Section 5.6(b)(iii) of the Lease Agreement is hereby amended and restated as follows:

Any asset becoming a part of the Project (other than Replacement Property) during the Fee Property Investment Period shall be included in the calculation of payments pursuant to paragraph (b)(i) above, for a period not exceeding thirty (30) years following the year in which the Phase in which such asset is included became a part of the Project.

Section 1.4 There shall be added a new Section 5.3(b)(v):

(v) Following the extension of the Term from twenty (20) years to thirty (30) years provided for by this Amendment, the Fee Payments shall be recalculated using a discount rate of 4.6 percent per annum.

Section 1.5 [corresponding amendment to memo]

## ARTICLE II MISCELLANEOUS

Section 2.1. This Amendment shall be effective from the date first above written.

Section 2.2. Except as specifically amended hereby, the Lease Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need to be made in the Lease Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Lease Agreement, any reference in any of such items to the Lease Agreement being sufficient to refer the Lease Agreement as amended hereby. The County and the Company confirm all their respective representations and covenants made under the Lease Agreement as if made on the date of this Amendment.

Section 2.3. This Amendment [and/or related memo] may be recorded in the office Richland County Register of Deeds, or in such other office as may be at the time provided by law as the proper place for such recordation.

Section 2.4. This Amendment shall be governed by South Carolina law.

This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the date 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

WITNESSES:

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

[Signature Page of the County]

[Signature Page of the Company Follows]

PROJECT QUATTRO

[SEAL]

ATTEST:

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

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

[Signature Page of the Company]



**EXHIBIT D**

**FORM OF FIRST AMENDMENT TO FEE AGREEMENT (2013 EXTENSION)**

## FIRST AMENDMENT TO FEE AGREEMENT

THIS FIRST AMENDMENT TO FEE AGREEMENT (this “Amendment”), dated as of \_\_\_\_\_, 2020, is made and entered into by and between RICHLAND COUNTY, SOUTH CAROLINA, a public body corporate and a political subdivision of the State of South Carolina (the “County”), and PROJECT QUATTRO, a [state] corporation (the “Company”). All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in the Fee Agreement (hereinafter defined).

### RECITALS

WHEREAS, the County and the Company entered into a Fee Agreement dated as of December 31, 2013 (the “Fee Agreement”);

WHEREAS, the County and the Company desire to amend certain provisions of the Fee Agreement to extend the term thereof.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I AMENDMENTS

Section 1.1. Section 4.1 of the Fee Agreement is hereby amended and restated as follows:

Subject to the provisions herein, this Fee Agreement shall be and remain in full force and effect for a term (the “Term”) commencing on the Commencement Date, and, unless earlier terminated in accordance with this Fee Agreement, ending at midnight on December 31 of the fortieth (40th) year after the last year during which any portion of the Project is placed in service or the last FILOT Payment hereunder, whichever is later.

### ARTICLE II MISCELLANEOUS

Section 2.1. This Amendment shall be effective from the date first above written.

Section 2.2. Except as specifically amended hereby, the Fee Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need to be made in the Fee Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Fee Agreement, any reference in any of such items to the Fee Agreement being sufficient to refer the Fee Agreement as amended hereby. The County and the Company confirm all their respective representations and covenants made under the Fee Agreement as if made on the date of this Amendment.

Section 2.3. This Amendment shall be governed by South Carolina law.

This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the date 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

WITNESSES:

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

[Signature Page of the County]

[Signature Page of the Company Follows]

PROJECT QUATTRO

[SEAL]

ATTEST:

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

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

[Signature Page of the Company]

**EXHIBIT E**

**FORM OF INFRASTRUCTURE CREDIT AGREEMENT**

---

**INFRASTRUCTURE CREDIT AGREEMENT**

**by and between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**PROJECT QUATTRO**

**Effective as of: [ \_\_\_\_\_ ]**

## INFRASTRUCTURE CREDIT AGREEMENT

This INFRASTRUCTURE CREDIT AGREEMENT, effective as of [DATE] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and Project Quattro, a [STATE] corporation (“Company” together with the County, “Parties,” each, a “Party”).

### W I T N E S S E T H :

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, the provisions of Title 4, Chapter 1 (the “Act”) of the Code of Laws of South Carolina, 1976, as amended (the “Code”), Title 4, Chapter 29 of the Code, Title 4, Chapter 12 of the Code, and Title 12, Chapter 44 (collectively, “Acts”), to grant credits (“Infrastructure Credit”) against fees-in-lieu of ad valorem property taxes (“Fee Payments”) 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, Company owns and operates a manufacturing facility (the “Facility”) located in the County, and desires to expand the Facility through new investment of approximately \$175 million in taxable real and personal property (the “Project”);

WHEREAS, the County has approved the execution of a Fee-in-Lieu of Ad Valorem Taxes and Incentive Agreement with the Company related to a portion of the Project (the “New Fee Agreement”);

WHEREAS, the County and Company are parties to a Lease Purchase Agreement dated as of December 1, 1991, as amended by a First Amendment to Lease Purchase Agreement dated as of May 1, 2010 and a Second Amendment to Lease Purchase Agreement dated as of [Month, Day], 2020 (the “1991 Lease Agreement”);

WHEREAS, the County and Company are parties to a Lease and Financing Agreement dated as of November 1, 2004, as amended by the First Amendment to Lease and Financing Agreement dated as of [Month, Day], 2020 (the “2004 Lease Agreement”);

WHEREAS, the County and Company are parties to a Fee Agreement dated as of December 31, 2013, as amended by the First Amendment to Fee Agreement dated as of [Month, Day], 2020 (the “2013 Fee Agreement”, and together with the 1991 Lease Agreement and the 2004 Lease Agreement the “Existing Fee Agreements”);

WHEREAS, the Company makes certain Fee Payments on property that is located in the Park but not subject to the Existing Fee Agreements (the “Park Property”);

WHEREAS, as inducement to maintaining the Facility and further investing in the Facility through the Project, through any combination of the following: additions and/or improvements to infrastructure, the construction of one or more new buildings, investment involving one or more existing buildings,



and/or the addition of machinery and equipment at the Facility the Company has requested the County provide Infrastructure Credits against the Fee Payments derived from the Existing Fee Agreements and the Park Property;

WHEREAS, by an ordinance enacted on [DATE] (“Ordinance”), the County authorized the execution and delivery of this Agreement to provide Infrastructure Credits against the Company’s Fee Payments with respect to the Existing Fee Agreements and the Park Property 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 Acts 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 Acts 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; and

(e) Based on representations made by the Company to the County, the County has determined the Facility, the Project, and the Infrastructure will directly and substantially benefit the general public welfare of the County by providing the retention of jobs and employment; the increase of the ad valorem tax base; and other public benefits, including 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 [STATE], 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, as defined below, for 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 \$55,000,000 in taxable real and personal 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 December 31, 2023 (“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. Infrastructure Credits.**

(a) To assist in paying for costs of Infrastructure, the County shall provide Infrastructure Credits against certain of the Company’s Fee Payments due with respect to the Facility. The term, amount and calculation of the Infrastructure Credits is described in Exhibit A.

(b) For each property tax year in which the Company is entitled to Infrastructure Credits (“Credit Term”), the County shall prepare and issue the Company’s annual bill with respect to the Facility net of the Infrastructure Credits set forth in Section 2.2 (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 ACTS 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 2.3. Clawback.** If the Company fails to meet the Investment Commitment by the Certification Date, then the Company shall be required to pay the Repayment Amount and future credits shall be reduced by the Claw Back Percentage.

**Repayment Amount = Total Received x Claw Back Percentage**

**Claw Back Percentage = 100% - Investment Achievement Percentage**

**Investment Achievement Percentage = Actual Investment Achieved / Investment Commitment**

In calculating the investment achievement percentage, only the investment made up to the Investment Commitment will be counted.

*For example, and by way of example only, if the County granted \$1,000,000 in Infrastructure Credits, and \$44,000,000 had been invested at the Project by the Certification Date, the Repayment Amount would be calculated as follows:*

*Investment Achievement Percentage = \$44,000,000/\$55,000,000 = 80%*

*Claw Back Percentage = 100% - 80% = 20%*

*Repayment Amount = \$1,000,000 x 20% = \$200,000*

*Future credits would be reduced by 20%.*

The Sponsor shall pay any amounts described in or calculated pursuant to this Section 2.3 within 30 days of receipt of a written statement from the County. If not timely paid by the Sponsor, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Section 2.3 survives termination of this Fee Agreement.

**Section 2.4. 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 subject to the Existing Fee Agreement, Park Property, and New Fee Agreement. Additionally, the Company shall, on or before January 31 of each year during the Credit Term, commencing in January 31, 2021, 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 B, as may be amended by subsequent resolution, with respect to the Company.

**Section 2.5 Cumulative Infrastructure Credits.** 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 Facility 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 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 Facility and have access to and examine the Company's books and records relating to the Facility for the purposes of (i) identifying the Facility; (ii) confirming achievement of the Investment 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: Emily Luther  
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:

Project Quattro  
[ ]

with a copy to

Burr & Forman LLP  
Attn: Erik Doerring  
1221 Main Street, Suite 1800 (29201)  
Post Office Box 11390  
Columbia, South Carolina 29211  
Phone: 803.799.9800  
Fax: 803.753.3278

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 \$2,500. 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 Facility 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:

\_\_\_\_\_  
Clerk to Council, Richland County Council

*[SIGNATURE PAGE 1 TO INFRASTRUCTURE CREDIT AGREEMENT]*

IN WITNESS WHEREOF, PROJECT QUATTRO, has caused this Agreement to be executed by its authorized officer(s), effective the day and year first above written.

**PROJECT QUATTRO**

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

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

Its: \_\_\_\_\_

*[SIGNATURE PAGE 2 TO INFRASTRUCTURE CREDIT AGREEMENT]*

**EXHIBIT A (See Section 2.1)**

**DESCRIPTION OF INFRASTRUCTURE CREDIT**

The County shall provide a ten percent (10%) Infrastructure Credit against the Fee Payments due and owing from the Company to the County under the Existing Fee Agreements and for other property located in the Park; provided the cumulative total amount of the Infrastructure Credit shall not exceed the Company's Infrastructure Costs. The Company's Infrastructure Costs shall include all Infrastructure Costs at the Facility, regardless of whether the Infrastructure Costs are made under or subject to the Existing Fee Agreements.

The Company is eligible to receive the Infrastructure Credit for a period of ten (10) consecutive years, beginning with the Fee Payments due on January 15, 2021 (the "Credit Term").

**EXHIBIT B (See Section 2.2)**

**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:**

Approving the transfer of certain property located in the Blythewood Business Park to Fairfield Electric Cooperative; and other related matters

**Notes:**

First Reading: May 19, 2020  
Second Reading: June 2, 2020  
Third Reading:  
Public Hearing: June 16, 2020

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**APPROVING THE TRANSFER OF CERTAIN PROPERTY LOCATED IN THE  
BLYTHEWOOD BUSINESS PARK TO FAIRFIELD ELECTRIC COOPERATIVE;  
AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”) owns certain real property in the County known as the Blythewood Business Park (“Park”);

WHEREAS, the County acquired the Park for the purpose of developing a Class A Business and Industrial Park in the County in order to attract businesses to the County thereby expanding the County’s tax base and creating and expanding the job opportunities within the County;

WHEREAS, Fairfield Electric Cooperative (“FEC”) is planning the installation of a substation in the Park to serve certain utility needs of the businesses locating or expected to locate in the Park;

WHEREAS, the County and FEC have negotiated the location of the substation in accordance with the County’s master plan for the development of the Park and desire for the substation to be located on the site as shown on the site plans attached hereto as Exhibit A (“Proposed Site”);

WHEREAS, due to the location and composition of the Proposed Site, including the location of certain streams and overhead transmission lines, the Proposed Site is otherwise unusable for any development and was identified as green space on the County’s master plan for the Park;

WHEREAS, the County desires to transfer the property to FEC for purposes of installing and constructing a substation to serve the Park; and

WHEREAS, pursuant to Title 4, Chapter 9 of the Code of Laws of South Carolina, 1976, as amended, the County, acting by and through its County Council (“County Council”), is authorized to transfer its interests in real property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL:

**Section 1. Findings.** County Council determines that the transfer of the Proposed Site is a proper governmental and public purpose, is anticipated to benefit the general public welfare of the County, and furthers the economic development of the County by providing a location for the installation of infrastructure that can serve business locating or expecting to locate in the County.

**Section 2. Approval of Transfer of Property.** County Council approves the transfer of the Proposed Site by the County to FEC subject to the terms and conditions of the Agreement for Right of Reversion, the form of which is attached hereto as Exhibit B, which permits the County, among other things, to rescind the transfer of the Proposed Site to FEC if FEC has not constructed and installed the substation on the Proposed Site by October 1, 2022. County Council authorizes the County Council Chair, the County Administrator, and the Director of Economic Development, as appropriate, to execute and deliver those documents that may be reasonably necessary to accomplish the transfer of the Proposed Site to FEC and evidence the conditions described in the foregoing sentence. Any actions taken in the name of the County prior to the effective date of this Ordinance with respect to the transfer of the Proposed Site are expressly ratified and confirmed.



**Section 3. Further Acts.** County Council authorizes the County Council Chair, the County Administrator, or the Director of Economic Development, as appropriate, following receipt of advice from counsel to the County, to take such further acts and negotiate, approve and execute whatever further instruments on behalf of the County as deemed necessary, desirable or appropriate to effect the transactions described in this Ordinance.

**Section 4. General Repealer.** Any ordinance, resolution, or other order of County Council, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 5. Effectiveness.** This Ordinance is effective after third reading and a public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

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Chairman of County Council

(SEAL)  
ATTEST:

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Clerk to County Council

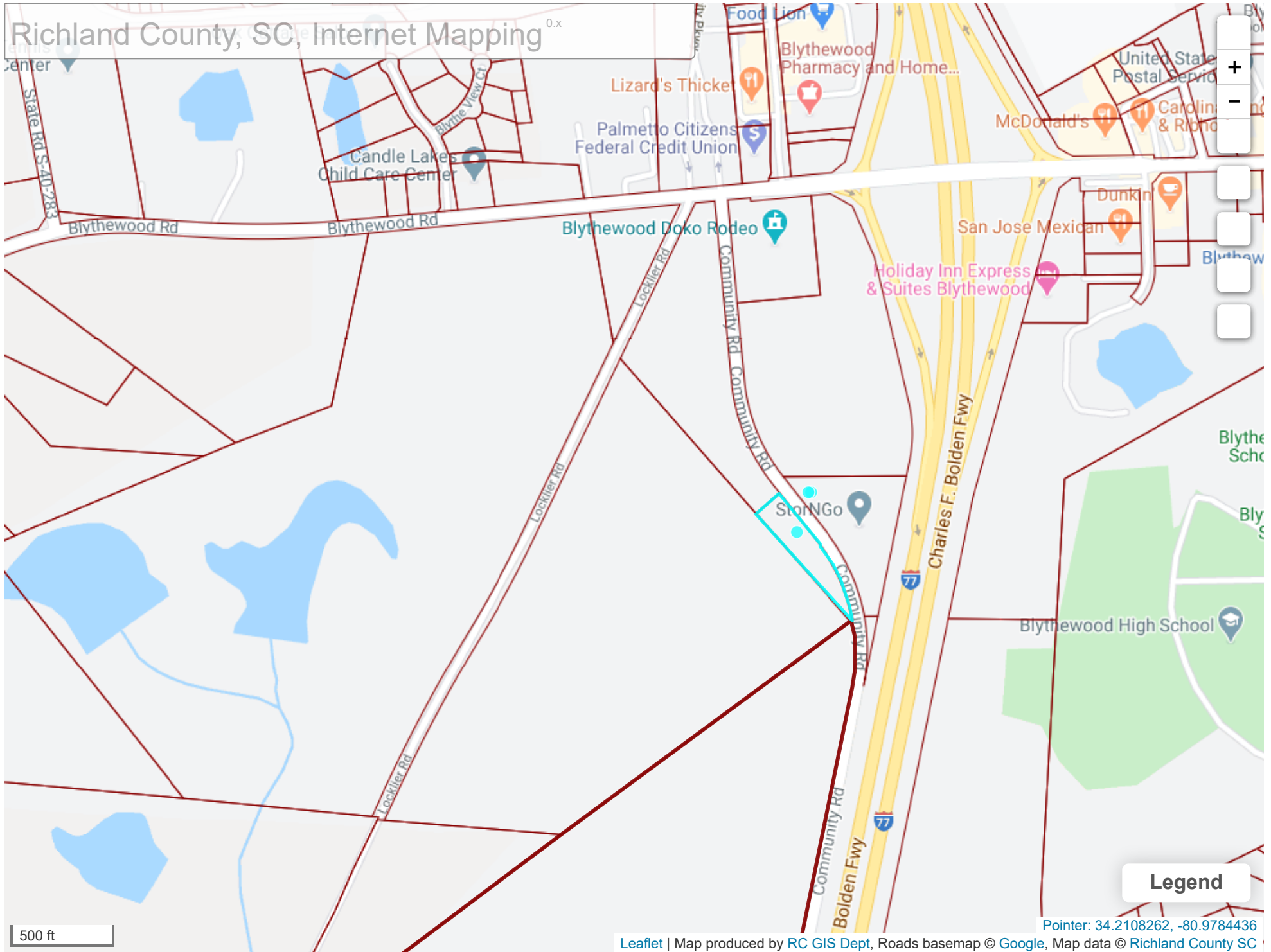
READINGS:

First Reading: May 19, 2020  
Second Reading: June 2, 2020  
Public Hearing: June 16, 2020  
Third Reading: August 31, 2020

**EXHIBIT A**

**PROPOSED SITE**

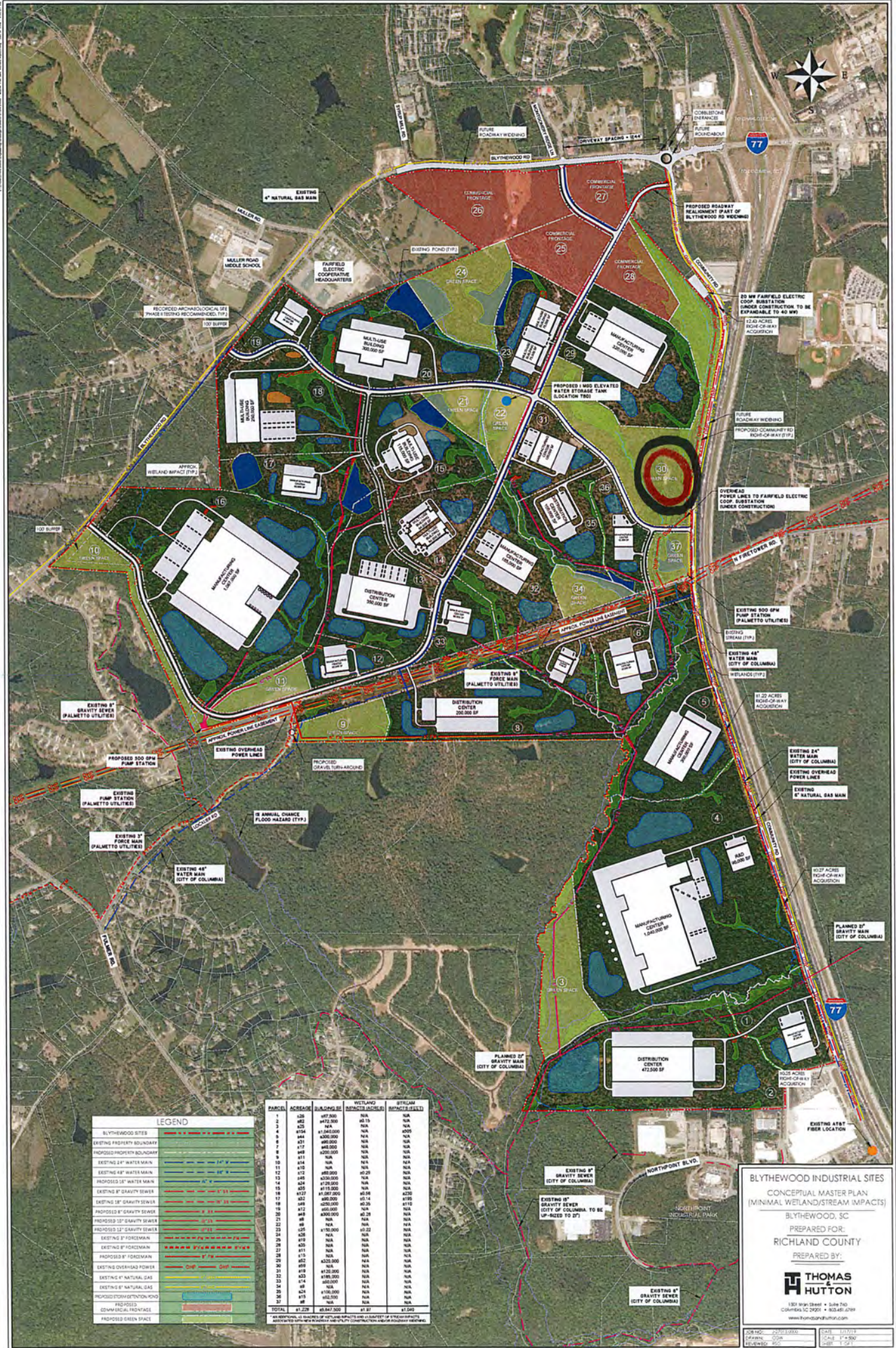
# Richland County, SC, Internet Mapping



Pointer: 34.2108262, -80.9784436

Leaflet | Map produced by RC GIS Dept, Roads basemap © Google, Map data © Richland County SC





**LEGEND**

- BLYTHEWOOD SITES
- EXISTING PROPERTY BOUNDARY
- PROPOSED PROPERTY BOUNDARY
- EXISTING 18" WATER MAIN
- EXISTING 48" WATER MAIN
- PROPOSED 18" WATER MAIN
- EXISTING 36" GRAVITY SEWER
- EXISTING 30" GRAVITY SEWER
- PROPOSED 36" GRAVITY SEWER
- PROPOSED 30" GRAVITY SEWER
- EXISTING 8" FORCE MAIN
- EXISTING OVERHEAD POWER
- EXISTING 4" NATURAL GAS
- EXISTING 8" NATURAL GAS
- PROPOSED 4" NATURAL GAS
- PROPOSED 8" NATURAL GAS
- PROPOSED COMMUNICATION FIBER
- PROPOSED COMMERCIAL FRONTAGE
- PROPOSED GREEN SPACE

PARCEL	ACRES	BUILDING SF	WETLAND SPACES (ACRES)	SPILLAGE SPACES (SQUARE FEET)
1	1.32	147,500	N/A	N/A
2	4.62	414,000	N/A	N/A
3	3.24	N/A	N/A	N/A
4	1.72	1,540,000	N/A	N/A
5	8.44	3,000,000	N/A	N/A
6	2.1	400,000	N/A	N/A
7	1.17	480,000	N/A	N/A
8	4.14	2,000,000	N/A	N/A
9	1.11	N/A	N/A	N/A
10	1.15	N/A	N/A	N/A
11	1.15	N/A	N/A	N/A
12	1.15	400,000	42.29	N/A
13	1.49	430,000	N/A	N/A
14	1.24	470,000	N/A	N/A
15	1.05	110,000	N/A	N/A
16	1.48	400,000	40.28	4275
17	1.62	480,000	41.14	4195
18	1.48	400,000	40.28	4275
19	1.17	480,000	N/A	N/A
20	1.17	480,000	N/A	N/A
21	1.17	480,000	N/A	N/A
22	1.17	480,000	N/A	N/A
23	1.17	480,000	N/A	N/A
24	1.17	480,000	N/A	N/A
25	1.17	480,000	N/A	N/A
26	1.17	480,000	N/A	N/A
27	1.17	480,000	N/A	N/A
28	1.17	480,000	N/A	N/A
29	1.17	480,000	N/A	N/A
30	1.17	480,000	N/A	N/A
31	1.17	480,000	N/A	N/A
32	1.17	480,000	N/A	N/A
33	1.17	480,000	N/A	N/A
34	1.17	480,000	N/A	N/A
35	1.17	480,000	N/A	N/A
36	1.17	480,000	N/A	N/A
37	1.17	480,000	N/A	N/A
38	1.17	480,000	N/A	N/A
39	1.17	480,000	N/A	N/A
40	1.17	480,000	N/A	N/A
TOTAL	41.228	40,847,000	41.87	81,580

**BLYTHEWOOD INDUSTRIAL SITES**  
 CONCEPTUAL MASTER PLAN  
 (MINIMAL WETLAND/STREAM IMPACTS)  
 BLYTHEWOOD, SC  
 PREPARED FOR:  
 RICHLAND COUNTY  
 PREPARED BY:  
**THOMAS HUTTON**  
 1331 W. 9th Street • Suite 105  
 Columbia, SC 29201 • 803.481.4789  
 www.thomashutton.com



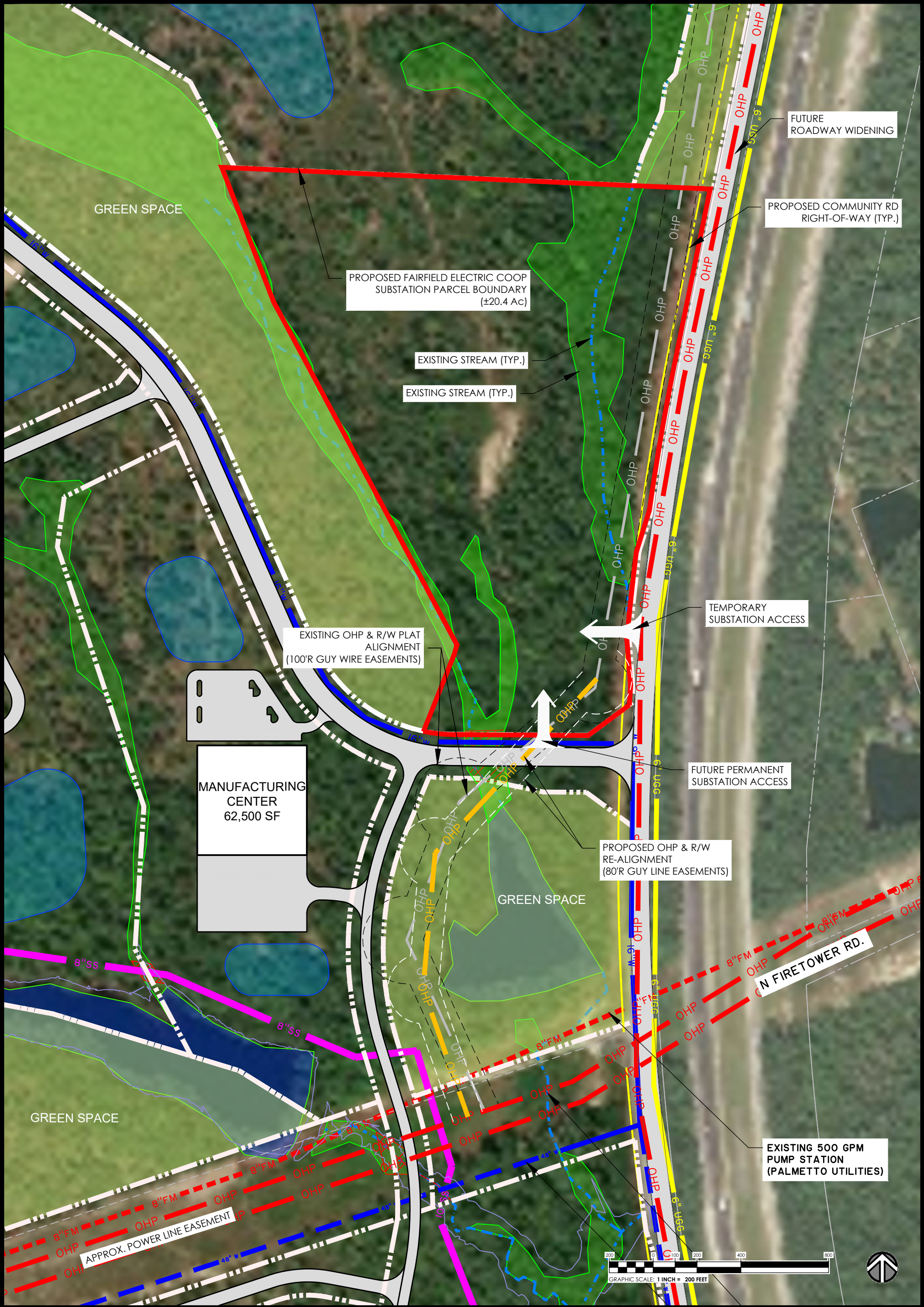
# Richland County, SC, Internet Mapping

- User Options:**
- Hide Info on Hover
  - Hide Legend
- Base Map Type:**
- Roadmap
  - Google
  - Imagery
  - Google Satellite
  - Hybrid (Combine Above)

- Richland County Layers:**
- Property:
    - Address Labels
    - Parcel Number Labels
    - Road Maintenance Authority
    - Parcels
    - Zoning
    - Subdivisions
    - Tax Districts
    - Garbage/Waste Collection
  - Boundaries:
    - County Boundary
    - Neighborhood Improvement Areas
    - Municipalities
    - Zip Codes
  - Public Safety:
    - Police Stations
    - Sheriff Regions
  - Civic:
    - Voting Locations
    - Voting Precincts
    - Council Districts
    - Magistrate Districts
    - SC Senate Districts
    - SC House Districts
    - US Congressional Districts
  - Education:
    - Library Locations
    - Public Schools
    - School Districts
  - Environmental:
    - Elevation:
      - Contours 10ft
      - Contours 2ft







PREPARED FOR:  
RICHLAND COUNTY

CONCEPTUAL UTILITY RE-ALIGNMENT FOR THE  
**PROPOSED FAIRFIELD ELECTRIC SUBSTATION SITE**  
FAIRFIELD COUNTY, SC

February 10, 2020

171 of 333



1501 Main Street • Suite 760  
Columbia, SC 29201 • 803.451.6789  
www.thomasandhutton.com

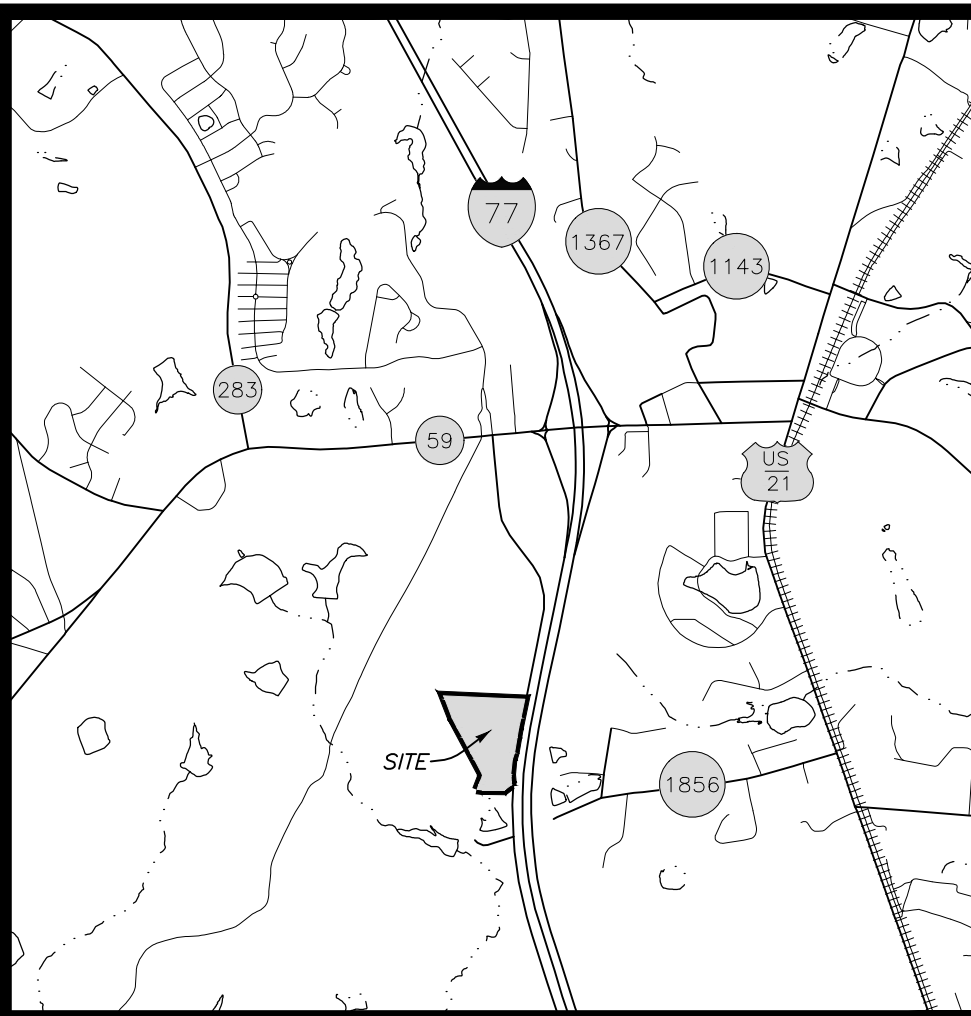
This map illustrates a general plan of the development which is for discussion purposes only, does not limit or bind the owner/developer, and is subject to change and revision without prior written notice to the holder. Dimensions, boundaries and position locations are for illustrative purposes only and are subject to an accurate survey and property description.

COPYRIGHT © 2019 THOMAS & HUTTON

GRAPHIC SCALE: 1 INCH = 200 FEET







LOCATION SKETCH  
SCALE: 1 INCH = 0.5 MILE

**GEODETIC AND SC STATE GRID POINT DATA**

HORIZONTAL DATUM: NAD83 (2011)  
VERTICAL DATUM: NAVD 88

POINT NUMBER: 1178  
SC GRID COORDINATES  
NORTH: 861,270.15'  
EAST: 2,003,559.84'  
GEODETIC COORDINATES:  
LATITUDE: N 34°12'01.92046"  
LONGITUDE: W 80°59'17.61198"

POINT NUMBER: 1201  
SC GRID COORDINATES  
NORTH: 862,506.12'  
EAST: 2,004,213.72'  
GEODETIC COORDINATES:  
LATITUDE: N 34°12'14.14786"  
LONGITUDE: W 80°59'09.82410"

COORDINATE DERIVATION: GNSS  
COMBINED REDUCTION FACTOR: 0.99981864  
MEASUREMENTS SHOWN ARE FIELD SURVEY DISTANCES.

BENCHMARK REFERENCE: BM SHARPE  
PID: EC2934  
GEODETIC COORDINATES:  
LATITUDE: N 34°12'35.15483"  
LONGITUDE: W 81°00'12.39569"  
SC GRID COORDINATES  
NORTH: 864,629.2870'  
EAST: 1,998,958.1248'  
ELEVATION: 546.10'

NOTE: THIS TIE DATA TO BE USED FOR LOCATION ONLY.

ACREAGE TOTALS	
TRACT "1":	14.50 ACRES
TRACT "2":	5.93 ACRES
TOTAL ACREAGE:	20.43 ACRES

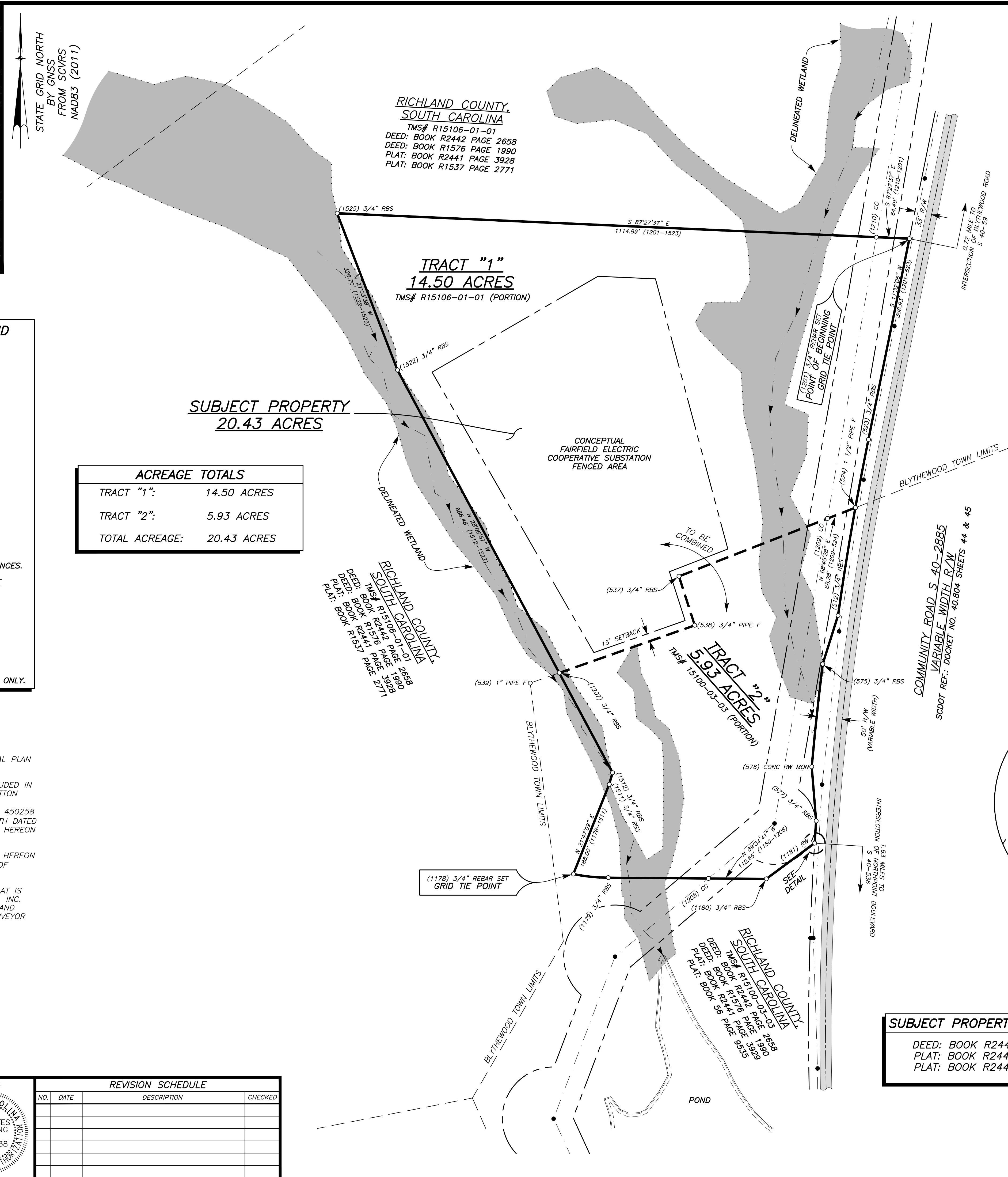
- NOTES:
1. THE SUBJECT PROPERTY SHOWN HEREON IS INCORPORATED INTO AN OVERALL CONCEPTUAL PLAN UNDER CURRENT REVIEW.
  2. DELINEATED WETLANDS SHOWN HEREON INCLUDED IN DRAWING FILES PROVIDED BY THOMAS & HUTTON
  3. ACCORDING TO F.I.R.M. COMMUNITY PANEL # 450258 0128 L, AND PANEL # 450170 0128 L, BOTH DATED DECEMBER 21, 2017 THE PROPERTY SHOWN HEREON IS NOT IN A SPECIAL FLOOD HAZARD ZONE.
  4. PORTIONS OF THE PROPERTY, BEING SHOWN HEREON AS TRACT "1", ARE LOCATED IN THE TOWN OF BLYTHEWOOD.
  5. NO PRINT OR ELECTRONIC COPY OF THIS PLAT IS CERTIFIED BY GLENN ASSOCIATES SURVEYING, INC. UNLESS IT BEARS THE ORIGINAL SIGNATURE AND IMPRESSION SEAL OF THE RESPONSIBLE SURVEYOR SHOWN HEREON.



DRAWING BY PARKER D. LESLIE

SURVEYOR'S SEAL PARKER D. LESLIE	SURVEYOR'S SEAL MICHAEL R. MILLS	C.O.A. SEAL GLENN ASSOCIATES SURVEYING, INC. No. C02238
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REVISION SCHEDULE			
NO.	DATE	DESCRIPTION	CHECKED

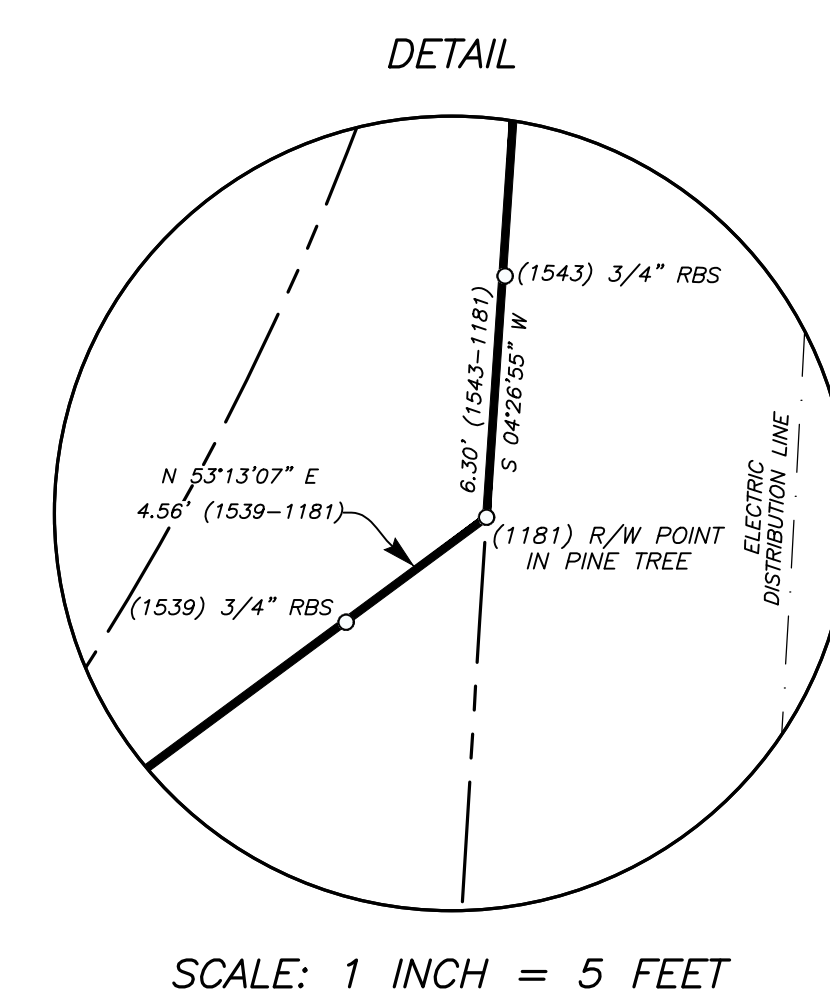


CURVE TABLE				
PT-PT	CHORD	DELTA	RADIUS	L-ARC
523-524	S 10°51'50" W 134.98'	00°58'47" LT.	7,893.78'	134.98'
524-512	S 09°08'13" W 212.43'	02°06'43" LT.	5,763.10'	212.44'
575-576	S 06°07'00" W 200.91'	01°59'30" LT.	5,780.10'	200.92'
577-1181	S 03°52'07" W 43.40'	00°25'53" LT.	5,762.98'	43.40'
1179-1178	N 84°00'02" W 68.17'	11°09'31" RT.	350.57'	68.28'

SUBJECT PROPERTY 20.43 ACRES		
PT-PT	BEARING	DISTANCE
1201-523	S 11°32'06" W	398.93'
523-524	SEE CURVE TABLE	
524-512	SEE CURVE TABLE	
512-575	S 17°28'59" W	99.01'
575-576	SEE CURVE TABLE	
576-577	S 04°38'54" E	105.74'
577-1181	SEE CURVE TABLE	
1181-1180	S 53°33'19" W	117.03'
1180-1179	N 89°34'41" W	307.61'
1179-1178	SEE CURVE TABLE	
1178-1511	N 21°47'09" E	188.00'
1511-1512	N 16°10'06" E	23.43'
1512-1207	N 28°06'57" W	220.33'
1207-1522	N 28°06'57" W	668.15'
1522-1525	N 21°03'38" W	326.70'
1525-1201	S 87°27'37" E	1,114.89'

TRACT "1" 14.50 ACRES		
PT-PT	BEARING	DISTANCE
1201-523	S 11°32'06" W	398.93'
523-524	SEE CURVE TABLE	
524-512	SEE CURVE TABLE	
512-575	S 17°28'59" W	99.01'
575-576	SEE CURVE TABLE	
576-577	S 04°38'54" E	105.74'
577-1181	SEE CURVE TABLE	
1181-1180	S 53°33'19" W	117.03'
1180-1179	N 89°34'41" W	307.61'
1179-1178	SEE CURVE TABLE	
1178-1511	N 21°47'09" E	188.00'
1511-1512	N 16°10'06" E	23.43'
1512-1207	N 28°06'57" W	220.33'
1207-1522	N 28°06'57" W	668.15'
1522-1525	N 21°03'38" W	326.70'
1525-1201	S 87°27'37" E	1,114.89'

TRACT "2" 5.93 ACRES		
PT-PT	BEARING	DISTANCE
524-512	SEE CURVE TABLE	
512-575	S 17°28'59" W	99.01'
575-576	SEE CURVE TABLE	
576-577	S 04°38'54" E	105.74'
577-1181	SEE CURVE TABLE	
1181-1180	S 53°33'19" W	117.03'
1180-1179	N 89°34'41" W	307.61'
1179-1178	SEE CURVE TABLE	
1178-1511	N 21°47'09" E	188.00'
1511-1512	N 16°10'06" E	23.43'
1512-1207	N 28°06'57" W	220.33'
1207-538	N 70°38'45" E	279.45'
538-537	N 17°48'57" W	100.10'
537-524	N 68°45'31" E	368.30'



LEGEND	
—	PROPERTY LINE
- - -	ADJOINING PROPERTY LINE
—+—	OVERHEAD ELECTRIC LINE
—+—+—	CENTERLINE
- - - - -	RIGHT-OF-WAY
.....	DELINEATED WETLAND
○	PROPERTY CORNER
●	GUY ANCHOR
⊙	POWER POLE
○	R/S REBAR SET
○	R/W RIGHT-OF-WAY
CC	COMPUTED CORNER

SUBJECT PROPERTY REFERENCES	
DEED:	BOOK R2442 PAGE 2658
PLAT:	BOOK R2441 PAGE 3928
PLAT:	BOOK R2441 PAGE 3929

ADMINISTRATIVE SUBDIVISION FOR  
**RICHLAND COUNTY, SOUTH CAROLINA**  
TO BE CONVEYED TO  
**FAIRFIELD ELECTRIC COOPERATIVE, INC.**  
LOCATED WITHIN THE TOWN OF BLYTHEWOOD  
AND RICHLAND COUNTY  
RICHLAND COUNTY, SOUTH CAROLINA  
JANUARY 10, 2019  
SCALE: 1 INCH = 100 FEET

0' 100' 200' 300' 400' 500' 600'

SURVEYED BY GLENN ASSOCIATES SURVEYING, INC.  
P.O. BOX 12 JENKINSVILLE, S.C. 29065 telephone (803) 345-5297

MICHAEL R. MILLS; S.C.P.L.S. # 11606  
I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.



**EXHIBIT B**

**FORM OF AGREEMENT FOR RIGHT OF REVERSION**

## AGREEMENT FOR RIGHT OF REVERSION

**THIS AGREEMENT** (“Agreement”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **Richland County, South Carolina**, a body politic and corporate and a political subdivision (the “**County**”) and **Fairfield Electric Cooperative, Inc.**, a South Carolina non-profit corporation (“**FEC**”).

### RECITALS

- A. Of even date herewith, the County conveyed to FEC that certain approximately 20.43 acre parcel of property more particularly described on **Exhibit A** attached hereto (the “**Property**”). Marketable title to the property was conveyed by Limited Warranty Deed.
- B. The Property was conveyed to FEC in consideration for FEC’s agreement to construct and operate an electrical substation and electrical plant on the Property (the “**Electrical Substation**”).
- C. FEC has agreed that, in the event that construction of the Electrical Substation is not commenced or completed in accordance with the terms of this Agreement, FEC will, at the option of the County, deed the Property back to the County.

NOW THEREFORE, in consideration of the conveyance by the County of the Property, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Covenant to Construct Electrical Substation.** FEC covenants to the County that it will construct and operate the Electrical Substation on the Property.
2. **Right of Reversion.** Subject to the terms set forth below, in the event that either (i) construction of the Electrical Substation has not commenced by April 1, 2021, or (ii) the Electrical Substation has not been completed in accordance with the Approved Plans (as defined below) by October 1, 2022 (either a “**Reversion Condition**”), then the County shall have the right to elect to rescind the transfer of the Property to FEC (the “**Right of Reversion**”) by sending written notice of such election to FEC (the “**Election Notice**”) within sixty (60) days of the date of occurrence of the Reversion Condition (the “**Election Period**”). Within ninety (90) days of delivery of the Election Notice hereunder, FEC shall deliver a warranty deed (the “**Reversion Deed**”), conveying marketable and insurable fee simple title to the Property to the County, free and clear of all liens and encumbrances, including without limitation the Mortgage (as defined below), and subject only to matters acceptable to the County, and the County shall be entitled to record the Reversion Deed in the Richland County, South Carolina Register of Deeds Office.
3. **Termination of Right of Reversion.** The right of reversion shall terminate and be null and void and of no effect whatsoever on the earlier of (x) completion of the Electrical Substation in accordance with the Approved Plans and (y) if the County does not send an Election Notice hereunder within the Election Period.
4. **Release of Mortgage Lien Prior to Conveyance Back to County.** The County acknowledges that, upon conveyance of the Property to FEC, the Property will be subject to FEC’s mortgage recorded in Richland County in favor of the United States of America Rural Utilities Service, the National Rural Utilities Cooperative Finance Corporation, and CoBank, ACB (the “**Mortgage**”). Upon receipt of an Election Notice, FEC shall obtain a recordable release of the Property from the Mortgage.
5. **Approval of Plans.** FEC covenants and agrees that, prior to commencement of construction of the Electrical Substation, it shall submit the construction plans to the County, acting through



8. **Modification.** This Agreement supersedes all prior discussions and agreements between the County and FEC with respect to the matters addressed herein, and contains the sole and entire understanding between the County and FEC with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the County and FEC.

9. **Applicable Law.** This Agreement shall be governed construed under and interpreted and enforced in accordance with the laws of the State of South Carolina and any litigation hereunder shall be conducted in state or federal court in South Carolina.

10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

11. **Time.** Time is and shall be of the essence of this Agreement.

*Signature page to follow.*

Executed and delivered to be effective as of the date set forth above.

**WITNESSES**

**FEC:**

**Fairfield Electric Cooperative, Inc., a South Carolina  
nonprofit corporation**

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

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTY:**

**RICHLAND COUNTY, SOUTH CAROLINA**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY**

All those certain pieces, parcels and tracts of land, located in Richland County, South Carolina, being shown as **Subject Property (20.43 acres)** on that certain plat entitled “Administrative Subdivision for Richland County, South Carolina to be conveyed to Fairfield Electric Cooperative, Inc.” by Michael R. Mills, S.C.P.L.S. # 11606 with Glenn Associates Surveying, Inc., No. C02238, dated January 10, 2019 and recorded in the Richland County ROD Office on \_\_\_\_\_ in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_. All metes, bounds, courses and distances being as more particularly shown on the Plat.

P/O TMS # R15106-01-01

P/O TMS # R15100-03-03

## Richland County Council Request for Action

**Subject:**

Little Jackson Creek Up-Ditch Work Authorization Award

**Notes:**

July 28, 2020 – The A&F Committee recommended to approve Work Authorization No 10 (Scope Amendment) for additional consultant services for the Little Jackson Creek Up-Ditch Hazard Mitigation Grant Project (HMGP) in the amount of \$127,853.



**Agenda Briefing**

**Prepared by:** Synithia Williams, Stormwater Manager  
**Department:** Public Works – Stormwater Management  
**Date Prepared:** July 7, 2020 **Meeting Date:** July 28, 2020

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	July 15, 2020
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	July 14, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 14, 2020
<b>Procurement Review:</b>	Jennifer Wladischkin via email	<b>Date:</b>	July 14, 2020
<b>Approved for Consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	

**Committee** Administration & Finance  
**Subject:** Little Jackson Creek Up-Ditch – WK Dickson Scope Amendment

**Recommended Action:**

Staff recommends approval of Work Authorization No 10 (Scope Amendment) for additional consultant services for the Little Jackson Creek Up-Ditch Hazard Mitigation Grant Project (HMGP) in the amount of \$127,853.

**Motion Requested:**

I move to approve Work Authorization No 10 from WK Dickson for additional consultant services for the Little Jackson Creek Up-Ditch Hazard Mitigation Grant Project (HMGP) in the amount of \$127,853.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

The Department of Public Works Stormwater Management Division currently has a Hazard Mitigation Grant 4241-DR in the amount of \$904,487 for the construction of the HMPG project. The Stormwater Management Division has funding in the Professional Services Capital account (1208302200-530700) in their FY-21 Budget which can be used to cover the cost of this Work Authorization.

**Motion of Origin:**

This action did not originate with a Council Motion; however, it reflects previous Council actions related to this Grant-funded project.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	



### Discussion:

The Department of Public Works, Stormwater Management Division, applied for and was awarded funds through the Hazard Mitigation Grant Program (HMGP) 4241-DR for a project to stabilize and reduce erosion of the large drainage ditch that runs parallel to the Railroad Right-of-Way between Two Notch Road and the Spring Valley Neighborhood. FEMA awarded the HMGP grant for the construction of this project on April 10, 2019. The estimated project cost is \$904,487 to be cost shared (\$678,365 – Federal and \$226,121 – Local). The local share is allocated from Community Development Block Grant-Disaster Recovery (CDBG-DR) grant funds.

Since the application and award for the grant, CSX railroad built a retaining wall within the up-ditch area. The location of the retaining wall is within the County's proposed project area. The wall is currently failing and would undermine any future work completed in the up-ditch area. Because there has been excessive erosion in the ditch since the original grant application and design and with the addition of a retaining wall, the design plans require revision to account for the change in field conditions. An exhibit showing the project area is attached.

The Stormwater Management Division requested a scope amendment from WK Dickson to update topographic survey, design analyses, and engineering drawings to reflect current field conditions of the Up-Ditch and surrounding project site. Revised plans will be needed to secure all necessary permits, approvals from regulatory agencies, and CSX Railroad. The Consultant will also prepare construction documents and support the County through the construction bid process, and will provide construction observation and documentation. A copy of the Work Authorization is attached.

### Attachments:

1. Project area exhibit
2. WK Dickson Work Authorization 10

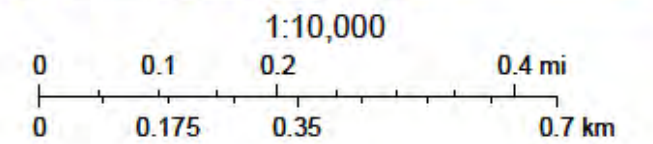


# Viewer Map



June 5, 2018

-  Parcels
-  Streams
- NWI Inventory**
  -  FORESTED WETLAND
  -  NON-FORESTED WETLAND
- FEMA Flood Zones**
  -  100 Year
-  Floodway
-  500 Year
- FEMA Firm Panels**
  -  12/21/2017



Richland County  
Richland County & Woolpert



**WORK AUTHORIZATION NO. 10****PROFESSIONAL ENGINEERING SERVICES FOR  
UPDATED DESIGN, PERMITTING AND CONSTRUCTION SUPPORT  
FOR STORMWATER CONTROL STRUCTURES  
ON THE UP-DITCH  
RICHLAND COUNTY, SC****June 8, 2020****SUMMARY**

The Up Ditch receives and conveys storm flows from the Spring Valley drainage area and much of the highly developed watershed south of Two Notch Road. Flows are collected and conveyed under Two Notch Road through existing Richland County stormwater infrastructure. The absence of functioning Stormwater Control Measures (SCM) in the contributing drainage areas results in flashy, high velocity flows that have persistently eroded the Up Ditch. Eroded sediments and stormwater pollutants have historically been transported downstream to Little Jackson Creek. A section of Little Jackson Creek was recently restored to provide compensatory mitigation for permitted impacts from the Owens Field Project. Additional work was performed on the lower section of the Up Ditch adjacent to the mitigation site.

Through a subsequent work authorization, WK Dickson developed engineered drawings for Stormwater Control Measures (SCM) in adjacent upstream reaches of the Up Ditch. The design plans called for installation of a Regenerative Stormwater Conveyance System (RSC) to stabilize the eroding ditch and provide some water quality treatment for urban stormwater delivered to the ditch. Construction of the project was delayed but Richland County is now ready to proceed to the construction phase.

The original design was predicated on topographic surveys performed in early 2013 and engineering analyses completed shortly thereafter. The hydraulic geometry of the ditch and other project site conditions have changed in the ensuing years such that updated survey and analyses are needed to ensure successful project outcomes. The final design and construction drawings will be changed as needed based on the new data.

**PURPOSE**

The purpose of the work is to update topographic survey, design analyses and engineered drawings to comport with current conditions of the Up Ditch and surrounding project site. Revised plans will be used to secure all necessary permits and approvals from regulatory agencies and CSX, to prepare construction documents and support the County through the construction bid process, and to provide construction observation and documentation.

## **SCOPE OF SERVICES**

WK Dickson proposes to prosecute the work according to the tasks outlined below. Note that the tasks are not listed sequentially and work will proceed on multiple tasks simultaneously.

### **Task 1: Field Data Collection**

- 1.1 Survey: topographic data will be collected, reduced and processed to depict current physical conditions and planimetric features at the project site. Representative cross sections will be measured as directed by the engineer to support hydraulics modelling.
- 1.2 Bank Erosion data: a general reconnaissance of the site will be conducted to identify areas of apparent recent and/or severe erosion; field measurements required for channel erosion analytical tools will be collected and reduced.

### **Task 2: Design Analysis and Update Design Plans**

- 2.1 Numeric simulations of hydraulic processes: the hydraulics model will be re-run using updated topography. Results will be used to determine design parameters including, but not limited to, proposed hydraulic geometry, materials specifications, and other design parameters. Results may also be used to secure regulatory approvals.
- 2.2 Design plans will be revised as needed to ensure a stable channel design for the Regenerative Stormwater Conveyance. Work will include, but is not limited to, proposed grading, typical cross sections and profile views for the RSC. Typical details will also be revised as needed.

**Deliverable:** A Technical Memorandum describing significant plan updates will be submitted to the County for review and comment. Included with the Technical Memorandum will be a set of draft plans, sections, profiles and details. Two hardcopies and an electronic file will be submitted for review.

- 2.3 This task includes one (1) round of plan revisions in response to comments from Richland County. WK Dickson will prepare a memorandum to document any such plan revisions and work with the County to address all design issues.

### **Task 3: Prepare Final Design Plans**

- 3.1 WK Dickson will prepare final design plans and construction documents to include: geometric layout, sections, profiles, details, notes, specifications, special provisions, quantity estimates, construction sequencing, and engineer's estimate of probable construction cost.

**Deliverable:** Final design plans (90%) will be submitted to the County. Three hardcopies and an electronic file will be submitted for review.

- 3.2 This task includes one (1) round of revisions to the final design plans and construction documents in response to comments from Richland County. WK Dickson will prepare a memorandum to document any such plan revisions and work with the County to address all design issues.

### **Task 4: FEMA Grant Support**

- 4.1 Update erosion model: WK Dickson will update the erosion analysis using new data collected pursuant to Task 1.2.

**Deliverable:** A Technical Memorandum will be submitted to describe the findings of the updated erosion model. The memorandum will include a brief summary of methods and appropriate graphics.

- 4.2 Miscellaneous grant support: WK Dickson will provide other support as requested by Richland County, up to and including participation in one (1) conference call or video conference and preparation of one (1) additional supporting document.

Task 5: Permitting and Regulatory Compliance

- 5.1 Clean Water Act 401/404 Permitting: WK Dickson will field delineate potentially regulated wetlands and waters within the project area, assemble related documentation and seek a Preliminary Jurisdictional Determination from the U.S. Army Corps of Engineers (USACE). This task includes one site visit with the USACE.
- 5.2 Update Stormwater Pollution Prevention Plan (C-SWPPP): WK Dickson will update the design of erosion control measures that minimize erosion and prevent off-site sedimentation during construction of the Project. The design will be in accordance with the requirements of the South Carolina Department of Health and Environmental Control (SCDHEC), Storm Water Management BMP Field Manual. The CONSULTANT will prepare erosion control construction plans, calculations, and supporting documents and submit these for agency review.
- One (1) erosion control permit submittal will be prepared and submitted to SCDHEC upon completion of the 90% design drawings. Included in this task is one sufficiency response after review by the agency. It is assumed that one response to completeness summaries will be sufficient to satisfy requests for unique additional information to obtain permits, and are therefore, the basis of the negotiated permitting budget.
- 5.3 Update/revise SC Department of Transportation Encroachment Permit: The CONSULTANT will update the permit application for the temporary driveway access required for construction of the Project. The design will be in accordance with the requirements of the South Carolina Department of Transportation (SCDOT). WK Dickson will prepare plans, calculations, and supporting documents and submit these for agency review and approval for the project construction entrance.
- One (1) permit submittal will be prepared and submitted to SCDOT upon completion of the 90% design drawings. Included in this task is one sufficiency response after review by the above agency. It is assumed that one response to completeness summaries will be sufficient to satisfy requests for unique additional information to obtain permits, and are therefore, the basis of the negotiated permitting budget for the CONSULTANT.
- 5.4 Secure Construction Access From CSX: The Consultant will update forms and other supporting documents necessary to secure right of entry for construction from CSX. This task includes payment of CSX fee and time for Construction Observation staff to complete CSX's four (4) hour safety training, which is mandatory for all personnel working within the CSX right-of-way.

Task 6: Final Construction Documents and Bid Support

- 6.1 Final construction documents will be prepared that integrate all permit conditions and other agency requirements.
- 6.2 Previously prepared documents to support the County's construction bid process will be updated as needed. Such documents may include: advertising, RFI responses, preparation of addenda, and tabulating bid results.

Task 7: Construction Observation

- 7.1 WK Dickson will provide the following Construction Observation Services:
- Attend Pre-Construction Meeting, including field review of construction elements;
  - Weekly observation of construction improvements, including structures, obstruction

- removal, and other items;
- Prepare Weekly Construction Observation Reports;
- Attend Bi-Monthly Construction Meetings;
- Monitor Contractor's Project Schedule;
- Recommend and Conduct a Pre-Final Inspection;
- Assist in preparing Final Punch List.

### **ASSUMPTIONS**

1. No real estate services related to private landowners, such as landowner negotiations, easement acquisition or easement recordation are included in the scope of services.
2. This scope of services assumes that the Up Ditch will not be considered jurisdictional Waters of the United States (WOTUS) by the U.S. Army Corps of Engineers and therefore the project will not require Pre-construction Notification for a Nationwide Permit nor an Individual Permit. Consultant's Clean Water Act compliance services are therefore limited to application for a Preliminary Jurisdictional Determination. Should the U.S. Army Corps of Engineers determine that WOTUS are present, additional scope and fee for 404/401 permitting will be provided by CONSULTANT to the OWNER.
3. All permit review and agency fees shall be paid by the OWNER.
4. The CONSULTANT shall pay, on behalf of the OWNER, up to \$5,750.00 in fees required to obtain the Right of Entry Permit necessary to complete work within the portion of the project that is within the CSX Railroad right of way.

Note: fee quotes provided by CSX on 25 October 2019 and confirmed on 3 January 2020 were \$5,750.00. Based upon past experience working with railroads, we have allocated 28 man-hours for this task, which includes phone calls, meetings, and submittal of updated documents. Consultant does not guarantee or represent that a final easement agreement will be finalized within the allocated hours and that Consultant will not commit to extending their services for this task beyond the allotted man-hours without written authorization from Richland County for additional fees. In addition, CONSULTANT makes no representation regarding the timely processing by CSX of the Right-of-Entry request.

5. Construction administration (e.g. tracking/documenting material quantity/type for contractor invoicing and payment) will be completed by OWNER and is not included in this scope of services. Additional scope and fee for such services can be added upon request.
6. Construction will be completed within 95 calendar days from the pre-construction meeting.

### **BASIS OF COMPENSATION**

OWNER shall compensate CONSULTANT on a lump sum per task basis according to the table below. CONSULTANT shall invoice OWNER monthly based on the percentage of work completed for each task.

Task 1: Field Data Collection and Survey	\$15,540
Task 2: Design Analysis and Update Design Plans	\$21,140
Task 3: Prepare final design plans	\$9,925
Task 4: FEMA grant support	\$5,215
Task 5: Permitting and Regulatory Compliance	\$22,893
Task 6: Final Construction Documents and Bid Support	\$3,140
Task 7: Construction Observation	\$50,000
Work Authorization No. 10 Total:	\$127,853

Any additional work not described in the above scope of services will be performed at the written request by owner with compensation in accordance with to the WK Dickson rate schedule in effect at the time of such request.

Requested by:

Accepted by:

\_\_\_\_\_  
Leonardo Brown, MBA, CPM  
County Administrator  
Richland County, South Carolina

\_\_\_\_\_  
Brian L. Tripp, PE  
Vice President  
W. K. Dickson & Co., Inc.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Date \_\_\_\_\_

Date \_\_\_\_\_

# Richland County Council Request for Action

**Subject:**

Home Detention/Electronic Monitoring Services

**Notes:**

July 28, 2020 – The A&F Committee recommended to continue the electronic monitoring program and approve the award of a contract for home detention services to Offender Management Services.





**Agenda Briefing**

**Prepared by:** Jennifer Wladischkin, Procurement Manager

**Department:** Finance

**Date Prepared:** July 14, 2020

**Meeting Date:** July 28, 2020

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	July 22, 2020
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	July 21, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 22, 2020
<b>Alvin S. Glenn Detention Center Review:</b>	Ronaldo Myers via email	<b>Date:</b>	July 14, 2020
<b>Approved for Consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	
<b>Committee</b>	Administration & Finance		
<b>Subject:</b>	Home Detention Services		

**Recommended Action:**

If Council’s desire is to continue the electronic monitoring program, staff recommends awarding the contract for home detention services to Offender Management Services.

**Motion Requested:**

Move to continue the electronic monitoring program and approve the award of a contract for home detention services to Offender Management Services.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

The program is designed to be paid for by the detainee. In cases where the detainee has been declared indigent, the Alvin S. Glenn Detention Center pays the County rate for monitoring. However, the cost of the program continues to increase due to the number of reduced and waived fees to the detainees. In addition to indigent expenses, if a detainee stops payment of fees and the fees cannot be collected, the County is paying those fees as well. The detention center has been using surplus funds due to vacancy recovery to absorb the rising costs of the program; however there are concerns about the sustainability of this funding method. The electronic monitoring program has allowed the County to reduce the need to build additional housing units.

**Motion of Origin:**

“The County’s current contract with Offender Management Services be extended for an additional year and that the services be competitively procured in time for the service provider awarded the new contract to be in place before the expiration of the coming year.”

<b>Council Member</b>	Dalhi Myers, District 10
<b>Meeting</b>	Special Called Council Meeting
<b>Date</b>	October 15, 2019

### Discussion:

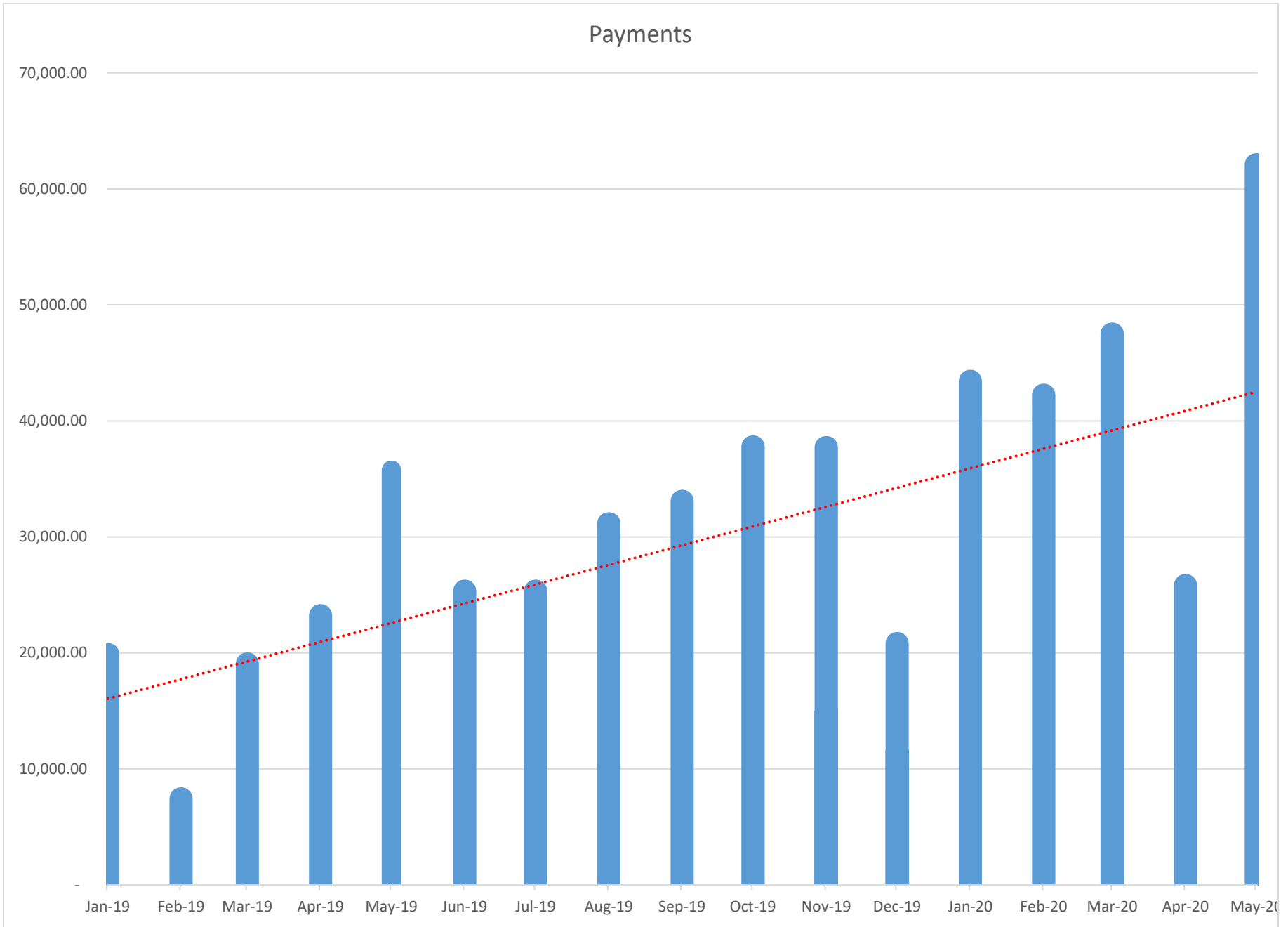
The Alvin S. Glenn Detention Center (ASGDC) is an essential part of the criminal justice system in Richland County. ASGDC serves as the intake center for unsentenced misdemeanor and/or felony detainees/inmates and as an incarceration facility for sentenced offenders. It provides facilities for the detention of both unsentenced detainees/inmates and sentenced inmates in a minimum, medium and maximum security environment. The County endorses an electronic home detention program, through its ordinance Chapter 1 Sec. 1-17 and pursuant to S.C. Code 1976, § 24-13-1530, in which such program may be used by the magistrates of Richland County as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders, as selected by the court as an alternative to incarceration.

A Request for Proposal was issued on April 29, 2019 and there were two submittals. An evaluation team comprised of various stakeholders evaluated the submittals and Offender Management Services was the highest ranked Offeror. Staff recommends award of a contract to Offender Management Services.

### Attachments:

1. Consolidated evaluation scoring
2. Chart- Payments for reduced/indigent fees

Consolidated Evaluations				
Evaluation Criteria RC-338-P-2020 Electronic Monitoring	Maximum Points	Corrective Solutions	Offender Management Services	
<b>Past Performance</b>	30			
Shane Kitchen		21	21	
Washava Moye		27	24	
Dan Goldberg		21	30	
William Bilton		18	24	
Fielding Pringle		18	18	
Steve Zurlo		21	18	
	<b>150</b>	<b>126</b>	<b>135</b>	
<b>Relevant Experience</b>	25			
Shane Kitchen		20	20	
Washava Moye		20	22.5	
Dan Goldberg		17.5	25	
William Bilton		15	22.5	
Fielding Pringle		15	15	
Steve Zurlo		20	17.5	
	<b>125</b>	<b>107.5</b>	<b>122.5</b>	
<b>Recent/Current Workload of the Firm</b>	25			
Shane Kitchen		20	20	
Washava Moye		20	20	
Dan Goldberg		17.5	25	
William Bilton		12.5	22.5	
Fielding Pringle		15	15	
Steve Zurlo		17.5	15	
	<b>125</b>	<b>102.5</b>	<b>117.5</b>	
<b>Cost Proposal</b>	20			
Shane Kitchen		16.3	20	
Washava Moye		16.3	20	
Dan Goldberg		16.3	20	
William Bilton		16.3	20	
Fielding Pringle		16.3	20	
Steve Zurlo		16.3	20	
	<b>100</b>	<b>97.8</b>	<b>120</b>	
<b>GRANDTOTAL</b>	<b>500</b>	<b>433.8</b>	<b>495</b>	



**A RESOLUTION**

**AUTHORIZING THE EXTENSION OF THE TERM OF THE FEE IN LIEU OF TAX AGREEMENT DATED AS OF SEPTEMBER 1, 1999, BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, AND CAROLINA CERAMICS, LLC.**

**WHEREAS**, pursuant to Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the "*Act*"), Richland County, South Carolina (the "*County*") and Carolina Ceramics, LLC. (the "*Company*") entered into a Fee in lieu of Tax Agreement dated as of September 1, 1999 ("*Fee Agreement*"), a copy of which is attached as Exhibit A, providing for a fee-in-lieu-of-tax arrangement with respect to the portion of the Company's manufacturing facilities located in the County comprising the Project, as more particularly defined in the Fee Agreement; and

**WHEREAS**, as required pursuant to the terms of the Act and the Fee Agreement, the Company committed to an investment of not less than \$8,000,000 in the Project, which commitment has been fulfilled and exceeded by the Company; and

**WHEREAS**, pursuant to the Fee Agreement, the benefits provided under the Fee Agreement with respect the economic development property comprising the Project will begin to terminate on December 31, 2020; and

**WHEREAS**, in accordance with Section 12-44-30(21) of the Act, the Company has made timely application to the County for an extension of the term of the Fee Agreement for 10 years ("*Term Extension*");

**WHEREAS**, if granted, the Term Extension would allow the Company to continue to pay a Negotiated FILOT, as defined the Agreement, with respect to the Project; and

**WHEREAS**, the Company has represented to the County that approval of the Term Extension would assist the Company in maintaining the employees at the Project and implementing a repair and capital improvement program at the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of the County as follows:

1. **Statutory Findings.** County Council finds and determines that the Term Extension would provide a substantial public benefit by maintaining employment opportunities in the County and assisting the Company in making further taxable investments in the County.
2. **Extension of Fee Agreement.** Pursuant to Section 12-44-30(21) of the Act, the term of the Fee Agreement with respect to each portion of the Project placed in service during the Investment Period, as defined in and may have been extended pursuant to the Fee Agreement, is ten (10) years.
3. **Further Actions.** The Chair of County Council and the Clerk to County Council, or their designees, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the intent of this Resolution.
4. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Resolution shall be held invalid or unenforceable by any court of competent

jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Resolution.

5. **All Other Provisions to Remain in Effect.** All other terms and conditions of the Fee Agreement not amended or modified hereby, either directly or, necessarily, indirectly, shall remain in full force and effect.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have meanings defined in the Fee Agreement.

ADOPTED the \_\_\_\_\_ day of August, 2020

RICHLAND COUNTY, SOUTH CAROLINA

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

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Clerk to County Council  
Richland County, South Carolina

**EXHIBIT A**

**FEE IN LIEU OF TAX AGREEMENT**

[see attached]



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**FEE IN LIEU OF TAX AGREEMENT**

**between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**CAROLINA CERAMICS, LLC**

**Dated as of September 1, 1999**

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**TABLE OF CONTENTS**

<u>Section</u>	<u>Page</u>
Recitals and Parties to Agreement .....	1

**ARTICLE I**

**DEFINITIONS**

1.01. Definitions .....	3
1.02. References to Agreement .....	7

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES**

2.01. Representations and Warranties by County .....	8
2.02. Representations and Warranties by Company .....	8

**ARTICLE III**

**UNDERTAKINGS OF COUNTY**

3.01. Agreement to Accept FILOT Payments .....	10
3.02. No Warranties by County .....	10
3.03. Execution of Lease .....	10

**ARTICLE IV**

**INVESTMENT BY COMPANY IN PROJECT;  
MAINTENANCE AND MODIFICATION OF PROJECT**

4.01. Acquisition by Construction and Purchase of Project .....	11
4.02. Maintenance of Project .....	11
4.03. Modification of Project .....	11
4.04. Records and Reports .....	11

**ARTICLE V**

**PAYMENTS IN LIEU OF TAXES;  
FUNDING FOR INFRASTRUCTURE PROJECT**

5.01. Payments in Lieu of Taxes .....	13
5.02. Application of FILOT Revenues by County .....	15

**ARTICLE VI**

**PAYMENT OF EXPENSES BY COMPANY**

6.01. Payment of Administration Expenses ..... 16  
6.02. Insurance ..... 16  
6.03. Defaulted Payments ..... 16

**ARTICLE VII**

**CASUALTY AND CONDEMNATION**

7.01. Damage and Destruction ..... 17  
7.02. Condemnation ..... 17  
7.03. Adjustments in the Event of Damage and  
Destruction or Condemnation ..... 17

**ARTICLE VIII**

**PARTICULAR COVENANTS AND AGREEMENTS**

8.01. Use of Project for Lawful Activities ..... 18  
8.02. Maintenance of Existence ..... 18  
8.03. Indemnification ..... 18

**ARTICLE IX**

**FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS**

9.01. Conveyance of Liens and Interests; Assignments ..... 20  
9.02. Access ..... 20  
9.03. Relative Rights of County and Financing Entities  
as Secured Parties ..... 20

**ARTICLE X**

**TERM; TERMINATION**

10.01. Term ..... 21  
10.02. Termination ..... 21

**ARTICLE XI**

**EVENTS OF DEFAULT AND REMEDIES**

11.01. Events of Default by Company ..... 22  
11.02. Remedies on Event of Default by Company ..... 22  
11.03. Application of Moneys Upon Enforcement of Remedies ..... 22  
11.04. Default by County ..... 23

**ARTICLE XII**

**MISCELLANEOUS**

12.01. Rights and Remedies Cumulative ..... 24  
12.02. Successors and Assigns ..... 24  
12.03. Notices; Demands; Requests ..... 24  
12.04. Applicable Law ..... 25  
12.05. Entire Understanding ..... 25  
12.06. Severability ..... 25  
12.07. Headings and Table of Contents; References ..... 25  
12.08. Multiple Counterparts ..... 25  
12.09. Amendments ..... 25  
12.10. Waiver ..... 25

EXHIBIT A - Land Description  
SCHEDULE A - Anticipated FILOT Payments

## FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (this "Agreement") dated as of September 1, 1999, by and between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and CAROLINA CERAMICS, LLC (the "Company"), a limited liability company organized and existing under the laws of the State of South Carolina.

### WITNESSETH:

WHEREAS, the Code of Laws of South Carolina, 1976 (the "Code"), and particularly Title 12, Chapter 44 thereof (as amended through the date hereof, the "Act") and Title 4, Chapter 1 (as amended through the date hereof, the "Multi-County Park Act"), in order to create jobs and promote prosperity within the State of South Carolina, empowers the several counties of the State of South Carolina to induce investors ("Project Sponsors") to acquire, enlarge, improve, and expand certain types of industrial and commercial property ("Economic Development Property") within their jurisdictional limits by: (i) entering into agreements with such Project Sponsors to provide that such Project Sponsors may make payments in lieu of *ad valorem* taxes ("FILOT Payments") with respect to Economic Development Property; and (ii) creating, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such Project Sponsor.

WHEREAS, the Company proposes to construct an expansion to its existing facilities for manufacturing bricks and other related products (the "Project"), which Project is to be owned and operated by the Company pursuant to this Agreement; and

WHEREAS, the parties have determined that the Company is a Project Sponsor and the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, to induce the Company to locate the Project in the County, the County heretofore entered into an Inducement and Millage Rate Agreement (the "Inducement Agreement") with the Company wherein the County approved FILOT Payments by the Company under the provisions of the Act; and

WHEREAS, the County authorized the foregoing actions to be taken on behalf of the Company pursuant to that certain Ordinance enacted by the County Council of the County with respect to the Project on September 7, 1999; and

WHEREAS, for the purposes set forth above, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

[Article I follows on next page]

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 the FILOT Simplification Act, as amended through the date hereof.

*"Administration Expenses"* shall mean the reasonable and necessary expenses including attorneys' fees, incurred by the County with respect to the Project and this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County has furnished to the Company prior to incurring such expense a statement in writing indicating the reason such expense has been or will be incurred and either estimating the amount of such expense or stating the basis on which the expense will be computed.

*"Agreement"* shall mean this Agreement as originally executed and from time to time supplemented or amended as permitted herein.

*"Authorized Company Representative"* shall mean any person or persons at the time designated to act on behalf of the Company by a written certificate furnished to the County containing the specimen signature of each such person and signed on behalf of the Company by its President, any Vice President or by any other officer to whom the Company has delegated authority to administer this Agreement.

*"Code"* shall mean the Code of Laws of South Carolina, 1976, as amended through the date hereof unless the context clearly requires otherwise.

*"Company"* shall mean Carolina Ceramics, LLC, a South Carolina limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under Section 8.04 or Article IX hereof; or any assignee hereunder which is designated by the Company and approved by the County. The County's subsequent approval of an assignee hereunder shall not be required if the subsequent Assignee is a member of the Controlled Group.

*"Controlled Group"* shall mean the Company and any affiliate of the Company which would qualify as member of the same controlled group within the meaning of that term as defined and used in Section 12-44-30(3) of the Code; provided, however, that such affiliate must be specifically approved by the County as a member of the Controlled Group and must agree in writing to be bound by this Agreement as to any investment by such affiliate to be subject to FILOT Payments hereunder and provided further that the Company must notify the County and the Department of Revenue in writing of the addition of such affiliate as a member of the Controlled Group within 30 days following the execution of such agreement by such affiliate. Currently, there are no members of the Controlled Group other than the Company.

"Cost" shall mean the cost of acquiring, by construction and purchase, the Project and shall be deemed to include, whether incurred (a) obligations incurred for labor, materials, and other expenses to contractors, builders, and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications, and preliminary investigations therefor, and for supervising construction as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Project; (d) compensation of legal, accounting, financial, and printing expenses, fees, and all other expenses incurred in connection with the Project; (e) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction, and installation of the Project, including (except, for purposes of Section 5.01(g) hereof, to the extent not permitted by §12-44-110 of the Code) the value of any Equipment leased by the Company in connection with the Project; (f) costs incurred by the Company for the acquisition of the Land or for the acquisition of a leasehold interest in the Land; and (g) any sums required to reimburse the Company for advances made for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project; provided, however, such term shall include expenditures by the Company with respect to the Project only to the extent made during the Investment Period.

"County" shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" shall mean the governing body of the County and its successors.

"Department of Revenue" shall mean the South Carolina Department of Revenue.

"Economic Development Property" shall mean each item of real and tangible personal property comprising a project within the meaning of Sections 12-44-30(7) and 12-44-40(C) of the Code.

"Equipment" shall mean all machinery, equipment, furnishings, and other personal property acquired by the Company and installed as part of the Project during the Investment Period in accordance with this Agreement.

"Event of Default" shall mean an Event of Default as defined in Section 11.01 hereof.

"Existing Property" shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, *i.e.*, property which has been subject to *ad valorem* taxes in the State prior to the execution and delivery of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by the Company or members of the Controlled Group during the Investment



Period which has not been placed in service prior to the execution and delivery of this Agreement notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (c) property purchased by the Company or a member of the Controlled Group during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company and members of the Controlled Group invest at least an additional forty-five million dollars (\$45,000,000.00) in the Project; or (d) modifications which constitute an expansion of Existing Property.

"*FILOT*" shall mean the fee in lieu of taxes which the Company is obligated to pay to the County pursuant to Section 5.01 hereof.

"*FILOT Payments*" shall mean the payments to be made by the Company pursuant to Section 5.01 hereof.

"*FILOT Revenues*" shall mean the revenues received by the County from the Company's payment of the FILOT.

"*FILOT Simplification Act*" shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

"*Investment Period*" shall mean the period from April 23, 1999 through December 31, 2007 as specified herein in accordance with Section 12-44-30(13) of the Code.

"*Land*" shall mean the real estate upon which the Project is to be constructed, as described in *Exhibit A* attached hereto, as *Exhibit A* may be supplemented from time to time in accordance with the provisions hereof.

"*Multi-County Fee*" shall mean the fee payable by the County to Fairfield County, South Carolina or any successor thereto under the Multi-County Park Agreement.

"*Multi-County Industrial Park*" shall mean the multi-county industrial/business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to any agreement which supersedes or replaces the Multi-County Park Agreement.

"*Multi-County Park Act*" shall mean Title 4, Chapter 1, of the Code, as amended through the date hereof unless the context clearly requires otherwise.

"*Multi-County Park Agreement*" shall mean the agreement to establish a joint county industrial park by and between the County and Fairfield County to be entered into with respect to the Project site, as amended, supplemented, or replaced from time to time.

**"Negotiated FILOT Payment"** shall mean the FILOT due pursuant to Section 5.01(b)(ii) hereof with respect to that portion of the Project qualifying for the 6% assessment ratio and fixed millage rate described in Section 5.01(c) of this Agreement.

**"Non-Economic Development Property"** shall mean that portion of the Project consisting of: (i) property as to which the Company or any members of the Controlled Group incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) property not placed in service during the Investment Period; (iii) Existing Property; and (iv) any other property which fails or ceases to qualify for Negotiated FILOT Payments.

**"Person"** shall mean and include any individual, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

**"Project"** shall mean: (i) the Land and all buildings, structures, fixtures, and appurtenances which now exist or which are now under construction or are to be constructed on the Land in whole or in part during the Investment Period, including any air conditioning and heating systems (which shall be deemed fixtures); (ii) the Equipment; and (iii) any Replacement Property.

**"Released Property"** shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation, or eminent domain proceedings as described in Article VII hereof and any infrastructure which the Company dedicates to the public use (within the meaning of that phrase as used in Section 12-7-1250(B) of the Code).

**"Replaced Property"** shall mean any Released Property for which the Company has substituted Replacement Property during the term hereof pursuant to Section 5.01(e) hereof.

**"Replacement Property"** shall mean all property installed in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(e) hereof and Section 12-44-60 of the Code.

**"School District"** shall mean the school district and its successors within which the Project is located at any given point of time.

**"State"** shall mean the State of South Carolina.

**"Streamlined FILOT Act"** shall mean Title 4, Chapter 12 of the Code, as amended through the date hereof.

**"Term"** shall mean the term of this Agreement, as set forth in Section 10.01 hereof.

**"Threshold Date"** shall mean December 31, 2005, the last day of the five-year period commencing at the end of the property tax year in which the Company places in service the initial phase of the Project, *i.e.* December 31, 2000 through December 31, 2005.

*"Transfer Provisions"* shall mean the provisions of Section 12-44-120 of the Code, as amended through the date hereof.

SECTION 1.02. References to Agreement. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

[End of Article I]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.01. Representations and Warranties by County.** The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The County has determined that the Project will subserve the purposes of the Act, and has made all other findings of fact required by the Act in connection with the undertaking of the Project.

(c) By proper action by the County Council, the County has duly authorized the execution and delivery of this Agreement and any and all actions necessary and appropriate to consummate the transactions contemplated hereby.

(d) This Agreement has been duly executed and delivered on behalf of the County.

(e) By the end of this calendar year, the Land will be located within the Multi-County Industrial Park, and the County will use its best efforts to ensure that such property remains in a multi-county industrial park for at least as long as necessary for the Company to benefit from the maximum jobs tax credit available under Section 12-6-3360(E) of the Code for all jobs created prior to the end of the Investment Period.

(f) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the County are pending or threatened against or affecting the County in any court or before any governmental authority which would materially adversely affect the validity or enforceability of this Agreement.

No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating (i) the construction or acquisition of the Project, (ii) environmental matters pertaining to the Project, (iii) the offer or sale of any securities, or (iv) the marketability of title to any property.

**SECTION 2.02. Representations and Warranties by Company.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State; has all requisite corporate power to enter into this Agreement; and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) The Company intends to operate the Project for the purposes of manufacturing bricks and other products.

(c) The agreements of the County with respect to the FILOT have been instrumental in inducing the Company to locate the Project within the County and the State.

(d) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Company are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(e) The Company expects to place in service the first phase of the Project during calendar year 2000, to expend approximately \$8,000,000 for Costs of the Project on or before the Threshold Date, and to hire approximately 15-30 people on or before the Threshold Date.

[End of Article II]

### ARTICLE III

#### UNDERTAKINGS OF COUNTY

**SECTION 3.01. Agreement to Accept FILOT Payments.** The County hereby agrees to accept FILOT Payments made by the Company in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

**SECTION 3.02. No Warranties by County.** The Company acknowledges that the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities, of the Project or that it will be suitable for the Company's purposes or needs.

**SECTION 3.03. Execution of Lease.** The parties acknowledge that the intent of this Agreement is to afford the Company the benefits of the Negotiated FILOT Payments in consideration of the Company's decision to locate the Project within the County and that this Agreement has been entered into in reliance upon the enactment of the FILOT Simplification Act. In the event that a court of competent jurisdiction holds that the FILOT Simplification Act is unconstitutional or that this Agreement or agreements similar in nature to this Agreement are invalid or unenforceable in any material respect or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then the County, upon the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company pursuant to the Streamlined FILOT Act. The Company acknowledges that any such sale/leaseback arrangement may not preserve the benefits of the Streamlined FILOT Act with respect to all or part of the Project.

[End of Article III]

## ARTICLE IV

### INVESTMENT BY COMPANY IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

**SECTION 4.01. Acquisition by Construction and Purchase of Project.** (a) The Company hereby agrees to acquire the Project by construction and purchase and to expend upon the Cost of the Project prior to the Threshold Date the sum of not less than \$8,000,000. The Company shall use its best efforts to cause such acquisition as promptly as is, in the Company's sole judgment, practicable.

(b) The Company shall retain title to the Project throughout the Term of this Agreement, subject to the Company's rights hereunder to mortgage or encumber the Project as it deems suitable.

**SECTION 4.02. Maintenance of Project.** During the Term of this Agreement the Company at its own expense will keep and maintain the Project in good operating condition. The Company will promptly make, or cause to be made, all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary to keep the Project in good and lawful order and in good operating condition (wear and tear from reasonable use excepted) whether or not such repairs are due to any laws, rules, regulations, or ordinances hereafter enacted which involve a change of policy on the part of the government body enacting the same.

**SECTION 4.03. Modification of Project.** (a) As long as no event of default exists hereunder, 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, at its own expense, add to the Project all such real and personal property as the Company in its discretion deems useful or desirable.

(ii) In any instance where the Company in its discretion determines that any items included in the Project or any portion of the Land have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County. If the Company sells, leases, or otherwise disposes of any portion of the Land, the Company shall deliver to the County, within 30 days thereafter, a new *Exhibit A* to this Agreement.

(b) No release of Project property effected under the provisions of Section 7.01 hereof or of this Section 4.03 shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT as specified in Section 5.01(d) hereof.

**SECTION 4.04. Records and Reports.** The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment

with respect thereto, and its computations of all FILOT Payments made hereunder and as will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including without limitation the reports required by Section 12-44-90 of the Code (collectively, "Filings").

Notwithstanding any other provision of this Section 4.04, the Company may designate with respect to any Filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall conform with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments.

[End of Article IV]



## ARTICLE V

### PAYMENTS IN LIEU OF TAXES; FUNDING FOR INFRASTRUCTURE PROJECT

SECTION 5.01. Payments in Lieu of Taxes. (a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Company shall pay annually with respect to the Project a FILOT in the amount calculated as set forth in this Section 5.01, on or before January 15 of each year commencing on January 15, 2002, and at the places, in the manner, and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes.

(b) The FILOT Payment due with respect to each property tax year shall equal the sum of (i) with respect to any portion of the Project consisting of undeveloped Land or Non-Economic Development Property, a payment equal to the taxes that would otherwise be due on such undeveloped Land or Non-Economic Development Property were it taxable; (ii) with respect to those portions of the Project (other than undeveloped Land and Non-Economic Development Property) placed in service during the Investment Period, for each of the 20 consecutive years following the year in which such portion of the Project is placed in service, a payment calculated each year as set forth in paragraphs (c) through (e) below (a "Negotiated FILOT"); and (iii) with respect to increments of the Project constituting Economic Development Property after such 20-year period, a payment equal to the *ad valorem* taxes that would otherwise be due on such property were it taxable, with appropriate reductions with respect to the property described in clauses (i) and (ii) above, similar to the tax exemption, if any, which would be afforded to the Company if *ad valorem* taxes were paid. For the purposes of clause (ii) above, there shall be excluded any Released Property and any other portion of the Project which ceases to qualify for a FILOT hereunder or under the Act.

(c) (i) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on (1) the fair market value of the improvements to real property and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate of 294.7 mills for the entire term of this Agreement, and (3) an assessment ratio of 6%. All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemption allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(ii) The table in Schedule A attached hereto sets forth sample schedules of the annual Negotiated FILOT Payments, assuming an investment of approximately \$8,000,000.

(d) The FILOT Payments are to be recalculated (i) to reduce such payments in the event the Company disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code, as provided in Sections 4.03, by the amount thereof applicable to the Released Property; or (ii) to

increase such payments in the event the Company adds property (other than Replacement Property) to the Project.

(e) Upon the Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, such Replacement Property shall become subject to FILOT Payments, subject to the following rules:

(i) Such Replacement Property is not required to serve the same function as the Replaced Property it replaces, and more than one item of Replacement Property may replace a single item of Replaced Property.

(ii) Replacement Property shall qualify for the Negotiated FILOT Payments only to the extent that its basis does not exceed the original income tax basis of the corresponding Replaced Property which is being disposed of in the same property tax year. To the extent that the income tax basis of Replacement Property exceeds the original income tax basis of such corresponding Replaced Property, the excess amount is subject to a FILOT as provided in Section 5.01(b)(iii) hereof. Replacement Property is entitled to inclusion in the Negotiated FILOT for the balance of the 20 years of the Negotiated FILOT applicable to the Replaced Property under Section 5.01(b)(ii) hereof; provided that where a single piece of property replaces two or more pieces of property, the Negotiated FILOT period shall be measured from the earliest of the dates on which the Replaced Property was placed in service.

(iii) Replacement Property shall be recorded on the Company's books using its income tax basis.

(f) In the event that the Act and/or the FILOT 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, including without limitation the benefits afforded under Section 12-44-50 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County agree that the Company shall pay an alternate fee in lieu of tax calculated in the manner set forth in Section 5.01(b)(iii) hereof. In such event, the Company shall be entitled (1) 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; (2) to enjoy all allowable depreciation; and (3) to receive credit, if any there be and to the extent permitted by law by reason of the fact that the School District received larger allocations of funds under the Education Finance Act of 1977 (Sections 59-20-10 to 59-20-80 of the Code) than it would have received if the Project had theretofore been taxed at the assessment ratio of 10.5% of fair market value, provided that such credit shall be adjusted to take into account any amounts which the School District is required to pay under the Education Finance Act as a result of the Project becoming subject to *ad valorem* taxation.

(g) In the event that the Company and other members of the Controlled Group have not invested \$5,000,000 in the Project on or before the Threshold Date as required by §12-44-30 (13), (14) and §12-44-40(F) of the Code, the portions of the Project previously subject to Negotiated FILOT shall revert retroactively to treatment required pursuant to Section 5.01(f) hereof, calculated as set forth therein, and the unpaid fees due thereby, if any (a "Deficiency"), shall be subject to interest as provided in § 12-43-305 of the Code. In the event that the Company's investment in the Project based on an income tax basis without regard to depreciation falls below \$5,000,000, the Project shall thereafter be subject to the tax treatment required pursuant to Section 5.01(b)(iii) hereof, calculated as set forth in Section 5.01(f). If the Project or any portion thereof becomes ineligible for Negotiated FILOT Payments pursuant to the Act, due to a transfer of an equity interest in the Company or of the Company's rights hereunder or under any fee agreement related hereto which does not comply with the Transfer Provisions, the Project, or such portion thereof, shall thereafter be subject to the tax treatment required pursuant to Section 5.01(b)(iii) hereof, calculated as set forth in Section 5.01(f).

(h) Any amounts due to the County under this Section 5.01 by virtue of the retroactive application of Section 5.01(f) or (g) hereof shall be paid within 30 days following written notice thereof from the County to the Company or, at the election of the Company, in five equal annual installments commencing within 30 days following such notice.

SECTION 5.02. Application of FILOT Revenues By County. All FILOT Revenues shall be used by the County, first, to satisfy obligations of the County to pay the Multi-County Fee at the times and in the manner provided in the Multi-County Park Agreement and, second, as the County deems appropriate; subject however, to the County's obligations with respect to distributions under agreements applicable to the Multi-County Park Agreement.

[End of Article V]

## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

SECTION 6.01. Payment of Administration Expenses. The Company will pay to the County from time to time amounts equal to the Administration Expenses of the County promptly upon written request therefor, but in no event later than 45 days after receiving written notice from the County specifying the nature of such expense and requesting payment of the same.

SECTION 6.02. Insurance. The Company shall maintain public liability insurance with specific reference to the Project and shall otherwise keep the Project continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due and payable all premiums with respect thereto. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies. Insurance policies may be written with deductible amounts and exceptions and exclusions comparable to those of businesses of like size and type. The insurance requirements hereunder may be satisfied by the Company providing self-insurance.

All proceeds of insurance against property damage to the Project shall be made payable as the Company shall specify, and such proceeds shall be collected and applied as provided in Section 7.01 hereof and all claims under any insurance policy referred to in this Agreement may be settled by the Company.

SECTION 6.03. Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, 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 or Administration Expenses 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.

[End of Article VI]

## ARTICLE VII

### CASUALTY AND CONDEMNATION

**SECTION 7.01. Damage and Destruction.** If all or any part of the Project shall be lost, stolen, destroyed, or damaged, the Company in its discretion may repair or replace the same. If the Company shall determine to repair or replace the Project, the Company shall forthwith proceed with such rebuilding, repairing, or restoring and shall notify the County upon the completion thereof. In the event any insurance proceeds are not sufficient to pay in full the costs of such rebuilding, repair, or restoration, the County shall not have any responsibility to complete the work thereof or pay that portion of the costs thereof in excess of the amount of said proceeds. Except as set forth in Section 7.03 hereof, the Company shall not by reason of any such damage or destruction or the payment of any excess costs be entitled to any reimbursement from the County or any abatement or diminution of the amounts payable hereunder.

**SECTION 7.02. Condemnation.** In the event that title to or the temporary use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain, there shall be no abatement or reduction in the payments required to be made by the Company hereunder except as set forth in Section 7.03 hereof. The Company shall promptly notify the County, as to the nature and extent of such taking and, as soon as practicable thereafter, notify the County whether it has elected to restore the Project. If it shall be determined to restore the Project, the Company shall forthwith proceed with such restoration, and shall notify the County, upon the completion thereof.

**SECTION 7.03. Adjustments in the Event of Damage and Destruction or Condemnation.** In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the operating ability of the Project or such portion thereof, the parties hereto agree that the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project. Except as otherwise expressly provided herein, including without limitation the circumstances described in the preceding sentence, this Agreement shall not terminate, nor shall the Company have any right to terminate this Agreement or be entitled to the abatement of any amounts payable hereunder or any reduction thereof, nor shall the obligations hereunder of the Company be otherwise affected, by reason of any damage to or the destruction of all or any part of the Project from whatever cause, the loss or theft of the Project or any part thereof, the taking of the Project or any portion thereof by condemnation or otherwise, the prohibition, limitation, or restriction of the Company's use of the Project or the interference with such use by any Person, or by reason of any eviction by paramount title or otherwise, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the FILOT Payments and Administration Expenses payable hereunder shall continue to be payable in all events and the obligations of the Company hereunder shall be terminated only pursuant to an express provision of this Agreement.

[End of Article VII]

## ARTICLE VIII

### PARTICULAR COVENANTS AND AGREEMENTS

**SECTION 8.01. Use of Project for Lawful Activities.** During the Term of this Agreement, the Company shall use the Project for any lawful purpose authorized pursuant to the Act. Insofar as it is practicable under existing conditions from time to time during the Term of this Agreement, the Project shall be used primarily as a facility for the manufacture of bricks.

**SECTION 8.02. Maintenance of Existence.** Unless the County shall consent otherwise, which consent shall not be unreasonably withheld, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into, or transfer or otherwise dispose of substantially all of its assets to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its assets (except, in either case, where the resulting, surviving, or transferee entity is the Company or another member of the Controlled Group as to which such consolidation, merger, or transfer the County hereby consents). The Company acknowledges that certain of such events may subject the Project to certain penalties under the Act or cause the Project to become ineligible for the Negotiated FILOT under the Act absent compliance by the Company with the Transfer Provisions.

**SECTION 8.03. Indemnification.** The Company releases the County including the members of the governing body of the County, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold Indemnified Parties harmless against, any loss or damage pertaining to this Agreement, except for that occasioned by negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from the performance by an Indemnified Party of any obligations of the County under this Agreement or any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or failure to act by, the Company, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

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 not of any member of the County Council or any officer, agent, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of

any act requested of the County by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing; nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation or other legal entity arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action, suit, or proceeding is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Company and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the cost of such counsel.

The indemnity specified in this Section 8.03 shall be in addition to any heretofore extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

[End of Article VIII]

## ARTICLE IX

### FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

**SECTION 9.01. Conveyance of Liens and Interests: Assignment.** The Company may at any time (a) sublet the Project or any part thereof and may sell, mortgage, encumber, assign, or otherwise transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfers to another member of the Controlled Group or pursuant to clause (b) above, the Company shall first obtain the prior written consent of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Company hereunder, no such assignment, transfer, or sublease shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such sublease, assignment, or other transfer agreement; and (iv) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that certain transfers of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

**SECTION 9.02. Access.** In lieu of and/or in addition to any subleasing by the Company pursuant to Section 9.01, the Company may, without any approval by the County, grant such rights of access to the Project and the buildings thereon as the Company may decide in its sole discretion.

**SECTION 9.03. Relative Rights of County and Financing Entities as Secured Parties.** The parties acknowledge that the County's right to receive FILOT Revenues hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Code, and Chapters 4 and 54 of Title 12 of the Code. The County's rights under this Agreement, except for its rights to receive FILOT Revenues and Administration Expenses, shall be subordinate to the rights of any secured party or parties under any financing arrangements undertaken by the Company with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional action on the part of the County; provided, however, that the County hereby agrees to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.

[End of Article IX]



## ARTICLE X

### TERM; TERMINATION

SECTION 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

SECTION 10.02. Termination. The County and the Company may agree to terminate this Agreement at any time, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. This Agreement shall automatically terminate if the Company fails to invest at least \$5,000,000 in the Project as required by §12-44-30(13), (14) and §12-44-40(F) of the Code on or before the Threshold Date, in which event the Project shall be subject retroactively to *ad valorem* taxes as provided in Section 5.01(g)-(h) hereof and any amounts due to the County as a result thereof shall be due and payable as provided in Section 5.01(f)-(h) hereof. The County's rights to receive payment for such retroactive *ad valorem* taxes and its rights to enforce the terms of this Agreement shall survive termination of this Agreement.

[End of Article X]

## ARTICLE XI

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 11.01. Events of Default by Company.** 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 by the Company:

(a) if default shall be made in the due and punctual payment of any FILOT Payments or Administration Expenses, which default shall not have been cured within 30 days following receipt of written notice thereof from the County; or

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for 90 days after the County shall have given the Company written notice of such default, provided, the Company shall have such longer period of time as necessary to cure such default if the Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence.

**SECTION 11.02. Remedies on Event of Default by Company.** Upon the occurrence of any Event of Default, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(i) declare immediately due and payable FILOT Payments or Administration Expenses due hereunder;

(ii) terminate this Agreement by delivery of written notice to the Company not less than 30 days prior to the termination date specified therein;

(iii) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project; or

(iv) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Company under this Agreement.

**SECTION 11.03. Application of Moneys Upon Enforcement of Remedies.** Any moneys received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to pay Administration Expenses; and third, to pay the FILOT in accordance with Section 5.02 hereof.

SECTION 11.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

[End of Article XI]

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. 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 12.02. 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 as permitted hereunder.

SECTION 12.03. 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 United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, addressed as follows or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Richland County Administration Building  
Attn: Richland County Chairman  
2020 Hampton Street  
Columbia, South Carolina 29201

(b) As to the Company:

Mr. Michael W. Borden  
c/o Carolina Ceramics, LLC  
9931 Two Notch Road  
Columbia, South Carolina 29223

with a copy (which shall not constitute notice) to:

April C. Lucas, Esquire  
Nexsen Pruet Jacobs & Pollard, LLP  
P.O. Drawer 2426  
Columbia, SC 29202

SECTION 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 12.05. Entire Understanding. 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 12.06. 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 12.07. Headings and Table of Contents: References. The headings of the Agreement and any 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 12.08. 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 12.09. Amendments. Subject to the limitations set forth in Section 12-44-40(L)(2) of the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

SECTION 12.10. 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.

[End of Article XII]

IN WITNESS WHEREOF, the parties have executed this Fee in Lieu of Tax Agreement as of the date first above written.

RICHLAND COUNTY, SOUTH CAROLINA

By: Paul Livingston  
Paul Livingston, Richland County Council Chairman

(SEAL)


ATTEST:

Michelle Cannon-Finch  
Michelle Cannon-Finch,  
Clerk to Richland County Council

APPROVED AS TO FORM:

Larry Smith  
Larry Smith, Esquire  
Richland County Attorney

CAROLINA CERAMICS, LLC,  
a South Carolina limited liability company

By:   
Name: Michael W. Borden  
Title: President/Member

**EXHIBIT A**

**LAND DESCRIPTION**

All that certain piece, parcel, or tract of land, with any improvements thereon, situate, lying, and being in Richland County, South Carolina, near U.S. Highway 1 and Brickyard Road, containing 24.29 acres as shown on a plat prepared for MKB Acquisitions, LLC by Whitworth & Associates, Inc., dated April 28, 1997 and recorded in the Office of the Clerk of Court for Richland County on September 7, 1999 in Book 342 at Page 1069.

TMS No.: 22804-5-4, 22804-5-5, 22804-5-6



**SCHEDULE A**  
**ANTICIPATED PILOT PAYMENTS**

**[ATTACHED]**

CAROLINA CERAMICS, LLC PROJECT  
 ESTIMATE AND COMPARISON OF SOUTH CAROLINA PROPERTY TAX OPTIONS  
 RICHLAND COUNTY (\$8,000,000 TOTAL INVESTMENT - 6% ASSESSMENT RATIO)  
 RUM DATE 7/13/99

999

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**ASSUMPTIONS:**

<b>LAND AND BUILDING</b>			
Land	2,400,000		
Building	500,000		
<b>TOTAL</b>		<b>2,900,000</b>	
<b>MACHINERY &amp; EQUIPMENT</b>			
On Site	5,100,000		
<b>TOTAL</b>		<b>5,100,000</b>	
<b>TOTAL PROPERTY</b>		<b>8,000,000</b>	<b>8,000,000</b>
<b>TIMES ASSESSMENT RATIO - FILOT</b>		<b>0.06</b>	
<b>TIMES ASSESSMENT RATIO - STANDARD</b>			<b>0.105</b>
<b>ASSESSED VALUE BEFORE DEPRECIATION</b>		<b>480,000</b>	<b>840,000</b>

**RATES**

Discount Rate	6.67%
Millage Rate	0.2947
Year Millage Rate Inflation Factor	0
Ad Tax Rate	0.0406

	STANDARD PROPERTY TAXES	STANDARD TAX ABATEMENT	NET / STD PROPERTY TAX	STANDARD FILOT	1% STANDARD FILOT	NET TO COUNTY
EAR 1	230,189	31,712	198,476	131,536	1,315	130,221
EAR 2	212,829	29,321	183,508	121,617	1,216	120,401
EAR 3	195,470	26,929	168,541	111,697	1,117	110,580
EAR 4	178,111	24,538	153,573	101,778	1,018	100,760
EAR 5	160,751	22,146	138,605	91,858	919	90,939
EAR 6	143,392		143,392	81,938	819	81,119
EAR 7	126,033		126,033	72,019	720	71,299
EAR 8	108,674		108,674	62,099	621	61,478
EAR 9	105,517		105,517	60,296	603	59,693
EAR 10	105,517		105,517	60,296	603	59,693
EAR 11	105,517		105,517	60,296	603	59,693
EAR 12	105,517		105,517	60,296	603	59,693
EAR 13	105,517		105,517	60,296	603	59,693
EAR 14	105,517		105,517	60,296	603	59,693
EAR 15	105,517		105,517	60,296	603	59,693
EAR 16	105,517		105,517	60,296	603	59,693
EAR 17	105,517		105,517	60,296	603	59,693
EAR 18	105,517		105,517	60,296	603	59,693
EAR 19	105,517		105,517	60,296	603	59,693
EAR 20	105,517		105,517	60,296*c92B	603	59,693
<b>OV</b>	<b>2,621,657</b>	<b>134,647</b>	<b>2,487,010</b>	<b>1,498,090</b>	<b>14,981</b>	<b>1,483,109</b>
<b>PV</b>	<b>1,569,117</b>		<b>1,456,444</b>	<b>896,638</b>		

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
RESOLUTION NO. \_\_\_\_\_

**CONSENTING TO AND RATIFYING THE PARTIAL ASSIGNMENT  
AND ASSUMPTION OF A FEE IN LIEU OF TAX AND INCENTIVE  
AGREEMENT FROM PPT REAL ESTATE ENTERPRISES, L.P. TO NL  
VENTURES XI NORTHPOINT, L.L.C.; 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 and Pure Power Technologies, Inc. (as successor in interest to Pure Power Technologies, LLC, as consented to by the County pursuant to a resolution adopted by the County dated June 21, 2016) (“PPT Inc.”) negotiated a Fee in Lieu of Tax and Incentive Agreement dated as of October 30, 2011 (as amended, restated, supplemented, modified and assigned, the “FILOT Agreement”), pursuant to which PPT Inc. committed to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an industrial development project in the County (collectively, the “Project”);

WHEREAS, PPT Inc. conveyed a portion of the Project comprised solely of the land and buildings located at the Project to PPT Real Estate Enterprises, L.P. (as partial successor in interest to PPT Inc.) (the “Company”) effective April 11, 2019, and the Company became successor-in-interest to PPT Inc. under the FILOT Agreement solely with respect to such conveyed property pursuant to a Partial Assignment and Assumption of Fee in Lieu of Tax and Incentive Agreement between PPT Inc. and the Company (the “2019 Assignment”);

WHEREAS, the Company has conveyed to NL Ventures XI Northpoint, L.L.C. a Delaware limited liability company (or to one or more Affiliates, as defined below) (the “Transferee”) the land and buildings owned by the Company comprising the Project (the “Transferred Property”), subject to the FILOT Agreement;

WHEREAS, the Company, the Transferee and the County with the signed acknowledgment of PPT Inc. desire to enter into that certain Partial Assignment and Assumption of FILOT Agreement (the “Assignment”), the form of which is attached as Exhibit A (the “2020 Assignment”), wherein and whereby the Company will assign all of its right, title, interest and obligations under the FILOT Agreement to the Transferee (or to one or more Affiliates, as defined below), as they relate to the Transferred Property, and

the Transferee (or one or more Affiliates) will assume such right, title, interest and obligations under the FILOT Agreement from the Company, subject to the terms of such Assignment, as they relate to the Transferred Property;

WHEREAS, the Company and the Transferee have requested that the County authorize, approve, ratify and consent to such conveyance of the Transferred Property and the 2020 Assignment in accordance with the provisions of the FILOT Agreement and Section 12-44-120 of the Code, including the transfer of the Transferred Property to Transferee (or to one or more Affiliates).

NOW THEREFORE, BE IT RESOLVED, by the County Council as follows:

**Section 1. *Definitions.*** For purposes of this Resolution, the term “Affiliate(s)” shall mean, with respect to any entity, an entity that is controlled by, owned directly or indirectly and in whole or in part by, or under common control with, such entity.

**Section 2. *Statutory Findings.*** Based on information supplied to the County by the Company, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to continue 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 continues to give 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 continue to be proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 3. *Approval of the Assignment; Authorization to Execute and Deliver the Assignment; Ratification of FILOT Agreement.*** The form, terms and provisions of the 2020 Assignment that is before this meeting are approved and all of the Assignment’s terms and conditions are incorporated in this resolution (“Resolution”) by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Assignment 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 Assignment and to deliver the Assignment to the Company and the Transferee. To the best knowledge of the County, based solely on information provided by the Company and the Transferee and without independent investigation, the County acknowledges and agrees that, as of the time immediately prior to the effectiveness of the 2020 Assignment, the FILOT Agreement is in full force and effect, there are no existing defaults under the FILOT Agreement, and the FILOT Agreement and the 2019 Assignment are hereby ratified by the County in all respects.

**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 Resolution and the Assignment.

**Section 5. *Savings Clause.*** The provisions of this Resolution are separable. If any part of this Resolution is, for any reason, unenforceable then the validity of the remainder of this Resolution is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Resolution, is, only to the extent of that conflict, repealed.

**Section 7. *Effectiveness.*** This Resolution is effective immediately upon approval by the Council following reading before Council.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, Richland County Council

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk of Council, Richland County Council

**Exhibit A**  
**Form of 2020 Assignment**

[See attached]

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF FILOT AGREEMENT**

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF FILOT AGREEMENT** (this “**Assignment Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and among PPT Real Estate Enterprises, L.P., a Delaware limited partnership (“**Assignor**”), NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (“**Assignee**”), and Richland County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina (the “**County**”).

**WITNESSETH:**

WHEREAS, Pure Power Technologies, LLC, a Delaware limited liability company (“**PPT LLC**”), and the County entered into that certain Fee in Lieu of Tax and Incentive Agreement dated as of October 30, 2011 (as amended, restated, supplemented, modified and assigned, the “**FILOT Agreement**”), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein by reference; and

WHEREAS, PPT LLC’s right, title and interest in the FILOT Agreement were assigned to Pure Power Technologies, Inc. (“**PPT Inc.**”) in connection with the sale of substantially all of PPT LLC’s assets to PPT Inc., which assignment was ratified by the County by a Resolution of County Council dated June 21, 2016; and

WHEREAS, PPT Inc.’s right title and interest in the FILOT Agreement solely with respect to the land and buildings located at the Project (as defined in the FILOT Agreement) were assigned to Assignor effective April 11, 2019; and

WHEREAS, Assignor has conveyed or will convey a portion of the Project (as defined in the FILOT Agreement) consisting of land and buildings located at the Project to Assignee (collectively, the “**Transferred Property**”); and

WHEREAS, Assignor desires to assign to Assignee all of its obligations, rights, title and interest in and to the FILOT Agreement, a true and correct copy of such FILOT Agreement having been provided to Assignee, with respect to the Transferred Property, and Assignee desires to assume all obligations, rights, title and interest of Assignor thereunder, with respect to the Transferred Property; and

WHEREAS, the County authorized, approved and consented to (or will authorize, approve and consent to) the assignment of the FILOT Agreement via Resolution of its County Council.

NOW, THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption of FILOT Agreement. Assignor does hereby sell, assign, transfer and set over to Assignee all of Assignor’s right, title, interest and obligations under the FILOT Agreement, solely with respect to the Transferred Property, and Assignee hereby accepts such assignment and assumes all of Assignor’s duties and obligations under the FILOT Agreement, solely with respect to the Transferred Property (“**Assignment and Assumption of FILOT Agreement**”).

2. Consent to Assignment and Assumption of FILOT Agreement. Such Assignment and Assumption of FILOT Agreement is made subject to and is conditioned upon obtaining the consent or ratification from the County as required by Section 12-44-120 of the South Carolina Code, as amended,

and the terms of the FILOT Agreement, and following receipt of such consent or ratification, shall be deemed effective as of the Effective Date.

3. Mutual Indemnities. Assignor agrees to indemnify, defend and hold Assignee, its affiliates, successors and assigns, harmless from and against any and all claims, actions, charges, fees and expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities (collectively, “**Claims**”) that result directly from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement (as such relate to the Transferred Property), provided that any such obligation accrued and that such failure occurred prior to the Effective Date. Assignee agrees to indemnify, defend and hold Assignor, its affiliates, successors and assigns, harmless from and against any and all Claims that: (a) result directly from the failure of Assignee to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement, provided that any such obligation accrued and that such failure occurred on or after the Effective Date; or (b) arise from any modification or amendment to the FILOT Agreement on or after the Effective Date (in each case, as such relate to the Transferred Property). Notwithstanding the foregoing, unless such Claim against Assignor results solely from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement during the period that Assignor was a party to the FILOT Agreement, Assignee shall pursue such Claim exclusively from PPT Inc. pursuant to the terms of that certain Lease Agreement by and between Assignee and PPT Inc.

4. Representations and Warranties by Assignor and County.

- (a) Assignor hereby represents and warrants to Assignee that, to the best of Assignor’s knowledge, neither the Assignor nor the Transferred Property is in default under the FILOT Agreement and that all requirements of Assignor under the FILOT Agreement (including any requirements to make and maintain investment at the Project) have been satisfied as of the Effective Date.
- (b) The County hereby represents that, to the best of the County’s knowledge based solely on information Assignor and Assignee have provided to the County without further independent investigation, neither Assignor nor the Transferred Property is in default under the FILOT Agreement.

5. Release. Effective and contingent upon the County’s consent to the Assignment and Assumption of FILOT Agreement, the County releases Assignor from any breach by Assignee of Assignee's duties, obligations, and liabilities under the FILOT Agreement with respect to the Transferred Property, accruing on or after 12:00 a.m. on the Effective Date, except with respect to the payment of Negotiated FILOT payments (as defined in the FILOT Agreement), payments in lieu of taxes *ad valorem* taxes or other amounts due with respect to the Transferred Property (collectively, “**Amounts**”), which the County specifically does not release Assignor from the obligation for the payment thereof until the County has received such Amounts due through the Effective Date or for the property tax year in which the Assignment and Assumption of FILOT Agreement occurs. Nothing contained in this Section 5 shall release Assignor from any other duties, obligations, or liabilities under the FILOT Agreement.



6. Notices. From and after the Effective Date, all notices delivered pursuant to the FILOT Agreement shall also be delivered to Assignee at the following addresses:

NL Ventures XI Northpoint, L.L.C.  
c/o AIC Ventures, L.P.  
2600 Via Fortuna, Suite 260  
Austin, TX 78746  
Attention: Heath D. Esterak, Managing Director – Legal

7. Amendment. This Assignment Agreement may be amended, modified or supplemented, and any provision hereof may be waived, only by written agreement of the parties hereto.

8. Governing Law. This Assignment Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of South Carolina.

9. Successors and Assigns. This Assignment Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Assignment Agreement.

10. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become binding when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment Agreement to be executed as of the Effective Date.

**ASSIGNOR:**

PPT REAL ESTATE ENTERPRISES, L.P., a  
Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

NL VENTURES XI NORTHPOINT, L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the County has consented to the Assignment and Assumption of FILOT Agreement and this Assignment Agreement by the signature of its authorized representative below.

**RICHLAND COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

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

IN WITNESS WHEREOF, PPT Inc. acknowledges the foregoing Assignment and Assumption of FILOT Agreement and agrees that nothing in this Assignment Agreement terminates or limits the obligations of PPT Inc. with respect to property subject to the FILOT Agreement other than the Transferred Property.

PURE POWER TECHNOLOGIES, INC., a  
Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A to Partial Assignment and Assumption of FILOT Agreement**

**Copy of FILOT Agreement**

[to be attached]

EXECUTION COPY

---

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

PURE POWER TECHNOLOGIES, LLC

Dated as of October 30, 2011

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NPCOL1:2559706.4-AGR-(SIN) 045392-00001

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I    DEFINITIONS.....	2
Section 1.01. Definitions.....	2
Section 1.02. References to Agreement.....	7
ARTICLE II    REPRESENTATIONS AND WARRANTIES.....	7
Section 2.01. Representations and Warranties by County.....	7
Section 2.02. Representations and Warranties by the Company.....	8
ARTICLE III    COVENANTS OF COUNTY.....	9
Section 3.01. Agreement to Accept Negotiated FILOT Payments.....	9
Section 3.02. Special Source Credits.....	9
Section 3.03. Multi-County Park Designation.....	10
Section 3.04. Commensurate Benefits.....	10
Section 3.05. Additional Commitment of the County.....	11
ARTICLE IV    COVENANTS OF COMPANY.....	11
Section 4.01. Minimum Contractual Investment Requirement and Minimum Jobs Requirement.....	11
Section 4.02. Investment in Expansion Project.....	11
Section 4.03. Funding for Special Source Improvements.....	13
Section 4.04. Failure to Comply with Minimum Contractual Investment Requirement and/or Minimum Jobs Requirement.....	13
Section 4.05. Payment of Administration Expenses.....	15
Section 4.06. Use of Expansion Project for Lawful Activities.....	15
Section 4.07. Maintenance of Existence.....	15
Section 4.08. Records and Reports.....	16
ARTICLE V    FEES IN LIEU OF TAXES.....	17
Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.....	17
Section 5.02. Statutory Lien.....	21
ARTICLE VI    THIRD PARTY ARRANGEMENTS.....	21
Section 6.01. Conveyance of Liens and Interests; Assignment.....	21
Section 6.02. Sponsors and Sponsor Affiliates.....	22
ARTICLE VII    TERM; TERMINATION.....	23
Section 7.01. Term.....	23

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
Section 7.02. Termination.....	23
<b>ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES .....</b>	<b>23</b>
Section 8.01. Events of Default .....	23
Section 8.02. Remedies on Event of Default .....	24
Section 8.03. Defaulted Payments .....	24
Section 8.04. Default by County.....	25
<b>ARTICLE IX MISCELLANEOUS .....</b>	<b>25</b>
Section 9.01. Rights and Remedies Cumulative.....	25
Section 9.02. Successors and Assigns.....	25
Section 9.03. Notices; Demands; Requests.....	25
Section 9.04. Applicable Law .....	27
Section 9.05. Entire Understanding .....	27
Section 9.06. Severability .....	27
Section 9.07. Headings and Table of Contents; References .....	27
Section 9.08. Multiple Counterparts .....	27
Section 9.09. Amendments .....	27
Section 9.10. Waiver.....	27
Section 9.11. Further Proceedings .....	27
<b>EXHIBIT A LEGAL DESCRIPTION.....</b>	<b>A-1</b>



## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of October 30, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and PURE POWER TECHNOLOGIES, LLC, a limited liability company organized and existing under the laws of the State of Delaware, acting for itself, one or more affiliates or other project sponsors (the "Company");

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and Section 4-29-68 of the Code by incorporation, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for certain expenditures including, without limitation, those incurred in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and facilitate the grant of Special Source Credits; and

WHEREAS, the Company proposes to establish and/or expand certain manufacturing, research and development, and related facilities at multiple sites in the County (the "Expansion Project"), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$25,000,000 in the Expansion Project and will create, or cause to be created, at least 150 new jobs in the County, by the end of the Compliance Period (as defined below); and

WHEREAS, the County has determined the Expansion Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Expansion Project in the County, the County Council adopted a Resolution on October 4, 2011 (the "Inducement Resolution"), whereby the County agreed to



provide FILOT, multi-county industrial or business park and Special Source Credits benefits, which are set forth in greater detail herein; and

WHEREAS, the County has determined it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on November 1, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Expansion Project.

NOW, THEREFORE, in consideration of the premises; the potential investment and jobs to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company 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, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

*"Administration Expenses"* shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable attorneys' fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and that the County shall have furnished to the Company, an itemized statement of all expenses incurred and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

*"Affiliate"* shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or any other Co-Investor, as the case may be, or which is owned in whole or in part by the Company or any other Co-Investor, as the case may be, or by any partner, shareholder or owner of the Company or any other Co-Investor, as the case may be.



*"Agreement"* shall mean this Fee In Lieu of Tax and Incentive 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 through the date hereof, unless the context clearly requires otherwise.

*"Co-Investor"* shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Expansion Project, any lessor of equipment or other property comprising a part of the Expansion Project, and any financing entity or other third party investing in or providing funds for the Expansion Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, the Company and Navistar, Inc., a Delaware corporation, ("Navistar") are the only Co-Investors.

*"Company"* shall mean Pure Power Technologies, LLC, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.07** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

*"Compliance Period"* shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Expansion Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. The parties anticipate that the initial Negotiated FILOT Property comprising the Expansion Project will be placed in service in the Property Tax Year ending on October 31, 2011 and that in such event, the Compliance Period will end on October 31, 2016.

*"County"* shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

*"Council"* shall mean the governing body of the County and its successors.

*"Deficiency Payment"* shall have the meaning specified in **Section 5.01(e)** hereof.

*"Department of Revenue"* shall mean the South Carolina Department of Revenue.

*"Event of Default"* shall mean an Event of Default, as set forth in **Section 8.01** hereof.

*"Existing Property"* shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the



Investment Period and property included in the Expansion Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Expansion Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Negotiated FILOT Act.

*"Expansion Project"* shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any Co-Investors for use on or about the Land; and (iii) any Replacement Property; provided, however, except as to Replacement Property, the term Expansion Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

*"FILOT"* shall mean fee in lieu of *ad valorem* property taxes.

*"FILOT Payments"* shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Expansion Project whether made as Negotiated FILOT Payments pursuant to the Negotiated FILOT Act or as FILOT payments pursuant to the Multi-County Park Act.

*"Inducement Resolution"* shall mean the Resolution approved by the County on October 4, 2011 in connection with the Expansion Project.

*"Investment Period"* shall mean the period for completion of the Expansion Project, which shall be initially equal to the Compliance Period; provided, however, that, the Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for up to a five-year extension to the Investment Period beyond the Compliance Period up to the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Expansion Project is placed in service, as permitted by the Negotiated FILOT Act, and the County may approve of such extension, in its sole discretion; provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act.



“*Land*” shall mean the land upon which the Expansion Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

“*Minimum Contractual Investment Requirement*” shall mean investment of at least \$25,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors, in the aggregate in the Expansion Project during the period commencing with the date of the initial expenditure with respect to the Expansion Project, whether before or after the date of this Agreement, and ending at the end of the Compliance Period.

“*Minimum Jobs Requirement*” shall mean the creation of at least 150 new jobs (without regard to jobs maintained) in the County by the Company and all Co-Investors, in the aggregate, during the period commencing on January 1, 2011 and ending at the end of the Compliance Period.

“*Minimum Statutory Investment Requirement*” shall mean investment in the Expansion Project of not less than \$2,500,000 during the Compliance Period, as required by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof in determining whether the Company or any other Sponsor or Sponsor Affiliate qualifies for the Negotiated FILOT.

“*Minimum Threshold Investment Requirement*” shall mean investment in the Expansion Project of at least \$10,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors, in the aggregate during the period commencing with the date of the initial expenditure with respect to the Expansion Project, whether before or after the date of this Agreement, and ending at the end of the Compliance Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Expansion Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“*Multi-County Park Agreement*” shall mean that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park between the County and Fairfield County, South Carolina dated as of April 15, 2003, as amended, supplemented, or modified through the date hereof and as such agreement may be further amended, supplemented, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Expansion Project



consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate described in **Section 5.01(b)(ii)** hereof.

*"Negotiated FILOT Act"* shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

*"Negotiated FILOT Property"* shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Expansion Project which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

*"Non-Qualifying Property"* shall mean that portion of the facilities located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act, including, without limitation, property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.02(e)(iii)** hereof.

*"Person"* shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

*"Property Tax Year"* shall mean the annual period which is equal to the fiscal year of the Company or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, the period ending on October 31 of each year.

*"Released Property"* shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.02(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act; which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; or which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

*"Replacement Property"* shall mean all property installed in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.



"*Special Source Act*" shall mean Section 4-1-175 of the Code, as amended through the date hereof.

"*Special Source Credits*" shall mean the special source revenue credits described in **Section 3.02** hereof.

"*Special Source Improvements*" shall mean, to the extent paid for by the Company or any Co-Investor, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Expansion Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and any additions or improvements to any of the foregoing, whether paid for by the Company or any other Co-Investors directly or through lease payments. At the request of the Company, the County hereby agrees to hereafter consider inclusion of personal property, including machinery and equipment, as Special Source Improvements hereunder in accordance with Section 4-29-68(A)(2)(i) of the Code, which inclusion may be approved by a resolution of the Council.

"*Sponsor*" and "*Sponsor Affiliate*" shall mean an entity whose investment with respect to the Expansion Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. Initially, the Company and Navistar are the only Sponsors or Sponsor Affiliates.

"*State*" shall mean the State of South Carolina.

"*Term*" shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

"*Transfer Provisions*" shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act, as amended through the date hereof.

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 WARRANTIES

Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part 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 this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and the Negotiated FILOT Payments and Special Source Credits as set forth herein, the inclusion and maintenance of the Expansion Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) The County has determined the Expansion Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, 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, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, 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, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 2.02. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is October 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate the Expansion Project as facilities primarily for manufacturing, research and development, and/or related activities.

(c) The agreements with the County with respect to the Negotiated FILOT, Special Source Credits and the Multi-County Park were factors in inducing the Company to locate the Expansion Project within the County and the State.



(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

### ARTICLE III

#### COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Expansion Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Special Source Credits.

(a) The County, as an additional incentive to induce the Company to locate the Expansion Project within the County and as reimbursement for investment in certain Special Source Improvements, and subject to the requirements of the Special Source Act, does hereby agree that the Company and each Co-Investor (each a "Claiming Entity") shall be entitled to receive, and the County shall provide, Special Source Credits in a maximum aggregate amount of \$500,000 (the "Aggregate Available Credits") and each Claiming Entity shall be entitled to receive Special Source Credits against each FILOT Payment made by such Claiming Entity with respect to the Expansion Project in an amount equal to fifty percent (50%) of each such FILOT Payment, for a period of up to five (5) years, commencing with the year for which the initial Negotiated FILOT payment is due hereunder, until the Aggregate Available Credits have been fully provided by the County; provided, however, that in determining the Special Source Credits with respect to the final year for which each Claiming Entity is entitled to receive the Special Source Credits hereunder, the applicable percentage shall be the highest percentage required, up to fifty percent (50%), for the County to fully provide all remaining Aggregate Available Credits. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Expansion Project.

(b) The Special Source Credits shall be reflected by the County on each bill to a Claiming Entity for FILOT Payments due with respect to the Expansion Project, by reducing the total original FILOT Payment otherwise due with respect to such property by the amount of such Special Source Credits.

(c) THE COUNTY SHALL HAVE NO FINANCIAL OBLIGATION OF ANY KIND RELATING TO THE SPECIAL SOURCE CREDITS EXCEPT TO THE EXTENT THE FILOT PAYMENTS ARE PAID BY THE CLAIMING ENTITY AND RECEIVED BY THE COUNTY WITH RESPECT TO THE EXPANSION PROJECT.



Section 3.03. Multi-County Park Designation. The County will take all acts to insure that the Expansion Project including, without limitation, Parcel I and Parcel II of the Land will be included within the boundaries of the Multi-County Park, if not already so included, and that the Expansion Project, including without limitation, Parcel I and Parcel II of the Land, will remain within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide for all jobs created at the Expansion Project from January 1, 2011, through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits set forth herein.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and any other Co-Investor the benefits specified in this Article III in consideration of the Company's decision to locate the Expansion Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that the Department of Revenue or a court or other entity of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and any other Co-Investor the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT and the Special Source Credits, and agrees, if requested, to enter into a lease purchase agreement with the Company and any other Co-Investor pursuant to Section 12-44-160; Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and any other Co-Investor the intended benefits of this Agreement. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and any other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Co-Investor must transfer the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply. In such lease purchase agreement, the County, upon the conveyance of title to the Expansion Project to the County at the expense of the Company or any such other Co-Investor, as the case may be, agrees to lease the Expansion Project to the Company or any such other Co-Investor, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or any such other Co-Investor shall have the option to purchase its respective portion of the Expansion Project for Ten Dollars (\$10.00).



Section 3.05. Additional Commitment of the County. The County will use its best efforts to assist the Company and each other Co-Investor in securing and processing grants and other funding for the infrastructure and other qualifying expenditures in connection with the Expansion Project. The County and the Company are currently pursuing a grant from the South of \$250,000 to reimburse the Company for certain costs required for the Expansion Project.

## ARTICLE IV

### COVENANTS OF COMPANY

Section 4.01. Minimum Contractual Investment Requirement and Minimum Jobs Requirement. The Company agrees that it will comply with, or cause compliance with, the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement, by the end of the Compliance Period.

Section 4.02. Investment in Expansion Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Expansion Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Expansion Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on October 31, 2014.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including the Minimum Contractual Investment Requirement, the Minimum Threshold Requirement, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and all Co-Investors filed with respect to the Expansion Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act and filed with respect to each Property Tax Year during the Investment Period, without regard to depreciation.

(c) The Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for up to a five-year extension to the Investment Period beyond the Compliance Period, as permitted by the Negotiated FILOT Act, and the County may approve such extension in its sole discretion. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement.

(d) The Company and each of its designated Co-Investors shall retain title, or other property rights, to its respective portion of the Expansion Project throughout the Term of this Agreement, and the Company and each Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Expansion Project, including,



without limitation, in connection with any financing transactions, without the consent of the County.

(e) The Company and each other Co-Investor 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 and each other Co-Investor may, at its own expense, add to the Expansion Project all such real and personal property as the Company, or such Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when the Company or any other Co-Investor in its discretion determines any of its items included in the Expansion Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Expansion Project, the Company, or such Co-Investor, may remove such items or portions of the Land from the Expansion Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, the Company, or such Co-Investor, shall deliver to the County a new **Exhibit A** to this Agreement or schedules or supplements to **Exhibit A**; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.



Section 4.03. Funding for Special Source Improvements. The Company agrees that it will provide, or cause Co-Investors to provide, funding for the Special Source Improvements related to the establishment of the Expansion Project.

Section 4.04. Failure to Comply with Minimum Contractual Investment Requirement and/or Minimum Jobs Requirement. If either or both of the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement are not complied with by the end of the Compliance Period:

(a) the Company and each other Co-Investor shall continue to be eligible to take advantage of the Negotiated FILOT hereof, in the event that the Minimum Threshold Investment Requirement is nevertheless satisfied by the end of the Compliance Period; and

(b) the Company and each other Co-Investor shall no longer be entitled to receive the Special Source Credits beginning with any FILOT Payment due with respect to Expansion Project property placed in service as of the end of the first Property Tax Year following the Compliance Period; and

(c) the Company and each other Co-Investor shall repay, or cause repayment to, the County of an amount equal to a portion of the Special Source Credits theretofore received by such entity, and, upon receipt by such entity, a portion of any additional Special Source Credits to which such entity is entitled to receive hereunder, (collectively, the "Aggregate Received Credits"), based upon the highest degree of satisfaction of the Minimum Contractual Investment Requirement (without regard to depreciation, disposals, or other diminution in value) and the Minimum Jobs Requirement (without regard to jobs maintained) prior to the end of the Compliance Period (the "Repayment"). In calculating any Repayment, the degree of satisfaction shall be measured against each of the Minimum Contractual Investment Requirement (\$25,000,000) and the Minimum Jobs Requirement (150 new jobs), and shall be weighted 50% investment / 50% jobs times the Aggregate Received Credits and any such Repayment shall be calculated according to the following formula:

1. 
$$\frac{\text{Actual Investment}}{\$25,000,000} \times 100 = \text{Investment Achievement Percentage [IAP]}$$
2. 
$$100\% - \text{IAP} = \text{Investment Alteration Factor [IAF]}$$
3. 
$$\frac{\text{Actual Employees Hired}}{150} \times 100 = \text{Employment Achievement Percentage [EAP]}$$
4. 
$$100\% - \text{EAP} = \text{Employment Alteration Factor [EAF]}$$
5. 
$$\frac{\text{IAF} + \text{EAF}}{2} = \text{Final Alteration Factor [FAF]}$$

6. FAF x Aggregate Received Credits = Repayment due to be paid to the County within one hundred eighty (180) days of the later of (i) the end of the Compliance Period or (ii) the day that all Aggregate Received Credits have been received by such entity.

As an example, assuming aggregate investment in the Expansion Project prior to the end of the Compliance Period totaled \$20,000,000 and the highest job creation levels in the County prior to the end of the Compliance Period totaled 130 new jobs, and that the Company had theretofore received, or will thereafter receive, Aggregate Received Credits of \$500,000, the Repayment would be calculated as follows:

1.  $\frac{\$20,000,000}{\$25,000,000} \times 100 = 80.0\%$  [IAP]
2.  $100\% - 80.0\% = 20.0\%$  [IAF]
3.  $\frac{130}{150} \times 100 = 86.7\%$  [EAP]
4.  $100\% - 86.7\% = 13.3\%$  [EAF]
5.  $\frac{20.0\% + 13.3\%}{2} = 16.7\%$  [FAF]
6.  $16.7\% \times \$500,000 =$  Reimbursement Payment of \$83,500.

As an additional example, assuming aggregate investment in the Expansion Project prior to the end of the Compliance Period totaled \$40,000,000 and the highest job creation levels in the County prior to the end of the Compliance Period totaled 120 new jobs, and that the Company had theretofore received, or will thereafter receive, Aggregate Received Credits of \$500,000, the Repayment would be calculated as follows:

1.  $\frac{\$40,000,000}{\$25,000,000} \times 100 = 160.0\%$  [IAP]
2.  $100\% - 160.0\% = (-60.0\%)$  [IAF]
3.  $\frac{120}{150} \times 100 = 80.0\%$  [EAP]
4.  $100\% - 80\% = 20\%$  [EAF]
5.  $\frac{(-60.0\%) + 20\%}{2} = (-40.0\%)$  [FAF]



6.  $(-40.0\%) \times \$500,000 = \text{No Repayment due.}$

Section 4.05. Payment of Administration Expenses. The Company will reimburse, or cause reimbursement to, the County from time to time for its Administration Expenses promptly upon written request therefor, but in no event later than sixty (60) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement or the Expansion Project, and, aside from attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with the initial approval of this Agreement and the transactions authorized hereby. The parties understand that legal counsel to the County has estimated its fees and other expenses for review of this Agreement, the Inducement Resolution, the Multi-County Park Agreement and all resolutions, ordinances, and other documentation related thereto at \$5,000.00 or less.

Section 4.06. Use of Expansion Project for Lawful Activities. During the Term of this Agreement, the Company and any other Co-Investor shall use the Expansion Project as it deems fit for any lawful purpose.

Section 4.07. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event or Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the



surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

The Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 4.08. Records and Reports. The Company and each other Co-Investor will each maintain such books and records with respect to the Expansion Project as will permit the identification of those portions of the Expansion Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, computations of all Negotiated FILOT Payments made by such entity hereunder and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Each year during the Term hereof, the Company and each other Co-Investor shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of its most recent annual filings made with the Department of Revenue with respect to the Expansion Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county



which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contain proprietary, confidential, or trade secret matters. To the extent permitted by law, the County shall comply with all reasonable, written requests made by the Company and each other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company or any other Co-Investor.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Expansion Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2013. If the Company designates any Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if required, pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall be payable for a period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's



investment during the Investment Period shall be subject to the Negotiated FILOT for a period of twenty (20) years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) the lowest millage rate or rates allowed by the Negotiated FILOT Act, which millage rate shall be (a) 460.8 mills with respect to Parcel I of the Land and all Negotiated FILOT Property located thereon, and (b) 402.9 mills with respect to Parcel II of the Land and all Negotiated FILOT Property located thereon, which rate shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Expansion Project property owned by such entity so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.02(e)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Expansion Project as a result of circumstances beyond the control



of the Company or any other Sponsor or Sponsor Affiliate, as the case may be;

(iii) to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Expansion Project; or

(iv) to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.02(c)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the twenty year period applicable to the Released Property.

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Expansion Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits



commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the investment in the Expansion Project is insufficient to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Expansion Project does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Expansion Project, then the Negotiated FILOT Payments with respect to that portion of the Expansion Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Expansion Project. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that investment in the Expansion Project based on an income tax basis without regard to depreciation satisfies the Minimum



Statutory Investment Requirement by the end of the Compliance Period, but following the Compliance Period, subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the Expansion Project shall thereafter be subject to *ad valorem* taxes, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act.

(iii) If the Minimum Contractual Investment Requirement or the Minimum Jobs Requirement is not satisfied by the end of the Compliance Period, the County shall have only the rights set forth in **Section 4.04** hereof.

(iv) If the Minimum Threshold Investment Requirement is not satisfied by the end of the Compliance Period, the Negotiated FILOT shall terminate retroactively and prospectively.

(v) In accordance with the provisions of **Sections 4.02(b)** and **6.02** hereof, except for Existing Property, the fair market value of all property utilized by the Company or any other Co-Investor at the Expansion Project site, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Co-Investor of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Expansion Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Expansion Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all



or any part of the Expansion Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Expansion Project, whereby the transferee in any such arrangement leases the portion of the Expansion Project in question to the Company or any Co-Investor or any of their respective Affiliates or operates such assets for the Company or any Co-Investor or any of their respective Affiliates or is leasing portion of the Expansion Project in question from the Company or any Co-Investor or any of their respective Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to any Negotiated FILOT Property so transferred: (i) except in connection with any transfer to any Co-Investor, an Affiliate of the Company or any Co-Investor, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County, in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Negotiated FILOT Property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.02(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such Co-Investor hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or any such Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this **Section 6.01**, and at the Company's or any such Co-Investor's expense, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any Co-Investor under this Agreement and/or any release of the Company pursuant to this **Section 6.01**.

The Company acknowledges such a transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or any such Co-Investor with the Transfer Provisions.

**Section 6.02. Sponsors and Sponsor Affiliates.** The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Expansion Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or



(20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Expansion Project prior to the end of the Compliance Period the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Expansion Project prior to the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Expansion Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

**Section 7.01. Term.** Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder or (ii) the day the Special Source Credits have been fully provided by the County.

**Section 7.02. Termination.** In addition to the rights of the County under **Sections 5.01(f)** and **8.01**, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Expansion Project in which event the Expansion Project, or such portion of the Expansion Project, shall be subject to *ad valorem* taxes from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01. 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



by the Company or other Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within thirty (30) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Co-Investor, as the case may be, to make certain additional payments to the County, all as set forth in **Section 4.04** and **5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Expansion Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.06** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall 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, all as provided in Section 12-44-90 of the Code.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor 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 or any other Co-Investor 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 or such other Co-Investor of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investors and Sponsor or Sponsor Affiliates designated pursuant to **Section 6.02** hereof and their respective successors and assigns as permitted hereunder.

Section 9.03. 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 United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Richland County Administrator  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29204  
Fax: 803-576-2137

with a copy (which shall not constitute notice) to:

Parker Poe Adams & Bernstein, LLP  
Attn: Ray E. Jones, Esq.  
P.O. Box 1509

Columbia, SC 29202  
Fax: 803-255-8017

(b) if to Navistar:

Navistar, Inc.  
Attn: Houman Kashanipour  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Houman.kashanipour@purepowertechologies.com](mailto:Houman.kashanipour@purepowertechologies.com)

with a copy (which shall not constitute notice) to:

Navistar, Inc.  
Attn: Steve Covey, General Counsel  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Steven.covey@navistar.com](mailto:Steven.covey@navistar.com)

with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC  
Burnet R. Maybank, III, Esq.  
Tushar V. Chikhliker, Esq.  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

(c) If to the Company:

Pure Power Technologies, LLC  
Attn: David A. Benson  
1410 Northpoint Boulevard  
Blythewood, South Carolina 29016  
Fax: 803-744-7069

with a copy (which shall not constitute notice) to:

Pure Power Technologies, LLC  
Attn: Steve Covey, General Counsel  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Steven.covey@navistar.com](mailto:Steven.covey@navistar.com)

with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC  
Burnet R. Maybank, III, Esq.



Tushar V. Chikhliker, Esq.  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. 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 9.06. 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 9.07. Headings and Table of Contents; References. The headings of the Agreement and any 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 paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. 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 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10. 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 9.11. Further Proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement to be effective as of the date first written above.

RICHLAND COUNTY, SOUTH CAROLINA

By: Paul Livingston  
Paul Livingston, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

By: Michelle Onley  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

PURE POWER TECHNOLOGIES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement to be effective as of the date first written above.

RICHLAND COUNTY, SOUTH CAROLINA

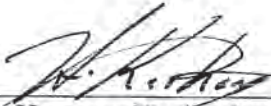
By: \_\_\_\_\_  
Paul Livingston, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

PURE POWER TECHNOLOGIES, LLC

By:  \_\_\_\_\_  
Name: Houshan Kashanipour  
Title: President, Pure Power Technologies, LLC



**EXHIBIT A  
LEGAL DESCRIPTION**

**PARCEL I:**

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar at the Point of Beginning (POB-B), this #4 Rebar being a common corner of Parcel "B" and a parcel of property now or formerly of Keller Properties, Inc.; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S 30°42'38" E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road; thence proceeding along Parcel "A" the following courses: a curve to the left having a radius of 50.00 feet; an arc length of 77.93 feet; a chord bearing of N76°38'30"W and a chord length 70.28 feet to a #4 Rebar; thence proceeding S58°42'22"W for a distance of 146.06 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of S73°14'46"W and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N89°18'32"W for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 460.00 feet, an arc length of 86.99 feet, a chord bearing of S77°04'31"W a chord length of 170.96 feet to a #4 Rebar; thence proceeding S66°21'58"W for a distance of 103.97 feet to a #4 Rebar; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W for a distance of 82.78 feet to a #4 Rebar; thence proceeding along reserved property and property now or formerly of Coca-Cola Bottling Company N66°21'53"E for a distance of 756.99 feet to a 2 ½" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. S55°36'41"E for a distance of 163.06 feet to a 2" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. N23°26'37"E for a distance of 209.45 feet to a #4 Rebar and Point of Beginning (POB-B), said parcel contains an area of 3.88 acres, more or less.

**TOGETHER WITH**

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S30 42'38"E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road, the Point of Beginning (POB-A); from said point of beginning, thence along the western margin of the right-of-way of Community

Exhibit A -1

NPCOL1:2559706.4-AGR-(SIN) 045392-00001



Road the following courses to the creek; proceeding along a curve to the left having a radius of 6056.40 feet, a chord bearing and distance of S32°45'25"E, 162.27 feet, an arc length of 162.28 feet to a concrete monument; thence proceeding S33°02'31"E, 10.08 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 5729.58 feet, a chord bearing and distance of S32°09'35"E, 258.44 feet, an arc length of 258.47 feet to a concrete monument; thence proceeding S31°05'41"E, 459.05 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 883.73 feet, a chord bearing and distance of S14°05'35"E, 516.67 feet, an arc length of 524.32 feet to a concrete monument; thence proceeding S02°54'14"W, 301.76 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the left having a radius of 965.22 feet, a chord bearing and distance of S05°48'06"E, 302.00 feet, an arc length of 303.25 feet to a concrete monument; thence proceeding S03°54'31"E, 162.57 feet to a concrete monument; thence proceeding S24°45'08"E, 45.78 feet to a point in the center of the creek; thence following the creek centerline S54°53'30"W, 92.85 feet to a point; thence following the creek centerline S80°29'27"W, 42.27 feet to a point; thence following the creek centerline S77°11'27"W, 45.78 feet to a point; thence following the creek centerline S85°05'49"W, 34.67 feet to a point; thence following the creek centerline S35°45'15"W, 37.68 feet to a point; thence following the creek centerline N. 79°22'15"W, 23.49 feet to a point; thence following the creek centerline S56°18'52"W, 58.20 feet to a point; thence following the creek centerline S81°54'49"W, 47.17 feet to a point; thence following the creek centerline S84°56'19"W, 26.03 feet to a point; thence following the creek centerline S79°16'52"W, 33.49 feet to a point; thence following the creek centerline N76°36'20"W, 39.05 feet to a point; thence following the creek centerline N75°36'20"W, 23.30 feet to a point; thence following the creek centerline S22°45'02"W, 36.32 feet to a point; thence following the creek centerline N80°20'08"W, 23.26 feet to a point; thence following the creek centerline N01°08'00"E, 20.82 feet to a point; thence following the creek centerline N52°59'26"W, 44.15 feet to a point; thence following the creek centerline N23°36'16"W, 39.49 feet to a point; thence following creek centerline N55°36'57"W, 48.22 feet to a point; thence following the creek centerline S71°31'34"W, 38.67 feet to a point; thence following the creek centerline S19°14'48"E, 19.57 feet to a point; thence following the creek centerline S50°35'39"W, 30.67 feet to a point; thence following the creek centerline N30°28'21"W, 16.24 feet to a point; thence following the creek centerline N36°29'39"W, 33.63 feet to a point; thence following the creek centerline N76°19'46"W, 49.29 feet to a point; thence following the creek centerline S73°49'21"W 22.68 feet to a point; thence following the creek centerline S03°18'27"W, 37.42 feet to a point; thence following the creek centerline N77°39'36"W, 41.24 feet to a point; thence following the creek centerline N77°33'40"W, 41.48 feet to a point; thence following the creek centerline N27°56'03"W, 33.98 feet to a point; thence following the creek centerline N60°27'23"W, 33.10 feet to a point; thence following the creek centerline S32°16'34"W, 24.52 feet to a point; thence following the creek centerline S89°16'56"W, 15.72 feet to a point; thence following the creek centerline N45°13'18"W, 38.26 feet to a point; thence following the creek centerline N26°17'46"E, 25.62 feet to a point; thence following the creek centerline N09°35'24"W, 25.42 feet to a point; ;thence following the creek centerline N84°41'36"W 15.32 feet to a point; thence following the creek centerline N07°53'25"E, 41.75 feet to a point; thence following the creek centerline N32°48'04"W, 25.64 feet to a point; thence following the creek centerline N71°09'43"W, 43.35 feet to a point; thence

Exhibit A -2

NPCOL1:2559706.4-AGR-(S)N) 045392-00001



following the creek centerline N10°59'52"W, 28.18 feet to a point; thence following the creek centerline N64°22'23"W, 21.10 feet to a point; thence following the creek centerline S61°33'26"W, 20.51 feet to a point, thence following the creek centerline N67°57'58"W, 19.33 feet to a point; thence following the creek centerline S87°51'09"W, 26.09 feet to a point; thence following the creek centerline S44°17'45W, 42.36 feet to a point; thence following the creek centerline S85°30'34"W, 17.61 feet to a point; thence following the creek centerline N55°25'28"W, 25.30 feet to a point; thence following the creek centerline N09°20'09"W; 25.33 feet to a point; thence following the creek centerline N59°58'35"W, 51.28 feet to a point; thence following the creek centerline N29°43'27"W, 42.86 feet to a point; thence following the creek centerline N48°39'23"W, 60.79 feet to a point; thence following the creek centerline S78°10'45W, 18.08 feet to a point; thence following the creek centerline N50°00'43"W, 29.92 feet to a point; thence following the creek centerline N10°37'24"W, 25.73 feet to a point; thence following the creek centerline N35°41'36"W, 25.40 feet to a point; thence following the creek centerline S78°12'03"W, 33.67 feet to a point; thence following the creek centerline N47°42'19"W, 23.71 feet to a point; thence following the creek centerline N51°00'09" W., 43.98 feet to a point; thence following the creek centerline N79°33'04"W, 43.89 feet to a point; thence following the creek centerline S36°46'14"W, 24.19 feet to a point; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W, 1,493.05 feet to a #4 Rebar; thence along Parcel "B" the following courses: N66°21'58"E, for a distance of 103.97 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 460.00 feet; an arc length of 86.99 feet, a chord bearing of N77°04'31"E a chord length of 170.96 feet to a #4 Rebar; thence proceeding S89°18'32"E for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of N73°14'46"E and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N58°42'22"E for a distance of 146.06 feet to a #4 Rebar; thence proceeding along a curve to the right having a radius of 50.00 feet, an arc length of 77.93 feet, a chord bearing of S76°38'30"E and a chord length of 70.28 feet to a #4 Rebar at the Point of Beginning (POB-A). Said parcel contains an area of 61.09 acres, more or less.

LESS HOWEVER: All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as 1.46 acres on that certain survey title "Closing Survey for South Carolina Electric and Gas Company, Northpoint Industrial Park, 115/23kV Substation" prepared by Glenn Associates Surveying, Inc. dated August 9, 2006, and recorded in Book 1245, page 2240 in the Office of the Register of Deeds for Richland County, South Carolina, on October 27, 2006; said tract having such boundaries and measurements as shown on the Closing survey.

**PARCEL II:**

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last

Exhibit A -3

NPCOLI:2559706.4-AGR-(S)N) 045392-00001

revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

**TOGETHER WITH**

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
RESOLUTION NO. \_\_\_\_\_

**AUTHORIZING, APPROVING, RATIFYING AND CONSENTING TO  
THE PARTIAL ASSIGNMENT AND ASSUMPTION OF AN  
INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT FROM  
PPT REAL ESTATE ENTERPRISES, L.P. TO NL VENTURES XI  
NORTHPOINT, L.L.C.; 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 4, Chapter 1, Code of Laws of South Carolina, 1976, as amended (“Act”), to provide special source revenue credits for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the County or the project and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County;

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 Act and MCIP Act, the County and Pure Power Technologies, Inc. (as successor in interest to Pure Power Technologies, LLC and Navistar, Inc., as consented to by the County pursuant to a resolution dated June 21, 2016) (“PPT Inc.”) are parties to that certain Infrastructure Credit and Incentive Agreement effective as of July 1, 2010 (as amended, restated, supplemented, modified and assigned, the “Infrastructure Credit Agreement”), pursuant to which PPT Inc. committed to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an industrial development project in the County (collectively, the “Project”);

WHEREAS, PPT Inc. conveyed a portion of the Project comprised solely of the land and buildings located at the Project to PPT Real Estate Enterprises, L.P. (as partial successor in interest to PPT Inc.) (the “Company”) effective April 11, 2019, and the Company became successor-in-interest to PPT Inc. under the Infrastructure Credit Agreement solely with respect to such conveyed property pursuant to a Partial Assignment and Assumption of Infrastructure Credit and Incentive Agreement effective April 11, 2019 between PPT Inc. and the Company (the “2019 Assignment”);

WHEREAS, the Company has conveyed to NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (or to one or more Affiliates, as defined below) (the “Transferee”), the land and buildings owned by the Company comprising the Project (the “Transferred Property”) and the Transferred Property is subject to the Infrastructure Credit Agreement;

WHEREAS, the Company, the Transferee and the County with the signed acknowledgement of PPT Inc. desire to enter into that certain Partial Assignment and Assumption of Infrastructure Credit and Incentive Agreement in the form attached hereto as Exhibit A (the “2020 Assignment”), wherein and whereby the Company shall assign all of its right, title, interest and obligations under the Infrastructure Credit Agreement to the Transferee (or to one or more Affiliates, as defined below), as they relate to the Transferred Property, and the Transferee (or one or more Affiliates) shall assume such right, title, interest



and obligations under the Infrastructure Credit Agreement from the Company, subject to the terms of such Assignment, as they relate to the Transferred Property;

WHEREAS, the Company and the Transferee have requested that the County authorize, approve, ratify and consent to the conveyance of the Transferred Property to the Transferee (or to one or more Affiliates) and the 2020 Assignment, each in accordance with the provisions of the Infrastructure Credit Agreement.

NOW THEREFORE, BE IT RESOLVED, by the County Council as follows:

**Section 1. *Definitions.*** For purposes of this Resolution, the term “Affiliate(s)” shall mean, with respect to any entity, an entity that is controlled by, owned directly or indirectly and in whole or in part by, or under common control with, such entity.

**Section 2. *Statutory Findings.*** Based on information supplied to the County by the Company, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to continue 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 continues to give 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 continue to be proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 3. *Approval of the Assignments; Authorization to Execute and Deliver the Assignments; Ratification of Infrastructure Credit Agreement.*** The form, terms and provisions of the 2020 Assignment that is before this meeting are approved and all of the 2020 Assignment’s terms and conditions are incorporated in this resolution (“Resolution”) by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the 2020 Assignment 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 2020 Assignment and to deliver the 2020 Assignment to the respective parties thereto. The County acknowledges and agrees that, as of the time immediately prior to the effectiveness of the 2020 Assignment, the Infrastructure Credit Agreement is in full force and effect, there are no existing defaults under the Infrastructure Credit Agreement, and the Infrastructure Credit Agreement and the 2019 Assignment are hereby ratified by the County in all respects.

**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 Resolution and the 2020 Assignment.

**Section 5. *Savings Clause.*** The provisions of this Resolution are separable. If any part of this Resolution is, for any reason, unenforceable then the validity of the remainder of this Resolution is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Resolution, is, only to the extent of that conflict, repealed.

**Section 7. Effectiveness.** This Resolution is effective immediately upon approval by the Council following reading before Council.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, Richland County Council

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk of Council, Richland County Council

**Exhibit A**  
**Form of 2020 Assignment**

[See attached]

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT**

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT** (this “**Assignment Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and among PPT Real Estate Enterprises, L.P., a Delaware limited partnership (“**Assignor**”), NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (“**Assignee**”), and Richland County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina (the “**County**”).

**WITNESSETH:**

WHEREAS, Pure Power Technologies, LLC, a Delaware limited liability company (“**PPT LLC**”), NAVISTAR, Inc., a Delaware corporation (“**NAVISTAR**”), and the County entered into that certain Infrastructure Credit and Incentive Agreement dated as of July 1, 2010 (as amended, restated, supplemented, modified and assigned, the “**Infrastructure Credit Agreement**”), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein by reference; and

WHEREAS, PPT LLC and NAVISTAR’s right, title and interest in the Infrastructure Credit Agreement were assigned to Pure Power Technologies, Inc. (“**PPT Inc.**”) in connection with the sale of substantially all of PPT LLC’s assets to PPT Inc., which assignment was ratified by the County by a Resolution of County Council dated June 21, 2016; and

WHEREAS, PPT Inc.’s right title and interest in the Infrastructure Credit Agreement solely with respect to the land and buildings located at the Project (as defined in the Infrastructure Credit Agreement) were assigned to Assignor effective April 11, 2019; and

WHEREAS, Assignor has conveyed or will convey a portion of the Project (as defined in the Infrastructure Credit Agreement) consisting of land and buildings located at the Project to Assignee (collectively, the “**Transferred Property**”); and

WHEREAS, Assignor desires to assign to Assignee all of its obligations, rights, title and interest in and to the Infrastructure Credit Agreement, a true and correct copy of such Infrastructure Credit Agreement having been provided to Assignee, with respect to the Transferred Property, and Assignee desires to assume all obligations, rights, title and interest of Assignor thereunder, with respect to the Transferred Property; and

WHEREAS, the County authorized, approved and consented to (or will authorize, approve and consent to) the assignment of the Infrastructure Credit Agreement via Resolution of its County Council.

NOW, THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption of Infrastructure Credit Agreement. Assignor does hereby sell, assign, transfer and set over to Assignee all of Assignor’s right, title, interest and obligations under the Infrastructure Credit Agreement, solely with respect to the Transferred Property, and Assignee hereby accepts such assignment and assumes all of Assignor’s duties and obligations under the Infrastructure Credit Agreement, solely with respect to the Transferred Property (“**Assignment and Assumption of Infrastructure Credit Agreement**”).



2. Consent to Assignment and Assumption of Infrastructure Credit Agreement. Such Assignment and Assumption of Infrastructure Credit Agreement is made subject to and is conditioned upon obtaining the consent or ratification from the County as required by Section 7.01 of the Infrastructure Credit Agreement, and following receipt of such consent or ratification, shall be deemed effective as of the Effective Date.

3. Mutual Indemnities. Assignor agrees to indemnify, defend and hold Assignee, its affiliates, successors and assigns, harmless from and against any and all claims, actions, charges, fees and expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities (collectively, "Claims") that result directly from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement (as such relate to the Transferred Property), provided that any such obligation accrued and that such failure occurred prior to the Effective Date. Assignee agrees to indemnify, defend and hold Assignor, its affiliates, successors and assigns, harmless from and against any and all Claims that: (a) result directly from the failure of Assignee to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement, provided that any such obligation accrued and that such failure occurred on or after the Effective Date; or (b) arise from any modification or amendment to the Infrastructure Credit Agreement on or after the Effective Date (in each case, as such relate to the Transferred Property). Notwithstanding the foregoing, unless such Claim against Assignor results solely from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement during the period that Assignor was a party to the Infrastructure Credit Agreement, Assignee shall pursue such Claim exclusively from PPT Inc. pursuant to the terms of that certain Lease Agreement by and between Assignee and PPT Inc.

4. Representations and Warranties by Assignor and County.

- (a) Assignor hereby represents and warrants to Assignee that, to the best of Assignor's knowledge, neither the Assignor nor the Transferred Property is in default under the Infrastructure Credit Agreement and that all requirements of Assignor under the Infrastructure Credit Agreement have been satisfied as of the Effective Date.
- (b) The County hereby represents that, to the best of the County's knowledge based solely on information Assignor and Assignee have provided to the County without further independent investigation, neither Assignor nor the Transferred Property is in default under the Infrastructure Credit Agreement.

5. Release. Effective and contingent upon the County's consent to the Assignment and Assumption of Infrastructure Credit Agreement, the County releases Assignor from any breach by Assignee of Assignee's duties, obligations, and liabilities under the Infrastructure Credit Agreement with respect to the Transferred Property, accruing on or after 12:00 a.m. on the Effective Date, except with respect to the payment of Richland Fee Payments (as defined in the Infrastructure Credit Agreement), payments in lieu of taxes, *ad valorem* taxes or other amounts due with respect to the Transferred Property (collectively, "**Amounts**"), which the County specifically does not release Assignor from the obligation for the payment thereof until the County has received such Amounts due through the Effective Date or for the property tax year in which the Assignment and Assumption of Infrastructure Credit Agreement occurs. Nothing contained in this Section 5 shall release Assignor from any other duties, obligations, or liabilities under the Infrastructure Credit Agreement.

6. Notices. From and after the Effective Date, all notices delivered pursuant to the Infrastructure Credit Agreement shall also be delivered to Assignee at the following addresses:

NL Ventures XI Northpoint, L.L.C.  
c/o AIC Ventures, L.P.  
2600 Via Fortuna, Suite 260  
Austin, TX 78746  
Attention: Heath D. Esterak, Managing Director – Legal

7. Amendment. This Assignment Agreement may be amended, modified or supplemented, and any provision hereof may be waived, only by written agreement of the parties hereto.

8. Governing Law. This Assignment Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of South Carolina.

9. Successors and Assigns. This Assignment Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Assignment Agreement.

10. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become binding when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment Agreement to be executed as of the Effective Date.

**ASSIGNOR:**

PPT REAL ESTATE ENTERPRISES, L.P., a  
Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

NL VENTURES XI NORTHPOINT, L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the County has consented to the Assignment and Assumption of Infrastructure Credit Agreement and this Assignment Agreement by the signature of its authorized representative below.

**RICHLAND COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

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

IN WITNESS WHEREOF, PPT Inc. acknowledges the foregoing Assignment and Assumption of Infrastructure Credit Agreement and agrees that nothing in this Assignment Agreement terminates or limits the obligations of PPT Inc. with respect to property subject to the Infrastructure Credit Agreement other than the Transferred Property.

PURE POWER TECHNOLOGIES, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A to Partial Assignment and Assumption of Infrastructure Credit Agreement**

**Copy of Infrastructure Credit Agreement**

[to be attached]

INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT

by and among

RICHLAND COUNTY, SOUTH CAROLINA

and

NAVISTAR, INC.

and

PURE POWER TECHNOLOGIES, LLC

Dated as of July 1, 2010

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## INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT

This INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT, dated as of July 1, 2010 (as the same may be amended, modified or supplemented in accordance with the terms hereof, the "Agreement"), by and among RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (the "County"), NAVISTAR, INC., a Delaware corporation ("Navistar"), and PURE POWER TECHNOLOGIES, LLC, a Delaware limited liability company ("PPT").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, including Sections 4-1-170 and 4-1-175 thereof, Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (collectively, the "Act"), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide special source revenue credits for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or the project and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County; and (ii) to create, in conjunction with one or more other counties, a joint county industrial or business park ("Park") in order to afford certain enhanced income tax credits to certain investors and to facilitate the grant of such special source revenue credits; and

WHEREAS, Navistar has made a significant investment in the County through the establishment of certain manufacturing and research and development facilities (collectively, the "Project"), including, without limitation, by its purchase of certain membership interests and assets from Continental Automotive Systems US, Inc., a Delaware corporation ("CAS"), including, among other things, (i) all of the membership interests of Continental Diesel Systems US, LLC, a Delaware limited liability company ("CDS"), which has since been renamed Pure Power Technologies, LLC, and (ii) real and personal property comprising a portion of facilities located at 1410 Northpoint Boulevard, Blythewood, South Carolina (the "Production Facility") and personal property comprising a portion of facilities located at 121 Research Drive, Columbia, South Carolina (the "R&D Facility")(the Production Facility and the R&D Facility, collectively referred to herein as, the "Facilities"); and

WHEREAS, a portion of investment in the Project consists of investment in certain real property, including, among other things, land, buildings and other improvements to land, and certain personal property including, among other things, furniture, fixtures, machinery and equipment, that were previously subject to that certain Lease Agreement dated December 30, 1999 between the County and Siemens Diesel Systems Technology, LLC (predecessor of CDS), as amended by that certain Amendment to Lease dated June 4, 2004, and terminated as of October 15, 2009 pursuant to that certain Settlement Agreement effective as of July 29, 2009 among the County, CAS, CDS, and Richland County Development Corporation (such property collectively referred to herein as the "Existing Blythewood Property"); and

WHEREAS, pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution, the County and Fairfield County, South Carolina ("Fairfield County") have established a Park (the "Richland-Fairfield Park") by entering into that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of April 15, 2003, as amended or supplemented from time to

time (the "Richland-Fairfield Park Agreement"); and

WHEREAS, the Production Facility, including, without limitation, the Existing Blythewood Property, is presently located on land more fully described on the attached **Exhibit A** attached hereto and made a part hereof (the "Production Facility Land"); and

WHEREAS, the County and Fairfield County have previously amended the Richland-Fairfield Park Agreement to expand the boundaries of the Richland-Fairfield Park to include therein the Production Facility Land and the real and personal property located thereon, including, without limitation, the Existing Blythewood Property, and the County has agreed to maintain such property within the boundaries of the Richland-Fairfield Park (or a replacement or successor Park) in order to facilitate the Special Source Revenue Credits (as defined below); and

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a *situs* in the Richland-Fairfield Park (or any other Park) is exempt from all *ad valorem* taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, payments in lieu of taxes to the County in the total amount equivalent to the *ad valorem* property taxes that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such Park (each, a "Richland Fee Payment"); and

WHEREAS, the County has agreed to provide special source revenue credits against each Richland Fee Payment made by Navistar, PPT, and their Affiliates (as defined below), successors, and assigns (in each case, to the extent the County is notified of same as set forth below), with respect to the Existing Blythewood Property in an amount sufficient to reduce each such Richland Fee Payment so that the resulting net Richland Fee Payment equals the amount of such payment if calculated using an assessment ratio of 6% and a locked millage rate equal to the millage rate in effect for the Production Facility as of October 29, 2009, 460.8 mills, for a period of twenty (20) years beginning with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2011 and terminating with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2030 (the "Special Source Revenue Credits"); and

WHEREAS, the County has agreed to convey, or cause to be conveyed, by Title to Real Estate Limited Warranty Deed to PPT marketable, insurable (at standard title insurance rates), fee simple title to the land on which the R&D Facility is presently located, and more fully described on the attached **Exhibit B** attached hereto and made a part hereof (the "R&D Facility Land"), together with and including all improvements, buildings, rights, members, easements, appurtenances and hereditaments belonging or in anywise incident or appertaining to the R&D Facility Land (such improvements, buildings, rights, members, easements, appurtenances and hereditaments and the R&D Facility Land, collectively referred to herein as the "R&D Facility Real Property"); and

WHEREAS, the County Council has authorized the execution and delivery of this Agreement by Ordinance No. 047-10HR enacted by the County Council on July 20, 2010 (the "Ordinance").

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the above recitals which are incorporated herein by reference, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### ADDITIONAL DEFINITIONS

The defined terms in this Agreement shall for all purposes of this Agreement have the meanings specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

*"Affiliate"* shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of Navistar or PPT or which is owned in whole or in part by Navistar or PPT or by any partner, shareholder or owner of Navistar or PPT, the identity of which must in all cases be provided in writing to the County.

*"Cost"* or *"Cost of the Infrastructure"* means all the costs of designing, acquiring, constructing, improving, or expanding the Infrastructure, whether incurred prior to or after the date of this Agreement, and shall be deemed to include, without limitation: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; and (d) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure.

*"County"* shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

*"Infrastructure"* means, to the extent paid for by Navistar, PPT, or an Affiliate, whether prior to or after the date of this Agreement, any infrastructure serving the County or the Project, any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements and any personal property, including, without limitation, machinery and equipment, to the extent now or hereafter permitted by law, used in the operation of a manufacturing or commercial enterprise, in order to enhance the economic development of the County, including, without limitation, the infrastructure of Navistar, PPT, or an Affiliate, the Production Facility Land, the buildings, fixtures and other real property improvements located on the Production Facility Land or on the R&D Facility Land, and any additions or improvements to any of the foregoing, all as defined and permitted under the Act.

*"Navistar"* shall mean Navistar, Inc., a Delaware corporation, and its successors and assigns.

*"Park Agreement"* shall mean the Richland-Fairfield Park Agreement, as amended, supplemented, replaced, or succeeded from time to time.

*"Person"* means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a joint venture, a trust, any unincorporated organization, or a

government or an agency or a political subdivision thereof.

"PPT" shall mean Pure Power Technologies, LLC, a Delaware limited liability company, and its successors and assigns.

"Richland Fee Payment" shall have the meaning ascribed thereto in the recitals of this Agreement.

"Richland Park" shall mean the Park established pursuant to the terms of the Park Agreement, and any Park which includes the Existing Blythewood Property, the Production Facility Land, and the real and personal property located on the Production Facility Land, and which is designated by the County as such pursuant to any Park Agreement which replaces or succeeds the Richland-Fairfield Park Agreement.

"R&D Facility Real Property" shall have the meaning ascribed thereto in the recitals of this Agreement.

"Special Source Revenue Credits" shall mean the special source revenue credits granted by the County described in Section 3.03 hereof.

The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

## ARTICLE II

### REPRESENTATIONS

SECTION 2.01. Representations by the County. The County makes the following representations:

- (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, execute, deliver, and carry out its obligations under, this Agreement;
- (c) The County has approved this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state and local law;
- (d) The County enters into this Agreement for the purpose of promoting the economic development of the County; and
- (e) No actions, suits, proceedings, inquiries, or investigations are pending or, to the best of the County's knowledge, threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

SECTION 2.02. Representations by Navistar and PPT. Navistar and PPT, respectively, make the following representations:

(a) Navistar is a corporation duly organized, validly existing, and in good standing, under the laws of the State of Delaware, has power to enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver this Agreement;

(b) PPT is a limited liability company duly organized, validly existing, and in good standing, under the laws of the State of Delaware, has power to enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver this Agreement; and

(c) No actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting Navistar or PPT in any court or before any governmental authority or arbitration board or tribunal, any of which could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

(d) The Special Source Revenue Credits provided by the County and the conveyance by the County to PPT of marketable, insurable (at standard title insurance rates), fee simple title to the R&D Facility Real Property in the manner set forth in this Agreement have been instrumental in inducing Navistar to invest in, or cause investment in, the Project in the County.

(e) As of July 1, 2010, PPT and/or Navistar intend to utilize or operate the R&D Facility Real Property.

SECTION 2.03. Covenants by the County. The County has included and will maintain the Existing Blythewood Property, the Production Facility Land, and the real and personal property located on the Production Facility Land within the boundaries of the Richland-Fairfield Park or other Richland Park in order to facilitate the Special Source Credits described herein.

### ARTICLE III

#### SPECIAL SOURCE REVENUE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure. Navistar agrees to pay, or cause to be paid, all Costs of the Infrastructure.

SECTION 3.02. [Reserved].

SECTION 3.03. Special Source Revenue Credits.

(a) To defray the Costs of Infrastructure, the County agrees to provide Special Source Revenue Credits against each Richland Fee Payment made by Navistar, PPT, or an Affiliate (but only in the event such Affiliate is identified in writing to the County) with respect to the Existing Blythewood Property in an amount sufficient to reduce each such Richland Fee Payment so that the resulting net Richland Fee Payment equals the amount of such payment if calculated using an assessment ratio of 6% and a locked millage rate equal to the millage rate in effect for the Production Facility as of October 29, 2009, 460.8 mills, for a period of twenty (20) years beginning with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2011 and terminating with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2030. In order to claim

its annual Special Source Credit against each Richland Fee Payment, each claiming party must, no later than August 31 of each year (or such later date as may be agreed to by the County) beginning with August 31, 2010, submit a "Special Source Revenue Credit Certification" in the form of Exhibit D attached hereto and made a part hereof ("Annual SSRC Certification") pursuant to the instructions provided therein; provided, however, that failure to submit such Special Source Revenue Credit Certification shall not be deemed to be an event of default under this Agreement. If the Annual SSRC Certification is timely submitted as provided herein and the conditions set forth in Exhibit D have been met, the Special Source Revenue Credits shall be reflected on each tax bill of Richland Fee Payment due sent to Navistar, PPT, and other applicable Affiliate by the County Auditor, by reducing such Richland Fee Payment due by the amount set forth herein;

(b) If subsection 3.03(a), or the granting of the Special Source Credits under this Agreement, is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, the County agrees to provide Navistar, PPT, and any other applicable Affiliate, with an incentive that is valid pursuant to such court ruling and commensurate to the nature and value of the benefits provided under this Agreement. The responsibility for the preparation of documents or modification of this Agreement in connection with such incentive and the applicable and reasonable costs thereof (including any applicable and reasonable legal fees incurred by the County) shall be borne solely by Navistar, PPT, and any other applicable Affiliate.

(c) THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS GRANTED HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY TO BE CLAIMED BY NAVISTAR, PPT, OR OTHER APPLICABLE AFFILIATE SOLELY FROM THE RICHLAND FEE PAYMENTS RECEIVED BY THE COUNTY FROM NAVISTAR, PPT, OR OTHER APPLICABLE AFFILIATE, AND DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY 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 A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED IN CONNECTION WITH THE GRANTING OF THE SPECIAL SOURCE REVENUE CREDITS HEREUNDER.

(d) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Richland Fee Payments received from Navistar, PPT, or other applicable Affiliate. The County shall not be required to provide the Special Source Revenue Credits except with respect to the Richland Fee Payments received from Navistar, PPT, or other applicable Affiliate.

#### ARTICLE IV

#### TRANSFERS OF THE PROJECT

SECTION 4.01. Transfers of the Project. The County acknowledges and agrees that Navistar, PPT, and applicable Affiliates each may from time to time and in accordance with applicable law and without the consent of the County, sell, transfer, lease, convey, or grant its respective interest in all or any portion of the Project, including, without limitation, the Existing Blythewood Property and the R&D

Facility Real Property, to any other individual or entity. The County shall receive reasonable written notice of any such transfer, lease, conveyance or grant. Once such notice is received, and subject to Section 7.01 hereof, the County agrees that the sale, transfer, lease, conveyance or grant shall not relieve the County of the County's obligation to provide Special Source Revenue Credits to Navistar, PPT, or applicable Affiliates under this Agreement.

## ARTICLE V

### R&D FACILITY REAL PROPERTY

#### SECTION 5.01. Conveyance of Title to R&D Facility Real Property.

(a) The County agrees to convey, or cause to be conveyed, to PPT marketable, insurable (at standard title insurance rates), fee simple title to the R&D Facility Real Property on or before August 20, 2010 (or such later date as may be established by PPT in writing to the County, in PPT's sole discretion), in writing by a Title to Real Estate Limited Warranty Deed in substantially the form set forth in **Exhibit C** attached hereto and made a part hereof, for and in consideration of the sum of Five and 00/100 Dollars (\$5.00), to be paid, or caused to be paid, to the County by Navistar. The County covenants and agrees to, upon the request of PPT, take such further steps and to execute and deliver such further instruments, agreements, or other documents, in form and substance reasonably acceptable to the County, to further effectuate, evidence or confirm such conveyance, to enable PPT to acquire title insurance, to effectuate and evidence the termination of that certain Lease Agreement dated January 24, 2010 between the County, Richland County Development Corporation ("RCDC"), and PPT (as successor by assignment), as amended by that certain Settlement Agreement by and among the County, RCDC, CAS, and CDS, and as may be required by applicable federal, state, or local law. The cost of the deed recording fee and/or state or local transfer taxes, if any, and documentary stamp taxes, if any, (S.C. Code Ann. Section 12-24-10, *et. seq.*), on the limited warranty deed required hereunder shall be borne by Navistar.

(b) If Navistar, PPT, and any Affiliates fail to, collectively, hire, or cause to be hired, at least 160 full-time employees (including, without limitation, contract employees) at the Facilities and elsewhere in the County, in the aggregate (the "Minimum Employment Requirement"), or, collectively, invest, or cause to be invested, (including, without limitation, investment and acquisition costs made prior to the date of this Agreement) at least \$70,400,000 (without regard to subsequent depreciation or diminution in value) at the Facilities and elsewhere in the County, in the aggregate (the "Minimum Investment Requirement"), on or before, December 31, 2019 (the "Initial Threshold Deadline"), Navistar shall pay, or cause to be paid, to the County an amount calculated according to the formula set forth below in this subsection 5.01(b) (the "Reimbursement Payment").

The degree of compliance shall be measured against each of the Minimum Employment Requirement (160 full-time employees) and the Minimum Investment Requirement (\$70,400,000), and shall be weighted 50% employment / 50% investment times the value ascribed to the R&D Facility Real Property by the County of \$2,000,000.

1. 
$$\frac{\text{Actual Investment}}{\$70,400,000} \times 100 = \text{Investment Achievement Percentage [IAP]}$$
2. 
$$100\% - \text{IAP} = \text{Investment Alteration Factor [IAF]}$$



3.  $\frac{\text{Actual Employees Hired}}{160} \times 100 = \text{Employment Achievement Percentage [EAP]}$
4.  $100\% - \text{EAP} = \text{Employment Alteration Factor [EAF]}$
5.  $\frac{\text{IAF} + \text{EAF}}{2} = \text{Final Alteration Factor [FAF]}$
6.  $\text{FAF} \times \$2,000,000 = \text{Reimbursement Payment}$  [To the extent this calculation yields a negative Reimbursement Payment, no party hereto shall have any payment obligation under this Section 5.01.]

As an example, assuming Navistar, PPT, and their Affiliates, collectively, invested \$30,000,000 and hired a maximum of 150 employees on or before the Initial Threshold Deadline, the Reimbursement Payment would be calculated as follows:

1.  $\frac{\$30,000,000}{\$70,400,000} \times 100 = 42.6\% \text{ [IAP]}$
2.  $100\% - 42.6\% = 57.4\% \text{ [IAF]}$
3.  $\frac{150}{160} \times 100 = 93.8\% \text{ [EAP]}$
4.  $100\% - 93.8\% = 6.2\% \text{ [EAF]}$
5.  $\frac{57.4\% + 6.2\%}{2} = 31.8\% \text{ [FAF]}$
6.  $31.8\% \times \$2,000,000 = \text{Reimbursement Payment of } \$636,000.$

As an additional example, assuming Navistar, PPT, and their Affiliates, collectively, invested \$60,000,000 and hired a maximum of 200 employees on or before the Initial Threshold Deadline, the Reimbursement Payment would be calculated as follows:

1.  $\frac{\$60,000,000}{\$70,400,000} \times 100 = 85.2\% \text{ [IAP]}$
2.  $100\% - 85.2\% = 14.8\% \text{ [IAF]}$
3.  $\frac{200}{160} \times 100 = 125\% \text{ [EAP]}$
4.  $100\% - 125\% = (-25\%) \text{ [EAF]}$

5. 
$$\frac{14.8\% + (-25\%)}{2} = (-10.2\%) \text{ [FAF]}$$

6. 
$$(-10.2\%) \times \$2,000,000 = \text{No Reimbursement Payment due.}$$

(c) The term “investment” or “invest” as used in this Section 5.01 shall include not only investments made by Navistar, PPT, and any Affiliates, but also those investments made by or for the benefit of Navistar, PPT, or such Affiliates through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxation payments, payments in lieu of taxes, or fees in lieu of tax payments by Navistar, PPT, or such applicable Affiliates.

## ARTICLE VI

### DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. If any party shall fail duly and punctually to perform any material covenant, condition, agreement or provision contained in this Agreement on the part of such party to be performed, which, except as otherwise provided in this Agreement, failure shall continue for a period of thirty (30) days after written notice by the other party specifying the failure and requesting that it be remedied is given to the defaulting party by first-class mail, then such party shall be in default under this Agreement (an “Event of Default”); provided, however, that if any such failure is not, with due diligence, susceptible of cure within such 30-day period, then such defaulting party shall have an additional period of time not to exceed thirty (30) days from the date of such written notice by the other party to remedy such failure, unless such parties shall agree in writing to an extension of such time prior to its expiration.

SECTION 6.02. Legal Proceedings by Navistar, PPT, and the County. Upon the happening of any Event of Default by a party, then and in every such case the other parties in their respective discretion may each:

- (1) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the defaulting party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;
- (2) bring suit upon this Agreement;
- (3) exercise any or all rights and remedies in effect in the State of South Carolina, or other applicable law, as well as all other rights and remedies possessed by the County, Navistar and PPT; or
- (4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 6.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to Navistar, PPT, or the County is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 6.04. Nonwaiver. No delay or omission of Navistar, PPT, or the County to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this Article VI to Navistar, PPT, or the County may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.01. Assignment; Binding Effect; Successors and Assigns. This Agreement, and the rights and obligations hereunder, may not be assigned or transferred by any party without the prior written consent or subsequent ratification of the other parties, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, except that Navistar and PPT may each assign this Agreement to an Affiliate, or in connection with the merger, consolidation, or sale or transfer of all or substantially all of their respective assets, without the prior written consent or subsequent ratification of the County. If and to the extent the prior written consent or subsequent ratification of the County is required pursuant to this Section 7.01, the County expressly agrees that, to the extent permitted by law, such prior written consent or subsequent ratification may be, but shall not be required to be, provided by a letter or other writing executed by the Chair of the County Council and the County Administrator of the County, and those two officials are hereby expressly jointly authorized to provide such consent or ratification on behalf of the County. This Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of Navistar, PPT, and the County, and their respective successors and assigns. All covenants, stipulations, promises, and agreements contained in this Agreement, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 7.02. Provisions of Agreement for Sole Benefit of Navistar, PPT, and the County. Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person other than Navistar, PPT, and the County any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be, except as otherwise specifically provided in this Agreement, for the sole and exclusive benefit of Navistar, PPT, and the County.

SECTION 7.03. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement and the Special Source Revenue Credits shall be construed and enforced as if the illegal, invalid or unenforceable provisions had not been contained herein or therein so as to most closely effectuate the legal, valid and enforceable intent hereof or thereof and so as to afford Navistar, PPT, and applicable Affiliates with the maximum benefits to be derived herefrom or therefrom.

SECTION 7.04. No Liability for Personnel of the County, Navistar or PPT. No covenant or agreement contained in this Agreement is deemed to be a covenant or agreement of any member, agent, or employee of the County or its governing body or Navistar or PPT or any of their respective officers,



Columbia, SC 29202

The County, Navistar, and PPT may, by notice given under this Section 7.05, each designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 7.06. Administrative Fees. Navistar shall reimburse, or cause reimbursement of, the County for reasonable expenses, including, reasonable attorneys' fees, related to (i) review and negotiation of this Agreement, (ii) review and negotiation of any other documents related to the Project or the Facilities, or (iii) the Project itself or Facilities themselves, in an amount not to exceed \$10,000.

SECTION 7.07. Merger. This Agreement constitutes the entire agreement among the parties to it with respect to the matters contemplated in it, and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had among these parties are merged herein.

SECTION 7.08 Agreement to Sign Other Documents. The County agrees that it will from time to time execute and deliver such further instruments, in form and substance reasonably acceptable to the County, and take such further action as may be reasonable and as may be requested by Navistar or PPT or as may be required to carry out the purpose of this Agreement. Navistar shall reimburse, or cause reimbursement of, the County for reasonable attorneys' fees, related to review and negotiation of such further instruments. Such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any state constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the credit or taxing power of the State of South Carolina, or any other political subdivision of the State of South Carolina.

SECTION 7.09. Construction of Agreement. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

SECTION 7.10. Applicable Law. The laws of the State of South Carolina govern the construction of this Agreement.

SECTION 7.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 7.12. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 7.13. 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 7.14. Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the

County without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees, to the extent permitted by law, to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 7.15. Indemnification and Hold Harmless Obligation of the Company

Except as provided herein, the Navistar, PPT and any applicable Affiliate, (collectively, "Company") shall jointly and severally indemnify and save the County, its past, present and future employees, elected officials, officers and agents (each, an "Indemnified Party") harmless from all claims, and costs related thereto, including reasonable attorneys' fees, by or on behalf of any person arising or relating to the County's execution or delivery of this Agreement, any other documents reasonably necessary to effect this Agreement and the transactions contemplated herein, and any related procedural documents entered into with respect to this Agreement (collectively, "Transaction Documents") or performance of the County's obligations under the Transaction Documents, or the administration of its duties pursuant to the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents. If such a claim is made against any Indemnified Party, then subject to the provisions below, the Company shall either defend the Indemnified Party in any action or proceeding, or provide prompt payment for all reasonable costs of defense incurred by an Indemnified Party if, with the consent of the Company, the Indemnified Party selects its own legal counsel with respect to such claim.

Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against any claim or liability (i) occasioned by the acts or omissions of that Indemnified Party, which are unrelated to the County's execution of the Transaction Documents, the performance of the County's obligations under the Transaction Documents, or the administration of the County's duties under the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents; (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct; or (iii) arising from the County's customary performance and administration of its obligations and duties in connection with its operation of the County's governmental functions outside of the County's execution and performance of the Transaction Documents.

SIGNATURES FOLLOW ON NEXT PAGE.

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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 hereunto affixed and attested and Navistar and PPT have caused this Agreement to be executed by its respective authorized officer, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina

By: Paul Livingston (SEAL)  
Name: Paul Livingston  
Its: Chairman, County Council, Richland County, South Carolina

ATTEST:

By: Michelle Cannon Finch (SEAL)  
Name: Michelle Cannon Finch  
Its: Clerk to County Council, Richland County, South Carolina

NAVISTAR, INC.,  
a Delaware corporation

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PURE POWER TECHNOLOGIES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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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 hereunto affixed and attested and Navistar and PPT have caused this Agreement to be executed by its respective authorized officer, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina

By: \_\_\_\_\_ (SEAL)  
Name: Paul Livingston  
Its: Chairman, County Council, Richland County, South Carolina

ATTEST:

By: \_\_\_\_\_ (SEAL)  
Name: Michielle Cannon Finch  
Its: Clerk to County Council, Richland County, South Carolina

NAVISTAR, INC.,  
a Delaware corporation

By: Eric Tech (SEAL)  
Name: Eric Tech  
Its: Engine Group

PURE POWER TECHNOLOGIES, LLC,  
a Delaware limited liability company

By: Thomas Kasher (SEAL)  
Name: Thomas Kasher  
Its: President

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EXHIBIT A

PRODUCTION FACILITY LAND

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar at the Point of Beginning (POB-B), this #4 Rebar being a common corner of Parcel "B" and a parcel of property now or formerly of Keller Properties, Inc.; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S 30°42'38" E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road; thence proceeding along Parcel "A" the following courses: a curve to the left having a radius of 50.00 feet; an arc length of 77.93 feet; a chord bearing of N76°38'30"W and a chord length 70.28 feet to a #4 Rebar; thence proceeding S58°42'22"W for a distance of 146.06 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of S73°14'46"W and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N89°18'32"W for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 460.00 feet, an arc length of 86.99 feet, a chord bearing of S77°04'31"W a chord length of 170.96 feet to a #4 Rebar; thence proceeding S66°21'58"W for a distance of 103.97 feet to a #4 Rebar; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W for a distance of 82.78 feet to a #4 Rebar; thence proceeding along reserved property and property now or formerly of Coca-Cola Bottling Company N66°21'53"E for a distance of 756.99 feet to a 2 ½" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. S55°36'41"E for a distance of 163.06 feet to a 2" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. N23°26'37"E for a distance of 209.45 feet to a #4 Rebar and Point of Beginning (POB-B), said parcel contains an area of 3.88 acres, more or less.

TOGETHER WITH

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S30 42'38"E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road, the Point of Beginning (POB-A); from said point of beginning, thence along the western margin of the right-of-way of Community Road the following courses to the creek; proceeding along a curve to the left having a radius of 6056.40 feet, a chord bearing and distance of S32°45'25"E, 162.27 feet, an arc length of 162.28 feet to a concrete monument; thence proceeding S33°02'31"E, 10.08 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 5729.58 feet, a chord bearing and distance of S32°09'35"E, 258.44

feet, an arc length of 258.47 feet to a concrete monument; thence proceeding S31°05'41"E, 459.05 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 883.73 feet, a chord bearing and distance of S14°05'35"E, 516.67 feet, an arc length of 524.32 feet to a concrete monument; thence proceeding S02°54'14"W, 301.76 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the left having a radius of 965.22 feet, a chord bearing and distance of S05°48'06"E, 302.00 feet, an arc length of 303.25 feet to a concrete monument; thence proceeding S03°54'31"E, 162.57 feet to a concrete monument; thence proceeding S24°45'08"E, 45.78 feet to a point in the center of the creek; thence following the creek centerline S54°53'30"W, 92.85 feet to a point; thence following the creek centerline S80°29'27"W, 42.27 feet to a point; thence following the creek centerline S77°11'27"W, 45.78 feet to a point; thence following the creek centerline S85°05'49"W, 34.67 feet to a point; thence following the creek centerline S35°45'15"W, 37.68 feet to a point; thence following the creek centerline N. 79°22'15"W, 23.49 feet to a point; thence following the creek centerline S56°18'52"W, 58.20 feet to a point; thence following the creek centerline S81°54'49"W, 47.17 feet to a point; thence following the creek centerline S84°56'19"W, 26.03 feet to a point; thence following the creek centerline S79°16'52"W, 33.49 feet to a point; thence following the creek centerline N76°36'20"W, 39.05 feet to a point; thence following the creek centerline N75°36'20"W, 23.30 feet to a point; thence following the creek centerline S22°45'02"W, 36.32 feet to a point; thence following the creek centerline N80°20'08"W, 23.26 feet to a point; thence following the creek centerline N01°08'00"E, 20.82 feet to a point; thence following the creek centerline N52°59'26"W, 44.15 feet to a point; thence following the creek centerline N23°36'16"W, 39.49 feet to a point; thence following creek centerline N55°36'57"W, 48.22 feet to a point; thence following the creek centerline S71°31'34"W, 38.67 feet to a point; thence following the creek centerline S19°14'48"E, 19.57 feet to a point; thence following the creek centerline S50°35'39"W, 30.67 feet to a point; thence following the creek centerline N30°28'21"W, 16.24 feet to a point; thence following the creek centerline N36°29'39"W, 33.63 feet to a point; thence following the creek centerline N76°19'46"W, 49.29 feet to a point; thence following the creek centerline S73°49'21"W 22.68 feet to a point; thence following the creek centerline S03°18'27"W, 37.42 feet to a point; thence following the creek centerline N77°39'36"W, 41.24 feet to a point; thence following the creek centerline N77°33'40"W, 41.48 feet to a point; thence following the creek centerline N27°56'03"W, 33.98 feet to a point; thence following the creek centerline N60°27'23"W, 33.10 feet to a point; thence following the creek centerline S32°16'34"W, 24.52 feet to a point; thence following the creek centerline S89°16'56"W, 15.72 feet to a point; thence following the creek centerline N45°13'18"W, 38.26 feet to a point; thence following the creek centerline N26°17'46"E, 25.62 feet to a point; thence following the creek centerline N09°35'24"W, 25.42 feet to a point; thence following the creek centerline N84°41'36"W 15.32 feet to a point; thence following the creek centerline N07°53'25"E, 41.75 feet to a point; thence following the creek centerline N32°48'04"W, 25.64 feet to a point; thence following the creek centerline N71°09'43"W, 43.35 feet to a point; thence following the creek centerline N10°59'52"W, 28.18 feet to a point; thence following the creek centerline N64°22'23"W, 21.10 feet to a point; thence following the creek centerline S61°33'26"W, 20.51 feet to a point, thence following the creek centerline N67°57'58"W, 19.33 feet to a point; thence following the creek centerline S87°51'09"W, 26.09 feet to a point; thence following the creek centerline S44°17'45"W, 42.36 feet to a point; thence following the creek centerline S85°30'34"W, 17.61 feet to a point; thence following the creek centerline N55°25'28"W, 25.30 feet to a point; thence following the creek centerline N09°20'09"W, 25.33 feet to a point; thence following the creek centerline N59°58'35"W, 51.28 feet to a point; thence following the creek centerline N29°43'27"W, 42.86 feet to a point; thence following the creek centerline N48°39'23"W, 60.79 feet to a point; thence following the creek centerline S78°10'45"W, 18.08 feet to a point; thence following the creek centerline N50°00'43"W, 29.92 feet to a point; thence following the creek centerline N10°37'24"W, 25.73 feet to a point; thence following the creek centerline N35°41'36"W, 25.40 feet to a

point; thence following the creek centerline S78°12'03"W, 33.67 feet to a point; thence following the creek centerline N47°42'19"W, 23.71 feet to a point; thence following the creek centerline N51°00'09"W, 43.98 feet to a point; thence following the creek centerline N79°33'04"W, 43.89 feet to a point; thence following the creek centerline S36°46'14"W, 24.19 feet to a point; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W, 1,493.05 feet to a #4 Rebar; thence along Parcel "B" the following courses: N66°21'58"E, for a distance of 103.97 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 460.00 feet; an arc length of 86.99 feet, a chord bearing of N77°04'31"E a chord length of 170.96 feet to a #4 Rebar; thence proceeding S89°18'32"E for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of N73°14'46"E and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N58°42'22"E for a distance of 146.06 feet to a #4 Rebar; thence proceeding along a curve to the right having a radius of 50.00 feet, an arc length of 77.93 feet, a chord bearing of S76°38'30"E and a chord length of 70.28 feet to a #4 Rebar at the Point of Beginning (POB-A). Said parcel contains an area of 61.09 acres, more or less.

LESS HOWEVER: All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as 1.46 acres on that certain survey title "Closing Survey for South Carolina Electric and Gas Company, Northpoint Industrial Park, 115/23kV Substation" prepared by Glenn Associates Surveying, Inc. dated August 9, 2006, and recorded in Book 1245, page 2240 in the Office of the Register of Deeds for Richland County, South Carolina, on October 27, 2006; said tract having such boundaries and measurements as shown on the Closing survey.

EXHIBIT B

R&D FACILITY LAND

LEGAL DESCRIPTION

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

EXHIBIT C

FORM OF LIMITED WARRANTY DEED

STATE OF SOUTH CAROLINA	)		
	)		<b>TITLE TO REAL ESTATE</b>
COUNTY OF RICHLAND	)		<b>LIMITED WARRANTY DEED</b>

KNOW ALL MEN BY THESE PRESENTS that the undersigned **RICHLAND COUNTY DEVELOPMENT CORPORATION**, a non-profit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Five and 00/100 Dollars (\$5.00) and [other valuable consideration], to it well and truly paid at and before the sealing and delivery hereof (the receipt and legal sufficiency of which are hereby acknowledged) by **PURE POWER TECHNOLOGIES, LLC**, a Delaware limited liability company (hereinafter referred to as the "Grantee"), whose mailing address is as hereinafter set forth, has granted, bargained, sold, aliened, conveyed and released, and by these presents does grant, bargain, sell, alien, convey, and release unto the Grantee, its successors and assigns, all of the Grantors' right, title, and interest in and to all that certain tract or parcel of land with all fixtures and improvements thereon lying described as follows (the "Premises"):

DESCRIPTION OF THE PREMISES CONVEYED: As set forth on Exhibit "A" attached hereto and incorporated herein by reference.

GRANTEE'S MAILING ADDRESS: For purposes of this Title to Real Estate Limited Warranty Deed, the Grantee's mailing address is:

1410 Northpoint Boulevard  
Blythewood, South Carolina 29016.

TOGETHER WITH ALL AND SINGULAR the rights, members, easements, any and all crops and timber growing on the Premises, any and all surface or subsurface sand, gravel, oil, gas, or mineral rights and royalties on the Premises, any and all surface and subsurface water appurtenant to the Premises,

all well, spring, reservoir, littoral rights, riparian rights, and water rights of any type, and hereditaments and appurtenances to the Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the Premises before mentioned unto the Grantee, its successors and assigns, forever.

AND the Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the Premises unto the Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof, but no others.

**[SIGNATURE PAGE ATTACHED]**

**[remainder of page intentionally left blank]**



WITNESS the Grantor's hand and seal this \_\_\_\_ day of August, 2010.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

GRANTOR:

RICHLAND COUNTY DEVELOPMENT  
CORPORATION, a non-profit corporation  
organized and existing under the laws of the  
State of South Carolina

\_\_\_\_\_  
Witness Number 1

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Witness Number 2

STATE OF SOUTH CAROLINA

)

) ACKNOWLEDGMENT

COUNTY OF RICHLAND

)

I, \_\_\_\_\_, a notary public for South Carolina, do hereby certify that RICHLAND COUNTY DEVELOPMENT CORPORATION, a non-profit corporation organized and existing under the laws of the State of South Carolina, by \_\_\_\_\_, its \_\_\_\_\_, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where official seal is required by law) official seal this \_\_ day of August, 2010.

\_\_\_\_\_  
Signature of Notary Public (SEAL)

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

Legal Description: All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

Derivation: Title to Real Estate Limited Warranty Deed from Richland County, South Carolina, to Richland County Development Corporation, dated August \_\_\_\_\_, 2010, and recorded August \_\_\_\_\_, 2010, in the Office of the Register of Deeds for Richland County, South Carolina, in Book \_\_\_\_\_, at Page \_\_\_\_\_.

Tax Map Number: 14500-03-06

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

AFFIDAVIT OF CONSIDERATION

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred consists of the following:

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

3. Check one of the following: The deed is:
  - (a) \_\_\_\_\_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)  X  exempt from the deed recording fee because (See Information section of affidavit): Exemption (1) (\$5.00).

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_.
5. Check Yes \_\_\_ or No \_\_\_ to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
- (b) Place the amount listed in item 5 above here:  
(If no amount is listed, place zero here.) \_\_\_\_\_
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ \_\_\_\_\_

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor's attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Infrastructure Credit and Incentive Agreement  
Richland County, South Carolina, Navistar, Inc., and Pure Power Technologies, LLC  
EXHIBIT C-6

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\_\_\_\_\_, Esq.  
Attorney for Richland County Development Corporation

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Notary Public for \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
(SEAL)

**INFORMATION**

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and

(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT D

SPECIAL SOURCE REVENUE CREDIT CERTIFICATION

Reference is made to that certain Infrastructure Credit and Incentive Agreement dated as of July 1, 2010 (the "Agreement"), by and among Richland County, South Carolina (the "County"), Navistar, Inc. and Pure Power Technologies, LLC. Each capitalized term not herein defined has the meaning ascribed in the Agreement. This Certificate shall be delivered not later than August 31 of each year beginning on August 31, 2010. The Certificate should be addressed to each of the following parties:

Richland County, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202

Richland County, South Carolina  
Attn: Richland County Auditor  
2020 Hampton Street  
Columbia, SC 29202

Parker Poe Adams & Bernstein, LLP  
Attn: Ray E. Jones  
P.O. Box 1509  
Columbia, SC 29202

In accordance with the terms of the Agreement, the undersigned authorized agent of [claiming party name to be inserted] certifies to the County as follows:

1. [Claiming party name to be inserted] is entitled to claim a Special Source Revenue Credit (each, a "Credit") against its annual Richland Fee Payment for this tax year, as set forth in Section 3.03 of the Agreement, not exceeding an amount for which a Credit is permitted under the Act.

3. [Claiming party name to be inserted] is entitled to a Credit for this tax year, calculated as follows:

Fair market value as determined by appraisal, in accordance with the Code of Laws of South Carolina 1976, as amended, of real property portion of Existing Blythewood Property \_\_\_\_\_ x .06 assessment ratio = \_\_\_\_\_ (Real Property Assessed Value)

Cost less statutory depreciation, in accordance with the Code of Laws of South Carolina 1976, as amended, of personal property portion of Existing Blythewood Property \_\_\_\_\_ x .06 assessment ratio = \_\_\_\_\_ (Personal Property Assessed Value)

Real Property Assessed Value + Personal Property Assessed Value = \_\_\_\_\_  
(Total Assessed Value)



Total Assessed Value x .4608 (fixed millage rate) =

\_\_\_\_\_ (Resulting Richland Fee Payment)

Richland Fee Payment otherwise due on Existing Blythewood Property ("Pre-Credit Richland Fee Payment") - Resulting Richland Fee Payment =

Credit Amount (see below)

4. The Credit Amount is intended to equal the amount that must be applied to reduce the Pre-Credit Richland Fee Payment by an amount sufficient to equal the Resulting Richland Fee Payment, which Resulting Richland Fee Payment shall be reflected as being due on the tax bill sent to [claiming party name to be inserted] by the County Auditor. The Credit Amount will fluctuate each year depending on the calculation of the Resulting Richland Fee Payment and the Pre-Credit Richland Fee Payment.

5. The Credit Amount specified in this Certificate for the current tax year, together with the amount of all Credits previously claimed pursuant to the Agreement, do not, in the aggregate, exceed the total cost of Infrastructure and other qualifying property, for which a Credit is permitted under the Act.

IN WITNESS WHEREOF, I have executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

[Claiming Party Name to be Inserted],

a \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. 17-20HR

AN EMERGENCY ORDINANCE REQUIRING THE WEARING OF FACE MASKS TO HELP ALLEVIATE THE SPREAD OF COVID 19.

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.

**WHEREAS**, it is well recognized that SARS-CoV-2 the virus that causes the disease COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and,

**WHEREAS**, on March 11, 2020, the World Health Organization declared a world-wide pandemic; and,

**WHEREAS**, on March 13, 2020, the President of the United States declared a National Emergency for the United States and its territories in an effort to reduce the spread of the virus; and,

**WHEREAS**, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster declared a state of emergency for the State of South Carolina; and,

**WHEREAS**, since March 11, 2020, the Governor of South Carolina has issued twenty-eight (28) Executive Orders in response to COVID-19, including, specifically 2020-21, issued on April 6, 2020; and

**WHEREAS**, on March 24, 2020, the Governor of the State of South Carolina requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

**WHEREAS**, on March 27, 2020, the President of the United States granted the Governor's request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

**WHEREAS**, South Carolina Code of Laws Annotated Section 4-9-25 provides that:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

**WHEREAS**, South Carolina Code of Laws Annotated Section 4-9-130 provides that:

To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be designated as such and shall contain a declaration that an emergency exists and describe the emergency. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment; and

**WHEREAS**, Richland County Code of Ordinances; Chapter 2, Administration, Article II, County Council, Division 2, Ordinances, Section 2-31 provides:

(a) An emergency ordinance may be enacted only to meet public emergencies affecting life, health, safety, or the property of the people. Such an ordinance may not levy taxes, grant, renew or extend a franchise nor may it impose or change a service rate;

(b) Each emergency ordinance shall contain a declaration that an emergency exists, defining the emergency, and shall be entitled an "Emergency Ordinance";

(c) Emergency ordinances require no readings or prior publications before adoption by county council;

(d) Emergency ordinances require a two-thirds (2/3) affirmative vote of members present for adoption;

(e) An emergency ordinance is effective immediately on the date of adoption and shall expire automatically on the sixty-first day following the date of enactment; and.

(f) The clerk of council shall be responsible for indexing and providing for compilation of the emergency ordinance adopted and shall, with the county

attorney's assistance, cause a copy of the emergency ordinance to be filed in the office of the clerk of court;

**WHEREAS**, COVID-19 has spread across the state with the South Carolina Department of Health and Environmental Control ("SCDHEC") confirming the localized person-to-person spread of COVID-19 in South Carolina, which indicates a significantly high risk of exposure and infection creating an extreme public health risk; and,

**WHEREAS**, as of June 25, 2020, there were 28,962 confirmed cases throughout the State of South Carolina, 2,934 cases in Richland County and 1,659 cases in Lexington County, 691 deaths statewide; and,

**WHEREAS**, the number of cases is growing rapidly and if COVID-19 continues to spread in the County, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and,

**WHEREAS**, it is vitally important that we all work together to decrease the widespread proliferation of COVID- 19 among us all now rather than suffer the unfortunate and devastating consequences later; and,

**WHEREAS**, the Centers for Disease Control and Prevention ("CDC") and SCDHEC advise the use of cloth face coverings to slow the spread of COVID-19; and,

**WHEREAS**, taking measures to control outbreaks minimizes the risk to the public, maintains the health and safety of the County's residents, and limits the spread of infection in our communities and within the healthcare delivery system; and,

**WHEREAS**, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the County is taking steps to try to protect the citizens and employees of the County from increased risk of exposure; and,

**WHEREAS**, in light of the foregoing, County Council deems it proper and necessary to adopt this emergency Ordinance;

**NOW, THEREFORE**, by virtue of the authority vested in the governing body of Richland County pursuant to Home Rule, S.C.Code Ann. Sections 4-9-25 and 4-9-130, and in accordance with the requirements of S.C.Code Ann. Section 4-9-130 and Richland County Code of Ordinances, Chapter 2, Administration, Article II, County Council, Division 2, Ordinances, Section 2-31, and in light of the foregoing, the governing body of Richland County declares that an emergency exists with respect to the presence of and the spread of

the Coronavirus (COVID-19), and pursuant to the above authorities, and incorporating the federal and state emergency declarations, orders, measures, guidance and recommendations set forth in the prefatory clauses hereinabove, adopts this EMERGENCY ORDINANCE, as follows:

1. All persons entering a commercial establishment in the County must wear a face covering, which covers the mouth and nose, while inside the establishment. This paragraph does not apply to religious establishments. However, the use of face coverings is recommended during religious activities as well.
2. All restaurants, retail stores, salons, grocery stores, and pharmacies in the County must require their employees to wear a face covering, which covers the mouth and nose, at all times while having face to face interaction with the public.
3. Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.
4. Face coverings are not required in the following circumstances:
  - a. In personal vehicles;
  - b. When a person is alone in enclosed spaces; during outdoor physical activity, provided the active person maintains a minimum of six (6) feet from other people at all times;
  - c. When a person is alone or only with other household members;
  - d. While drinking, eating or smoking;
  - e. When wearing a face covering causes or aggravates a health condition.
  - f. When wearing a face covering would prevent the receipt of personal services.
  - g. When a person is 10 years of age or younger.
5. A person who fails to comply with Paragraph 1 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00. A person who fails to comply with Paragraph 2 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$100.00.
6. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense. In addition to the fines established by this paragraph, repeated violations of this Ordinance by a person who owns, manages, operates or otherwise controls a business subject to this Ordinance may, subject to all procedural protections set forth in the County Code, result in the suspension or revocation of any occupancy permit or business license issued to a business where the repeated violations occurred. Repeated violations of this Ordinance are additionally hereby declared to be a public nuisance, which may be abated by the County by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. The foregoing notwithstanding, every effort shall be made to bring the

business into voluntary compliance with the terms of this Ordinance prior to the issuance of any citation. For the purposes of Paragraph 2 of this Ordinance, "person" shall be defined as any individual associated with the business who has the control or authority and ability to enforce the social distancing requirements of the Ordinance within the business, such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure that the requirements of this Ordinance are met while the business is open to the public.


7. This Ordinance is effective as of 6:00 a.m., July 6, 2020.

SECTION II. Severability. If any section, subsection, or clause of this Emergency 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 Emergency Ordinance shall be effective beginning at on July 6, 2020. This Ordinance shall automatically expire on the 61st day after enactment of this Ordinance

RICHLAND COUNTY, SOUTH CAROLINA

By:   
Paul Livingston, Chair  
Richland County Council

ATTEST THIS 6<sup>th</sup> DAY OF

July, 2020

  
Michelle Onley  
Deputy Clerk to Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only  
No Opinion Rendered As To Content



**Agenda Briefing**

**Prepared by:** Dale Welch, Interim IT Director  
**Department:** IT Department  
**Date Prepared:** August 12, 2020 **Meeting Date:** August 31, 2020

<b>Legal Review</b>	Brad Farrar via email	<b>Date:</b>	August 12, 2020
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	August 24, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	August 19, 2020
<b>Approved for consideration:</b>	County Administrator	Leonardo Brown, MBA, CPM	
<b>Subject:</b>	Memorandum of Understanding (MOU) - COMET		

**Recommended Action:**

Staff recommends approval of the Memorandum of Understanding (MOU) with COMET so as to display COMET’s transportation data on RichlandMaps.com to include COMET’s routes and stops and to update map layers from COMET as they are received. This MOU is intended to benefit the residents who are served by COMET.

**Motion Requested:**

Move to approve staff’s recommendation.

**Request for Council Reconsideration:** Yes

**Fiscal Impact:**

Staff has determined the hard cost to Richland County to be zero. The soft cost to Richland County would be a few hours of GIS labor per quarter, which is considered negligible. The large benefit to residents would far outweigh the negligible hours of GIS labor. There would be zero cost to COMET.

**Motion of Origin:**

There is no associated Council motion of origin.

<b>Council Member</b>	
<b>Meeting</b>	
<b>Date</b>	



### Discussion:

The Executive Director/CEO of the Central Midlands Regional Transit Authority, Mr. John Andoh, has requested the county's GIS website display COMET's routes, stops, and transportation information in an effort to provide a public service to residents. Staff agrees that hosting COMET data on the GIS website does indeed provide a worthwhile public service.

If approved, there would be zero cost to Richland County and zero cost to COMET.

The MOU ensures that Richland County assumes no liability for the accuracy or reliability of COMET data. The COMET agrees to indemnify and hold harmless the County from any possible related claims. Either party can terminate the MOU with sixty (60) days' written notice with no preconditions.

### Attachments:

1. Unexecuted Memorandum of Agreement (MOU) with COMET as approved by Council at its December 17, 2019 Special Called meeting
2. Language suggested by Deputy County Attorney Brad Farrar (in red) as requested by the COMET attorneys
3. Excerpt of the minutes from the December 17, 2019 Special Called Meeting



RichlandMaps.com. County provides the information, maps, data and services herein as a public service. County makes no claims, representations or guarantees about the accuracy or currency of the contents of this information or the quality of the services provided for herein and expressly disclaims liability for errors and omissions in its contents or performance. No warranty of any kind, express or implied, including but not limited to the warranties of non-infringement of third party rights, title, merchantability, fitness for a particular purpose and freedom from computer virus, is given with respect to the information or services provided for herein. Neither the County nor its officers, employees or agents shall be liable for any loss or injury caused in whole or in part by use of the information or services described or provided for in this Agreement. Other than making COMET data available on RichlandMaps.com, Richland County will not redistribute any COMET data, regardless of the requestor.

The COMET understands and agrees that the maps, information and services obtained by virtue of this Memorandum is used at the COMET's risk and discretion and that the COMET will be solely responsible for any damages to The COMET's or any third party's computer systems or loss of data that results from any use of the services set forth herein. The COMET is responsible for ensuring that anyone using the information resulting from the services provided for in this Memorandum is informed that the burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the user accessing the information or services.

Further, that the user acknowledges and accepts all inherent limitations of the maps, data, information and services, including the fact that the maps and data are periodically updated, corrected and revised.

The maps and associated data provided herein do not represent or constitute a survey, nor anything that should be relied upon as establishing a legal right or interest in property.

Plans and maps are produced for posting on the Internet and are not necessarily the most complete. County assumes no liability for the accuracy of the data delineated on any map, information or services provided herein, either expressed or implied.

4. Within the limits of statutes prescribing liability, The COMET indemnifies and holds harmless the County of and from any and all claims, demands, damages, attorneys' fees, costs, actions, cause of action, or suit in law or equity of whatsoever kind or nature whether heretofore or hereafter accruing or whether now known or not known for the use of any information, data, maps or services provided by County pursuant to this Agreement.
5. This Memorandum shall commence on the date set forth above and shall continue unless terminated by either party upon such party giving sixty (60) days' written notice to the other party of its intent to terminate this agreement. Written notices must be forwarded to:

Richland County  
Attn: County Administrator  
2020 Hampton Street  
P.O. Box 192 Columbia, SC  
29202

The Central Midlands Regional Transit Authority  
Attn: Executive Director / CEO  
3613 Lucius Rd  
Columbia, SC 29201

6. This Memorandum may be amended in writing by the parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

WITNESSES:

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

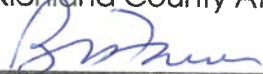
RICHLAND COUNTY

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

Central Midlands Regional Transit  
Authority

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

Richland County Attorney's Office

 1/10/20  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA

)

MEMORANDUM OF UNDERSTANDING

)

RICHLAND COUNTY

)

(Mapping Support)

THIS MEMORANDUM OF UNDERSTANDING (“Memorandum”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between Richland County, South Carolina (“County”) and the Central Midlands Regional Transit Authority (“COMET”).

RECITALS

WHEREAS, the COMET desires to have the assistance of the County with respect to certain mapping services; and

WHEREAS, the County is willing to provide such services under the terms and conditions set forth herein;

NOW, THEREFORE, the parties understand the following:

1. The County will provide support on an as available basis and dependent upon County’s operational priorities, resources, needs and tempo. Such support includes:
2. Displaying the COMET’s transportation data on RichlandMaps.com online mapping, such data to include the COMET’s routes and stops; and
  - a) Updating map layers from COMET as they are received.
  - b) The County host the data described herein on RichlandMaps.com at no cost to The COMET.
3. Richland County assumes no responsibility for the accuracy or reliability of COMET data. Any questions regarding COMET data should be directed to COMET staff. Richland County assumes no responsibility for the use of COMET data on RichlandMaps.com. County provides the information, maps, data and services herein as a public service. County makes no claims, representations or guarantees about the accuracy or currency of the contents of this information or the quality of the services provided for herein and expressly disclaims liability for errors and omissions in its contents or performance. No warranty of

any kind, express or implied, including but not limited to the warranties of non-infringement of third party rights, title, merchantability, fitness for a particular purpose and freedom from computer virus, is given with respect to the information or services provided for herein. Neither the County nor its officers, employees or agents shall be liable for any loss or injury caused in whole or in part by use of the information or services described or provided for in this Agreement. Other than making COMET data available on RichlandMaps.com, Richland County will not redistribute any COMET data, regardless of the requestor.

The COMET understands and agrees that the maps, information and services obtained by virtue of this Memorandum is used at the COMET's risk and discretion and that the COMET will be solely responsible for any damages to The COMET's or any third party's computer systems or loss of data that results from any use of the services set forth herein. The COMET is responsible for ensuring that anyone using the information resulting from the services provided for in this Memorandum is informed that the burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the user accessing the information or services. Further, that the user acknowledges and accepts all inherent limitations of the maps, data, information and services, including the fact that the maps and data are periodically updated, corrected and revised.

The maps and associated data provided herein do not represent or constitute a survey, nor anything that should be relied upon as establishing a legal right or interest in property. Plans and maps are produced for posting on the Internet and are not necessarily the most complete. County assumes no liability for the accuracy of the data delineated on any map, information or services provided herein, either expressed or implied.

4. Within the limits of statutes prescribing liability, and only to the extent permitted by law, The COMET indemnifies and holds harmless the County of and from any and all claims, demands, damages, attorneys' fees, costs, actions, cause of action, or suit in law or equity of whatsoever kind or nature whether heretofore or hereafter accruing or whether now known or not known for the use of any information, data, maps or services provided by County pursuant to this Agreement. Nothing about this paragraph shall be



construed as requiring The COMET to indemnify the County for any claims, demands, damages, attorneys' fees, costs, actions, cause of action, or suit in law or equity of whatsoever kind or nature arising solely out of the County's negligence resulting in the inaccurate display or improper use of the information, data or maps provided to the County.

5. This Memorandum shall commence on the date set forth above and shall continue unless terminated by either party upon such party giving sixty (60) days' written notice to the other party of its intent to terminate this agreement. Written notices must be forwarded to:

Richland County  
Attn: County Administrator  
2020 Hampton Street  
P.O. Box 192 Columbia, SC  
29202

The Central Midlands Regional Transit Authority  
Attn: Executive Director / CEO  
3613 Lucius Rd  
Columbia, SC 29201

6. This Memorandum may be amended in writing by the parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

WITNESSES:

RICHLAND COUNTY

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

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

Central Midlands Regional Transit Authority

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

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

Richland County Attorney's Office  
 11/14/20  
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Mr. Malinowski noted on p. 29 of the agenda Riverwalk Subdivision is listed as District 1, when it is actually in District 2.

Mr. Manning stated that Mr. Malinowski had brought this to the committee's attention, prior to them taking action on the item.

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

The vote in favor was unanimous.

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

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

The motion for reconsideration failed.

- b. County Sidewalk Program – This item was held in committee.
- c. I move that Richland County undertake a study regarding the existence/prevalence of PFAS 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 [MYERS] – This item was held in committee.

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

- a. **Memorandum of Understanding – COMET – Mapping Services** – Ms. Dickerson stated the committee recommended to approve the MOU, to correct the name of the entity from COMET to CMRTA/COMET, and include the CMRTA/COMET address on the last page of the MOU.

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

**Present but Not Voting: Manning**

**The vote in favor was unanimous.**

- b. Approval of Award of Community Housing Development Organization (CHDO) funding – Ms. Dickerson stated the committee recommended to approve the award HOME funds in the amount of \$528,144.00 to Community Assistance Provider for the construction of a four unit townhouse in the New Castle/Trenholm Acres master plan area.

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

Opposed: Malinowski

Present but Not Voting: Manning